

# TERMS & CONDITIONS OF RENTAL AND SUPPLY OF SERVICES

## Parties to the Agreement:

(A) Hyperactive Broadcast Limited, trading as Gravity Media (registered no. 0196190), registered office is situated at Unit 15, Southwood Business Park, Armstrong Mall, Farnborough, Hampshire GU14 0NR (together with its assigns and successors in title), hereinafter referred to as "the Supplier"; and

(B) "The Customer" as specified on the Order Acknowledgement Form.

## 1. Definitions

1.1 "the Equipment" means the equipment specified on the Order Acknowledgement Form together with all replacements and renewals of such equipment and the component parts thereof and all accessories, additions, containers, handbooks and suchlike. References to the Equipment shall (where the context so permits) be construed as including a reference to any component thereof.

1.2 "the Charges" means those amounts as are specified on the Order Acknowledgement Form without any deduction, set-off, or counterclaim.

1.3 "the Period" means the period specified on the Order Acknowledgement Form and commencing on the Commencement Date.

1.4 "the Commencement Date" means the earlier of the date upon which the Equipment is delivered to the Customer or its agents or the date upon which the Equipment is made available for collection by the Customer or its agents, or the commencement of the supply of the Services.

1.5 "the Order Acknowledgement Form" means the document prepared by the Supplier specifying in particular the Equipment, personnel and services, the Charges and the Period.

1.6 "the Services" means mean any services to be provided including Equipment, personnel, and services as set out in the Order Acknowledgement Form.

## 2. Supply

2.1 The Supplier agrees to provide to the Customer and the Customer agrees to accept from the Supplier the Services for the Period at the Charges subject to these terms and conditions ("the Terms").

2.2 These Terms shall apply to the supply of Equipment, Personnel and/or Services except where application to one or the other is specified.

## 3. Conditions of Supply

3.1 The supply of the Services commences on the Commencement Date. At the Commencement Date the Customer shall inspect the Equipment and the Order Acknowledgement form will be signed by the Customer or by a person authorised on behalf of the Customer.

3.3 Signature of the Order Acknowledgement Form by the Customer or by a person authorised to sign on the Customer's behalf shall constitute acceptance of the Equipment and of the Terms.

## 4. Charges

4.1 The Customer shall pay to the Supplier during the Period the Charges in the amounts and at the intervals specified in the Order Acknowledgement Form without previous demand or invoice.

4.2 Subject to clause 4.1 above, the Supplier shall (where appropriate) be entitled to invoice the Customer at any time after the Customer has accepted a written quotation of the Supplier or the Supplier has accepted any written order of the Customer, and the Customer shall pay to the Supplier the amount specified on the invoice within 30 days of the Supplier's invoice.

4.3 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:

4.3.1 terminate any supply of Services to the Supplier or suspend the supply of any Services to the Customer;

4.3.2 appropriate any payment made by the Customer in relation to any equipment or services supplied between the Customer and the Supplier towards full or partial payment of amounts due under the Order Acknowledgement Form as the Supplier shall think fit (notwithstanding any purported appropriation by the Customer);

4.3.3 charge the Customer interest at the rate of 4% per annum above the Base Rate for the time being of Barclays Bank plc on all sums which from time to time may be due from the Customer to the Supplier hereunder and remain for the time being unpaid, such interest being calculated from the due date until actual payment compounded monthly and to be payable before as well as after any judgment obtained in respect thereof.

4.4 The time of all payments due shall be of the essence and the Supplier's right to terminate pursuant to clause 4.3.1 shall continue until such time as all overdue amounts (including interest) have been paid in full and shall not be deemed to be waived or otherwise impaired by the Supplier's continuance to supply any Services notwithstanding any breach by the Customer of clause 4.3.1.

4.5 The payment of all sums must be made to the Supplier at the address specified on the Order Acknowledgement Form and payment by post is at the Customer's risk.

4.6 The Customer is solely responsible for the payment of all taxes, charges or other amounts that may be levied in respect of the payment for the Charges or for the delivery of or use of the Equipment or supply of Services and shall indemnify and hold harmless the Supplier against any such amounts which the Supplier is required to pay.

## 5. Use of the Equipment

5.1 The Customer may use the Equipment for the purposes of its business and for social, domestic and pleasure purposes. The Equipment is not to be used, and the Customer will not permit it to be used, for any purposes for which it is not expressly designed. Further, the Customer will not use or permit the Equipment to be used or operated in a manner contrary to any instruction notified by the Supplier or to any statutory provision or regulation or in any way contrary to law.

