

# Orchard.

## Orchard Media & Events Group Limited Terms and Conditions of Business – 18-05-2018

### Definitions:-

- “Company”** means Orchard Media & Events Group Limited a company registered in England & Wales (Company No. 07214357) and having its registered office at Orchard, Trade Street, Cardiff, CF105DT.
- “Client”** refers to any company, organisation, entity or individual engaging the Company to purchase Goods or Services.
- “Contract”** The contract between the Company and the Client for the supply of Services and/or Goods in accordance with these Terms and Conditions.
- “Goods”** means all goods supplied from time to time by the Company including any audio visual equipment.
- “IPR”** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered in any part of the world.
- “Order”** the Client’s order for the supply of Goods and/or Services as set out in the Client’s purchase order form.
- “Services”** means all services supplied from time to time by the Company in various media including print and digital design services, public relations, consultancy, event promotion and management, production services, media planning, media purchasing services, exhibition management services and the hire of audio visual equipment.
- “Term”** The Contract will commence upon the Company accepting an order placed by the Client and shall continue until terminated by either party in accordance with Clause 15.

### 1. Acceptance

1.1. All Orders placed with the Company constitute an offer by the Client to purchase the Services and/or Goods in accordance with these Terms and Conditions (“Terms”).

1.2. The Order shall only be deemed to be accepted when the Copy issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

1.3. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.



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The Orchard Media & Events Group Ltd  
Grŵp Cyfryngau a Digwyddiadau Orchard Cyf

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Company No / Rhif Cwmni: 07214357

1.4. Any quotation given by the Company shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.

## 2. Pricing

2.1. Estimates are based on instructions or specifications originally submitted by the Client. Any subsequent alterations requested by the Client may be subject to an additional charge. A revised estimate will be supplied to the Client in the event of any alteration being requested.

2.2. Estimates are also based on the current anticipated costs of the provision of Services and the Company reserves the right to amend any estimate on or at any time after acceptance to meet any costs of a variable nature which are outside the Company's control. The Company will use its reasonable endeavours to inform the Client in its initial estimate of any costs which may vary from time to time during the Term due to them being of a variable nature.

2.3. Any preliminary work produced by the Company, whether experimentally or otherwise, at the Clients' request will be charged for by the Company. No work will be undertaken on a speculative basis unless otherwise agreed in writing by the Company.

2.4. The Company shall be entitled to charge the Client for all and any expenses reasonably incurred by it in connection with the provision of the Services or the sale of Goods including, but not limited to, travelling expenses, hotel costs, courier services postage, subsistence and any associated expenses, and for the cost of any services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials that may be required by the Company to perform the Services.

2.5. The Company reserves at all times the right to request funds on account from the Client prior to any costs or expenses being incurred by it and in the event of the Company not being placed in such funds immediately the Company shall not proceed to incur the relevant cost or expense.

2.6. Should the Client request the Company to expedite the provision of the Services from any timescales agreed at the outset the Company shall be permitted to invoice the Client for all additional costs or expenses that are incurred by the Company in providing the expedited Services.

2.7. Should the provision of the Services be suspended at the request of or delayed through any default of the Client the Company shall then be entitled to payments for work already carried out and materials specially produced.

## 3. Payment Terms

3.1. Payment of all Company invoices is due within 30 days of the date of the invoice unless otherwise agreed and time for payment shall be of the essence of the Contract.

3.2. VAT is payable on all invoices issued by the Company at the prevailing rate.



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3.3. Payment by cheque will only be deemed to have been made when the cheque has been cleared by the Client's bank.

3.4. No deduction in the payment of invoices may be made for goods returned to the Company or not received by the customer until the Company has issued a Credit Note to the customer.

3.5. In the event of any invoices not being paid by the Client within 30 days pursuant to clause 3.1 the Company reserves the right to charge interest of 2% (compound) per month or part month against the outstanding invoice(s) from the date of invoice.

3.6. For the avoidance of doubt should the Client fail to comply with these Terms any credit facilities provided by the Company will be suspended immediately (without notice to the Client) and any future trading (if any) will be operated on a strictly pro-forma basis.

3.7. Pursuant to clause 9.1 of these Terms the Company shall be permitted to raise invoices periodically following the provision of part only of any the supply of Services or Goods to the Client and the Client acknowledges that there shall be no requirement whatsoever for the Company to complete the supply of the Services or Goods prior to raising an invoice and all invoices shall be payable in accordance with clause 3.1 of these Terms irrespective of whether there are any further Services or Goods to be provided by the Company to the Client.

