

## **TERMS AND CONDITIONS**

### **1. Applicability of Terms and Conditions**

This Agreement is made between the Client and Creative Nation on the date specified in the form above. The entire terms and conditions of this Agreement are set out below and in the event that the Client proposes any terms and conditions whether through a purchase order or otherwise, these terms and conditions shall take precedence and none of the Client's terms and conditions shall form a part of this Agreement unless expressly agreed to in writing by Creative Nation.

All the services provided by Creative Nation to the Client (as detailed in Schedule One and as may be amended by the signature of the parties hereto) ("Services") shall be provided to the Client under the terms hereof.

### **2. Extent of Creative Nation's Responsibilities**

Creative Nation's responsibilities are only as set out at Schedule One and Creative Nation shall not be responsible for any matter outside of the control of Creative Nation, including but not limited to any matter normally falling within the province of a director or producer of any film, video tape, computer programme or other media and accordingly, the Client is solely responsible for ensuring that any film, video tape, computer programme or other media meets the Client's needs and is correct and complete in all respects before use is made thereof or the same is removed or delivered from the Creative Nation's premises or (whichever is the earlier). Creative Nation shall be entitled to rely upon the instructions made by the Client representatives in respect of the provision of the Services by Creative Nation. The Client shall, at such point, be deemed to have accepted such Services.

Creative Nation shall provide the Services in a proper, professional and workmanlike manner and in accordance with good industry standards. To this end, Creative Nation shall only engage personnel to work upon the Services who are competent and able to complete those tasks efficiently. Any stated delivery date of the Services is an estimate only. The Client hereby acknowledges that in the provision of the Services, Creative Nation

shall rely upon the Client to promptly provide any materials, feedback or assistance to Creative Nation in order to enable Creative Nation to fulfil the Services for the Client. Any delays or failings in the provision of the Services by Creative Nation due to the Client failing to provide the foregoing in a timely manner or any third party supplier failing or delaying the provision of the Services, shall not cause Creative Nation to be liable to the Client to the extent that those delays or failings are caused by the Client or third party.

### **3. Bookings, Cancellations and Working Days**

3.1 Unless the Client has made a minimum spend commitment to the Services (as evidenced in Schedule One) the Client may call off the Services from time to time either by e-mail, letter or telephone (in the latter case Creative Nation shall confirm such call off by email to the Client). The rates charged to the Client shall be those set out at Schedule One as may be amended by Creative Nation from time to time by notice to the Client.

3.2. If after the Client has called off Services and subsequently wishes to cancel those Services by giving Creative Nation notice of cancellation of such Services previously booked and such notice is received by Creative Nation with less than seven days notice prior to Creative Nation commencing the Services, the Client shall be liable to pay Creative Nation the full charges relating to the Services cancelled; if such notice is given between twenty one days and seven days, Creative Nation shall charge the Client twenty five percent of the fees relating to such Services.

Notwithstanding the foregoing, Creative Nation shall charge the Client in respect of any cancellation, the cost of any third party charges or penalties incurred by Creative Nation in respect of the Services, plus an administration fee of fifteen percent of such third party charges or penalties.

Working days are Monday to Friday inclusive, but excluding any public holidays in England and Wales.

3.3 Cancellations of any bookings will only be effective if given in writing or e-mail by the Client and shall take effect from receipt by Creative Nation of such cancellation.

#### **Creative Nation Limited: 2014**

Registered Address: Vyman House  
104 College Road, Harrow, Middlesex, HA1 1BQ.  
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## Client Agreement Form

3.4 Creative Nation reserves the right to cancel any booking whether or not any Services in connection therewith have been provided by Creative Nation in the event that Creative Nation in its absolute discretion, but acting reasonably considers the Client's material is or might be offensive or obscene or that the copying or other reproduction thereof might infringe the rights of any third party or be otherwise illegal however and for the avoidance of doubt, any failure by Creative Nation in this regard shall not cause any responsibility upon Creative Nation in respect of the decency or legality of such material. In the event that Creative Nation cancels such Services it shall be entitled to charge for its time and materials up to the date of such cancellation.

3.5 Nothing herein shall constitute a penalty and the parties hereby acknowledge and agree that the cancellation charges referred to herein is a fair and reasonable assessment and estimate of Creative Nation's losses and damages.

### 4. Payment

4.1 The Client shall pay for the Services at the rates set out in this Agreement including Schedule One or otherwise as agreed in writing between the parties. Time of payment of the fees is of the essence and the Client shall not withhold, delay or offset any sums against any sums due to Creative Nation, which sums shall be paid in full. In the event that the Client disputes any sums due and owing to Creative Nation, the Client shall raise such dispute in writing with Creative Nation in sufficient detail to identify the basis of such dispute, within the lesser of seven days of the date of receipt of such invoice or thirty five days of the date of the invoice. If no such dispute is raised the Client shall not be entitled to raise a dispute in connection with such invoice in the future.

4.2 All the payments shall be made within twenty-eight days from the date of invoice. Creative Nation reserves the right to charge the Client any or all of the fees for the Services prior to performing the Services and in such circumstances no Services will be performed until payment has been received in full.