3.8. The Client shall pay all amounts due under any invoice in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Company to the Client.

3.9 If you have queries on our charges, you must write to us within 21 days of the date of our fee account otherwise our fee accounts shall not be brought into question and the charges made by us shall remain valid and shall not be commuted.

#### **4. Cancellation**

4.1 Notwithstanding the provisions of clause 2.7, any provision of the Goods or Services cancelled at the request of a Client prior to a scheduled event, the Company shall be permitted to invoice the Client for the amount of the estimate provided to the Client at the outset or any other sum that has been agreed by the Company and the Client.

4.2 In the event of a cancellation by the Client, the Company can (at its sole discretion) apply a reduction to an invoice in the following circumstances:

4.2.1 50 % reduction if the provision of the Services are cancelled by the Client 4 weeks prior to a scheduled event;  
or

4.2.2 75 % reduction if the provision of Services are cancelled by the Client 5-8 weeks prior to a scheduled event;



4.3 For the avoidance of doubt no reduction whatsoever will be applied by the Company if the provision of Goods or Services is cancelled at the request of the Client within 2 weeks of a scheduled event.

4.4 The Client acknowledges that if any monies have been paid by the Client to the Company on account of any services or goods to be provided by the Company such monies shall not be refunded to Client and in the event that the Client cancels the provision of the Services or Goods the Company shall be entitled to offset the monies paid on account by the Client against any outstanding sum due to the Company.

## 5. Client Obligations

5.1 The Client shall:

5.1.1 ensure that the terms of the Order and/or any information it provides in any specification to the Company are complete and accurate;

5.1.2 co-operate with the Company in all matters relating to the provision of the Services or the sale of Goods;

5.1.3. provide the Company, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Company and where such access is to be provided by the Client to the Company the Client shall;

5.1.3.1 undertake appropriate and relevant health and safety risk assessments for the purposes of complying with any statutory or regulatory requirements;

5.1.3.2 ensure that suitable working conditions are provided to all the Company's employee's, offices, agents or sub-contractors and any other third party that may provide the Services to the Client; and

5.1.3.3 provide a copy of the risk assessment undertaken to the Company prior to the commencement of the provision of the Services by the Company;

5.1.4. provide the Company with such information and materials as the Company may reasonably require in order to supply the Services requested by the Client, and ensure that such information is accurate in all material respects;

5.1.5. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;

5.1.6. keep and maintain all materials, equipment, documents and other property of the Company (**Company Materials**) at the Client's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.

5.1.7. insure all the Company Materials to a value not less than its full replacement value comprehensively against all the usual risks of loss, damage or destruction by fire, theft or accident and such other risks as the Company may



from time to time nominate in writing to the Client and the Client shall on demand supply the Company with copies of the relevant insurance policies or other insurance confirmation acceptable to the Company and proof of premium payment to the Company to confirm the insurance arrangements

5.2. If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation set out in these Terms (**Client Default**):

5.2.1. the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services provided until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Company's performance of any of its obligations;

5.2.2. the Company shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this Clause 5.2 and

5.2.3. the Client shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Client Default.

## 6. Proofs

6.1. Proofs of all work will be submitted by the Company for the Clients' approval unless otherwise agreed. No responsibility can be accepted for any errors in such proofs submitted to the Client.

6.2. Any corrections should be made by the Client in writing on the proofs and clearly marked as "approved" or "approved with marked corrections" and signed by the Client. All proofs are chargeable. For the avoidance of doubt, no responsibility or liability can be assumed by the Company for any corrections or alterations that are requested to be made to the proofs by the Client via telephone.

## 7. Approvals and Authority

7.1. Any reference in this Contract to the Client's 'Written Approval' shall mean written approval by directors or employees of the Client authorised to approve the Company's work and/or expenditure. The Client will notify the Company in writing of any change to the authorised persons during the term. The Company shall not be responsible for any delay in the performance of the Services resulting from the unavailability of an authorised person to provide approval.

7.2. The Client's Written Approval of proofs, copy, layouts or artwork will be the Company's authority to purchase production materials, prepare final proofs and enter into any necessary Contracts with relevant third parties that may be engaged by the Company for the purposes of providing the Services. The Client's Written Approval of proofs will be the Company's authority to publish.



7.3. The Client accepts full legal responsibility in respect of any proof approved by it for publication and will indemnify the Company in respect of any loss or liability, costs (including legal costs) or damages incurred as a result of any use of the proof by the Client for advertising purposes.

7.4. If you are a Partner in an unincorporated Partnership or an unincorporated Sole Trader your data will be transferred to our financiers for the purpose of providing finance. Their details are available upon request

## **8. Intellectual Property Rights**

8.1. All Intellectual Property Rights in or arising out of or in connection with the provision of the Services shall be owned solely by the Company.

8.2. The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Client.

8.3. All advertising prepared by the Company and paid for by the Client will be the Client's property but the Client will not own any IPR in it. For the avoidance of doubt, the Client shall not for example own the copyright and have ongoing usage rights in 'stock' photographs obtained from news or photographic agencies or the indefinite usage of actors/actresses/voiceovers or assets supplied for particular advertisements or campaigns or to photographic or film negatives or to any other medium in which this material may be supplied.

## **9. Delivery of the Services or the Goods**

9.1. In the event of the Contract being fulfilled by way of separate parts, instalments or deliveries each part, instalment or delivery shall be made on the basis that it constitutes a separate Contract. The Company shall be permitted to invoice the client periodically following any part of the Services being provided to the Client or only part of the Goods being installed or delivered (as the case may be) and there shall be no requirement whatsoever for the Company to complete the supply of the Services or Goods prior to invoicing the Client.

9.2. Delivery of any work shall be accepted when tendered and thereupon or on notification that the work has been completed the ownership shall pass and payment shall become due provided always that any IPR shall remain vested in the Company pursuant to clause 8.

9.3. The Client acknowledges and agrees that time is not of the essence for:

9.3.1. any dates or times when the Services are due to be performed or the Goods are to be Delivered; or

9.3.2. the length of time that any Services will take to perform; or

9.3.3. any date or time when any of the Services will be completed by the Company or the Goods will be installed by the Company (as the case may be).



## 10. Materials supplied by the Client

10.1. The Company may reject any transparencies, paper, plates, digital files or any other materials supplied or specified by the Client which appear to the Company to be unsuitable. Any additional costs incurred by the Company purchasing suitable materials to replace any unsuitable materials provided by the Client will be charged to the Client.

10.2. Where materials are so supplied or specified, responsibility for defective work will not be accepted by the Company unless this is due to its failure to use reasonable skill and care.

10.3. Quantities of materials supplied shall be adequate to cover normal spoilage.

10.4. Whilst every effort will be made to ensure the safety of any materials supplied to the Company, no responsibility for loss or damage will be accepted by the Company nor will any subsequent claims be met by the Company.

## 11. Work supplied by electronic media

The Company shall not be liable for indirect loss or third party claims occasioned by any use of electronic media following its release from the Company.

## 12. Confidential Information

12.1. The Client shall not during or after the Term disclose without the Company's prior written permission any confidential information either concerning its business, its business plans, customers, suppliers or employees.

12.2. The Client acknowledges and agrees that any identifiable and original idea or concept presented by the Company in relation to any promotion or advertising campaign invented or developed by the Company shall be acknowledged as being available only for such promotion or campaign and shall not be used for any other purposes whatsoever without the Company's express prior written consent. Even where no promotion or campaign is agreed, the ideas and concepts presented to the Client shall remain strictly confidential and shall not be used in any way, including communication to any third party, without the Company's express prior written consent.

12.3. For the avoidance of doubt, the restrictions in this Clause 12 shall not prevent:

12.3.1. the disclosure or use of Information in the proper performance of the Company's duties;

12.3.2. the disclosure of Information if required by law; or

12.3.3. the disclosure of Information which has come into the public domain otherwise than through un-authorised disclosure.

12.4. The Client acknowledges that nothing in this Contract shall affect the Company's right to use as it sees fit any general marketing or advertising intelligence gained by the Company in the course of its appointment.



### 13. Use of Sub-Contractors

13.1. The Company is permitted to use other persons to provide some or all of the Services to the Client.

13.2. The Parties acknowledge and agree that some sub-contractors have their own terms and conditions on which they trade and which are more restrictive than the provisions in these Terms. For example, without limiting the generality of the foregoing, a sub-contractor may have more restrictive wording as to the standard it will reach in work it performs (as to timing or quality), what is to happen if that standard is not reached or met, or issues concerning the restriction and exclusion of liability). Where the terms and conditions of a sub-contractor are more restrictive or exclusory than the provisions of these Terms, the Parties agree that work provided by a sub-contractor will be governed by the terms and conditions of the sub-contractor rather than the provisions of these Terms.