4.3 In the event of default in payment by the Client, Creative Nation shall be entitled without

prejudice to any other right or remedy to suspend any further performance of the provision of the Services (in whole or in part) without notice and liability to the Client and (i) to charge interest on any amount outstanding at the rate of 4% above the bank base rate of National Westminster Bank plc from time to time calculated daily from the date that payment was due until the date of actual full payment; and (ii) to charge for its legal and debt collection costs at the cost incurred and in addition to that internal administrative costs of collecting late payments, at the rate of £200 per hour (or part thereof).

4.4 In the event that the Client delays the provision of the Services or extends the scope of the Services provided, Creative Nation shall be entitled to charge the Client additional fees at its then standard rate of charges for such professional services work. In addition Creative Nation reserves the right to charge the Client its out of pocket expenses in the provision of the Services (including any third party charges incurred).

### 5. Limitation of Liability

5.1 Neither party shall exclude any liability to the other for death or personal injury or damage to real property caused by its negligence or by its wilful conduct, including that of their respective employees.

5.2 All implied warranties are hereby excluded.

5.3 Creative Nation shall not be liable in contract, tort or otherwise (including negligence) for any indirect or consequential losses whatsoever or howsoever arising, including loss of profit, business, contracts or anticipated savings (being savings that the Client expected to make by entering into this Agreement).

5.4 Other than as provided for at clause 5.1, the total liability of Creative Nation to the Client in any consecutive 12 month period commencing from the date of this Agreement, shall not exceed the lower of, one times the fees received by Creative Nation from the Client in the same 12 month period, or £10,000

### 6. Indemnities by Client

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The Client shall fully indemnify Creative Nation and (where applicable) its sub-contractors, agents or employees from and against all actions, proceedings, claims, demands, damages, fees, costs, losses and expenses (including legal costs) or other liabilities made against or incurred or suffered by Creative Nation and/or its sub-contractors, agents or employees by reason of or in respect of:

- a) any allegation of infringement of copyright or trademark or other intellectual property rights or any passing off of any third party or any civil or criminal action or prosecution for defamation or obscenity or for any breach of confidence or misuse of any confidential information arising out of any work carried out by or on behalf of the Client;
- b) any breach by the Client of any of these terms and conditions.

### 7. Insurance

Each party shall be responsible for procuring and maintaining suitable insurances to cover the liabilities that each party has to the other party under this Agreement.

### 8. Non Solicitation and Screen Credits

The Client hereby agrees not to solicit or otherwise offer employment, consultancy or otherwise engage directly or indirectly, any employee, agent or sub-contractor of Creative Nation involved in the provision of the Services within the previous 12 months to provide any services for the Client.

For any material produced by the Services and where a screen credit is generally incorporated to such material (or such other materials comprising the materials produced under the Services) clear credit must be given to Creative Nation and (as applicable) to relevant personnel, unless otherwise agreed in writing.

### 9. Termination

This Agreement shall take effect from the date of this Agreement and shall continue for the period stated in Schedule One (if any) or; until it is terminated under this clause 9. Other than the foregoing this Agreement may be immediately terminated by the non-defaulting

party where (a) the defaulting party is in material breach of this Agreement and if such breach is capable of remedy, fails to remedy such breach within 30 days (in respect of payments due to Creative Nation the remedy period shall be 7 days) of written notice sent by the non-defaulting party requesting that such default is remedied and providing sufficient detail of the default; or immediately without notice to remedy, where such breach is not capable of remedy; (b) immediately where the other party appoints an administrator or receiver other than for solvent reorganisation purposes (or where there are circumstances that exists for such an appointment) or otherwise bankruptcy or insolvency proceedings are commenced by or against the other party PROVIDED THAT none of the foregoing shall relieve the Client of any of its payment obligations to Creative Nation.

### 10. General

All intellectual property rights (being all rights in Patent, copyright, and any other rights capable of registration) in the Services shall be and remain with Creative Nation unless otherwise agreed in Schedule One PROVIDED THAT Creative Nation hereby grants to the Client a perpetual worldwide license to use the intellectual property rights comprised in the Services PROVIDED THAT no rights to use shall be transferred to the Client until all fees invoiced by Creative Nation to the Client have been paid in full and without delay, set-off, deduction or withholding.

This Agreement comprises the entire agreement between the parties in respect of the Services and shall be governed by the laws of England. The parties hereby agree to submit to the exclusive jurisdiction of the English Courts in London, England.

This Agreement can only be amended if such amendments are made in writing and signed by an authorised representative of each party, which authorised representative for Creative Nation, shall only be a director of Creative Nation.

All notices sent from one party to the other shall be validly given if sent to the postal or e-mail addresses given for each party in this Agreement (or such subsequent addresses notified to the other party for such purposes) and with e-mail addresses shall be deemed to

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have been received when the sending party has received confirmation of delivery of such e-mail and with postal addresses shall be deemed to have been received three days from the date of posting.

is caused by any force majeure, including any failure by third party suppliers, act of god, war, riot, inclement weather, strike, lock-out or otherwise any act outside of the control of the affected party.

Neither party shall be liable to the other for any breach of this Agreement where such breach