### 14. Warranties and Indemnities

14.1. The Client warrants that it owns full intellectual property and legal title to all material supplied for use by the Company and fully indemnifies the Company against all actions as a result of incomplete title.

14.2. The Company warrants that its personnel working on the Services are and shall be competent and suitable, whether as to qualifications, experience or otherwise, to perform the Services.

14.3. The Client agrees to indemnify and keep the Company indemnified against any or all costs, demands, expenses, losses or damages incurred by the Company arising from or out of any cancellation, delay, alteration or disruption to the provision of any Services which results from bad weather or any act or threatened act of terrorism or military action.

### 15. Limitation of Liability

15.1. The Company will not be liable under this Contract for any loss of actual or anticipated income or profits, loss of contracts or for any special, indirect or consequential loss or damage of any kind howsoever.

15.2. These Terms states the full extent of the Company's obligations and liabilities in respect the performance of the Services or the sale of the Goods. The parties agree that any condition, warranty representation or other term concerning the performance of the Services or the sale of Goods which might otherwise be implied into or incorporated in this Contract, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.

15.3. The Client agrees that if the provision of any of the Services is postponed or cancelled as a result of bad weather or any act or threatened act of terrorism or military action, the Client shall have no claim of any kind over all or any part of any budget agreed with the Company.

15.4. The Company shall not be liable for indirect loss or third party claims occasioned by delay in performing the Services or for any loss to the client arising from delay in transit: -



15.4.1. Where work is defective for any reason, including negligence, the Company's liability (if any) shall be limited to rectifying such defects; and

15.4.2. Clients will be liable for payment of any copyright or research fees as may arise.

15.5. The Company's total liability to the Client in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Contract in any event.

## 16. Termination

16.1. Either party may terminate this Contract forthwith by notice in writing to the other if the other party:

16.1.1. is in material breach of any of the terms of these Terms and, in the case of a breach capable of remedy, fails to remedy such breach within 14 days of receipt of written notice giving full particulars of the breach and of the steps required to remedy it; or

16.1.2. passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or

16.1.3. becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or

16.1.4. has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or

16.1.5. ceases, or threatens to cease, to carry on business.

16.2. The parties' rights, duties and responsibilities shall continue in full force during the agreed period of notice and whether or not there is a period of notice, the Client shall pay all sums due in respect of work done and expenditure committed by the Company until the end of the Contract.

16.3. On termination of this Contract, the Client shall pay for all Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by the Company for the performance of the Services prior to the date of termination.

## 17. Title to the Goods

17.1. Title to the Goods shall remain with the Company until payment in full of all monies due and owing from the Client to the Company (whether in relation to that particular contract or on any account whatsoever). In the case of payment by cheque or other instrument of payment, title will not pass until the same has been met or otherwise honoured. If a cheque fails to clear the Client's Bank, or a standing order is not honoured the Company reserves the right to charge a £15 administration fee.



17.2. Until such payment the Client shall remain in possession of the Goods solely as Bailee for the Company and shall store them in a manner which makes them readily identifiable as goods of the Company.

17.3. The Client agrees that if payment is overdue in whole or in part the Company shall (without prejudice to any of its other rights) have the right to enter the Client's premises and remove any of its goods therefrom.

17.4. If notwithstanding that the title to the goods has not passed to the customer the Client sells the Goods in such manner as to pass to a third party a valid title to the Goods the Client shall hold the proceeds of such sale on trust for the Company.

17.5. Demand for or recovery of the Goods or documents by the Company shall not itself discharge either the customer's liability to pay the whole of the price and take delivery of the goods or the Company's right to sue for the whole of the price.

17.6. Non specified payments shall be appropriated by the Company to invoices and to Goods in such order the Company shall select.

## **18. General lien**

Without prejudice to other remedies, the Company shall in respect of all unpaid debts due from the client have a general lien on all goods and property within its possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property as it thinks fit and to apply any proceeds towards such debt.

## **19. Force Majeure**

19.1. The Company shall not be liable for any failure to perform or delay in performance of any of its obligations under this Contract caused by any act of God, war, terrorism, military action, strike, lockout, industrial action, fire, flood, drought, tempest, failure of a utility service or transport network or any other circumstances beyond the reasonable control of a party to this Contract (a "Force Majeure Event").

19.2. The Client acknowledges and agrees that nothing in this Contract shall place any obligation upon the Company to obtain insurance cover in relation to risks arising from a Force Majeure Event and the Company shall not be liable to the Client under this Contract for any loss of any kind arising from a Force Majeure Event.

19.3. The Company shall promptly notify the Client in writing of its reasons for the delay or stoppage and its likely duration and shall take all reasonable steps to overcome the delay or stoppage.

19.4. If the Company has complied, its performance under this Contract shall be suspended for the period that the Force Majeure Event continues and the party will have a reasonable extension of time for performance of its obligations given all the circumstances. As regards the delay or stoppage arising from the Force Majeure Event:

19.4.1. the Company shall take all reasonable steps necessary to bring that event to a close or to find a solution by which its obligations under this Contract may be performed despite the Force Majeure Event; and



19.4.2. if the Force Majeure Event continues for more than 30 consecutive days, the Company may terminate this Contract with immediate effect on giving written notice to the other party and shall not be liable to the Client for any liability, cost or expense arising from such termination.

## **20. Assignment**

The Client shall not assign, transfer, charge or deal in any other manner with this Contractor any of its rights under it without the prior written consent of the Company, such consent not to be unreasonably conditioned, withheld or delayed.

## **21. Third Party Rights**

A person who is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

## **22. Variation**

No variation of these Terms or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

## **23. Notice**

23.1. Any notice, invoice or other communication which either party is required by this Contract to serve on the other party shall be sufficiently served if sent to the other party at its specified address.

23.1.1. by hand;

23.1.2. by registered or first class post or recorded delivery; or

23.1.3. by facsimile transmission confirmed by registered or first class post or recorded delivery.

23.2. Notices sent by registered post or recorded delivery shall be deemed to be served three (3) Working Days following the day of posting. Notices sent by facsimile transmission shall be deemed to be served on the day of transmission if transmitted before 4.00pm on a Working Day, but otherwise on the next following Working Day. In all other cases, notices are deemed to be served on the day when they are actually received.

## **24. Entire Contract**

These Terms contain the whole contract between the Parties and supersedes and replaces any prior written or oral contracts, representations or understandings between them. The Parties confirm that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into these Terms. Nothing in these Terms excludes liability for fraud.



## 25. Severance

If any provision of these Terms is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these Terms and rendered ineffective as far as possible without modifying the remaining provisions of these Terms and shall not in any way affect any other circumstances of or the validity or enforcement of these Terms.

## 26. Governing Law and Jurisdiction

26.1. These Terms shall be governed by and construed in accordance with the laws of England and Wales.

26.2. Each party irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales over any claim or matter arising under or in connection with this Contract or the legal relationships established by these Terms.



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## GDPR DPA

### Client as **Data Controller** and **Agency as Data Processor**

For use with the **ORCHARD MEDIA & EVENTS GROUP** Agreement

#### General Guidance Notes:

##### Introduction

- Article 28 of the GDPR governs the appointment of data processors. In addition to setting out certain general obligations imposed on data controllers and data processors in the context of the appointment of a data processor, Article 28(3) sets out two key requirements where a data processor is appointed by a data controller, or another data processor:
  - Firstly, there must be an agreement in place between the parties (which will be referred to as a “Data Processing Agreement” or “DPA”); and
  - The DPA must contain certain contractual obligations imposed on the data processor (the “Compulsory Terms”).
- The DPA can either be a separate agreement to the Client Agency Agreement, or the Compulsory Terms required by Article 28(3) can be included within the Client Agency Agreement itself.

##### The purpose of this document

- This document is designed to be used with the **ORCHARD MEDIA & EVENTS GROUP** i.e. where agency services may only require occasional processing of personal data services as part of a wider set of creative services. This document should not be used where the agency’s core services to the client will involve the processing of Client Personal Data (e.g. data analytics services), or where the processing of Client Personal Data may result in a high risk to data subjects. In such cases the long form template DPA should be used.
- There appears to be considerable confusion concerning which terms of a DPA are Compulsory Terms and which terms of a DPA are optional (the “Optional Terms”).
- In addition, many DPA’s suffer from the following problems:
  - The DPA omits the full list of Compulsory Terms;
  - The DPA incorporates terms purporting to be Compulsory Terms but their construction does not comply with the minimum requirements of the Compulsory Terms; or
  - The DPA includes other terms that contradict the Compulsory Terms; or
  - The DPA includes terms that significantly exceed the scope of the Compulsory Terms



- This document is therefore designed, amongst other things, to assist clients and their agencies with the following:
  - To identify the Compulsory Terms and provide suggested contractual language for their incorporation into a DPA; and
  - To identify and provide suggested contractual language for the following types of Optional Terms:
    - Clauses that reflect a party's rights and/or obligations under the GDPR but which are not required to be included in a DPA; and
    - Clauses to address the effect of the obligations imposed and/or the rights conferred on a party by the GDPR but which are not required to be included in a DPA.
- The parties can elect to omit/amend the Optional Terms and/or include additional terms, provided that the amended Optional Terms and/or additional clauses do not remove the minimum:
  - obligations represented by the Compulsory Terms; or
  - rights conferred and the obligations imposed on the parties under the GDPR.

### How to use this Document

- This document has been designed to work with the **ORCHARD MEDIA & EVENTS GROUP** template and therefore it adopts definitions used in the Creative Services Agreement template. This document is designed to be used in the following scenarios:
  - For new appointments taking effect from 25th May 2018:
    - As a Schedule to the **ORCHARD MEDIA & EVENTS GROUP**; or
    - The definitions and operative terms are added to the body of the **ORCHARD MEDIA & EVENTS GROUP**
  - For existing appointments in force after 24th May 2018:
- The definitions and operative terms form part of a Variation Addendum to the **ORCHARD MEDIA & EVENTS GROUP**.



“**Client Personal Data**” shall mean personal data:

- (i) supplied to the Agency by or on behalf of the Client; and/or
- (ii) obtained by, or created by, the Agency on behalf of the Client in the course of delivery of Services, and which, in each case, is processed by the Agency in the performance of Services;

“**Data Controller**” shall have the same meaning as defined in the GDPR;

“**Data Privacy Laws**” shall mean the following as amended, extended or re-enacted from time to time.

- (i) EC Directive 1995/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (ii) EC Directive 2002/58/EC on Privacy and Electronic Communications;
- (iii) EC Regulation 2016/679 (the “**GDPR**”) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
- (iv) all local laws or regulations implementing or supplementing the EU legislation mentioned in (i)-(iii) above;
- (v) all codes of practice and guidance issued by national regulators relating to the laws, regulations and EU legislation mentioned in (i)–(iv) above.

“**Data Processor**” shall have the same meaning as defined in GDPR;

“**Effective Date**” means the 25th May 2018;

“**Processing and Processed**” shall have the same meaning as defined in GDPR;

“**Personal Data**” shall have the same meaning as defined in GDPR;

## 1 Data Protection

1.1 This [Variation Addendum] shall have effect from the Effective Date. Until that time the provisions of clause 32 of this Agreement shall continue to apply.

1.2 From the Effective Date, in the event that a provision of this Clause conflicts with any other provision of this Agreement, the provision in this Clause shall prevail to the extent of such conflict.

1.3 The parties confirm that where Services comprise of the Agency’s processing of Client Personal Data, the Agency shall be the Data Processor and the Client shall be the Data Controller with respect to such processing.

1.4 The parties hereby acknowledge and agree that the provisions of Article 28(3)(a)-(h) of the GDPR are incorporated into this Agreement, with any necessary changes to give full effect to such provisions.

1.5 Each party shall comply with the obligations imposed on it by applicable Data Privacy Laws with regard to Client Personal Data processed by each party in connection with Services.

1.6 Where, by operation of Clause 1.4, the Agency is obliged to provide assistance to the Client, or to third parties at the request of the Client (including submission to an audit or inspection and/or the provision of information), such assistance shall be provided at the sole cost and expense of the Client, save where such assistance directly arises from the Agency’s breach of its obligations under this Agreement, in which event the costs of such assistance shall be borne by the Agency.

1.7 Notwithstanding any other provision of this Agreement, the Agency shall be entitled to sub-contract any part of the Services requiring the processing of Client Personal Data, subject to the following conditions:

- (a) The Agency shall notify the Client in writing of its intention to engage such sub-contractor. Such notice shall give details of the identity of such sub-contractor and the services to be supplied by it;



(b) The Client shall be deemed to have approved the engagement of the sub-contractor if it has not served a notice in writing on the Agency objecting (acting reasonably) to such appointment within 30 days of the date that the notice is deemed to be received by the Client in accordance with clause 13.

1.8 Where, in accordance with the provisions Article 82 of the GDPR, both parties are responsible for the act, or omission to act, resulting in the payment of Losses by a party, or both parties, then a party shall only be liable for that part of such Losses which is in proportion to its respective responsibility.



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