5.2 The Customer agrees that it will not:

5.2.1 without the prior consent of the Supplier effect any modification to or make any alterations additions or repair to the Equipment including addition, removal or modification of any software or hardware to the supplied systems;

5.2.2 remove or interfere with any identification marks or plates affixed to the Equipment nor attempt or purport to do so nor permit the same;

5.2.3 deface the Equipment nor add any painting, sign writing, lettering or advertising to or on the Equipment.

## 6. Supply of Services

6.1 The Supplier shall supply the Services to the Customer in accordance with the specification set out in the Order Acknowledgement Form.

6.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Acknowledgement Form, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

6.3 The Supplier reserves the right to amend the specified in the Order Acknowledgement Form if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

6.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## 7. Duties of the Supplier

7.1 The Supplier shall during the Period:

7.1.1 In the event of any of the Equipment becoming temporarily unusable (other than as a result of accident, damage, theft or vandalism), the Supplier shall during the Period, endeavour to make available replacement equipment (not necessarily of the same type and age) for collection by the Customer within 48 hours (or so soon thereafter as is practicable) after receipt of notification from the Customer requesting the same. The Supplier may at its own discretion from time to time withdraw any Equipment and substitute other equipment of similar make and type. Save as otherwise expressly provided for any replacement equipment shall be subject to the Terms to the same extent as the Equipment.

7.1.1 In the event the Equipment is rendered unusable as a result of the customer breaching clause 5.2.1, then the Supplier may elect to repair or replace the equipment at cost to the Customer.

## 8. Duties of the Customer

8.1 The Customer shall during the Period:

8.1.1 ensure that the Equipment is operated properly and safely by persons who are competent to operate the same and in accordance with any instructions or guidance issued from time to time by the manufacturer of the Equipment or by the Supplier;

- 8.1.2 indemnify the Supplier against all fines, penalties and liabilities arising in respect of any non-compliance or contravention of any law or regulation, together with the cost or expense relating thereto incurred by the Supplier;
- 8.1.3 not take or allow any of the Equipment to be taken out of the United Kingdom mainland without receiving prior written authority of the Supplier and, in the event of that authority being given, only on such terms as the Supplier deems fit;
- 8.1.4 collect from and return to the Supplier, or from and to such place as the Supplier shall advise, any replacement equipment made available to the Customer in accordance with clause 7.1.2 hereof. The replacement equipment shall be returned within 24 hours after the Customer has been notified by the Supplier that the original Equipment is ready for collection, failing which the Customer will pay additional Charges for the replacement equipment at a rate determined by the Supplier for the period during which the replacement equipment is retained by the Customer;
- 8.1.5 bear the cost of the repair or rectification of any damage to the Equipment resulting from negligence or improper use of the Equipment by the Customer or any person permitted by the Customer to use the Equipment;
- 8.1.6 pay all costs incurred by the Supplier in respect of the supply and fixing of any accessories, extras or additions which may be required by law or which are fixed to the Equipment at the request of or by the Customer;
- 8.1.7 take all necessary steps at its own expense to retain and recover possession or control of any Equipment of which the Customer loses control;
- 8.1.8 permit the Supplier or its authorised representatives at all reasonable times to enter upon any premises where the Equipment may from time to time be to inspect and test the condition of the Equipment;
- 8.1.9 notify the Supplier of any change in the Customer's address and upon request by the Supplier promptly inform the Supplier of the whereabouts of the Equipment; and
- 8.1.10 in respect of the condition and maintenance of the Equipment (including any replacement equipment supplied pursuant to Clause 7.1.2 be solely responsible at its own cost for:
- (a) regularly cleaning and maintaining the Equipment;
  - (b) subject to clause 5.2.1, promptly repairing damage to the Equipment;
  - (c) arranging (where appropriate) the regular servicing of the Equipment and keeping accurate records of the same.
- 8.1.11 co-operate with the Supplier in all matters relating to the Services;
- 8.1.12 provide the Supplier, its employees, agents, consultants and subcontractors with access to the Customer's premises, and any other location as reasonably required to provide the Services;
- 8.1.13 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure the information is complete and accurate in all material respects;
- 8.1.14 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the Commencement Date; and
- 8.1.15 comply with all applicable laws, including health and safety laws.

## **9. Insurance**

9.1 The Customer will throughout the Period keep the Equipment (including any replacement equipment provided under clause 7.1.2 above) insured with an insurance company of good repute or with Lloyds underwriters against loss or damage from all risks. The Customer shall notify its insurers that the Equipment is on hire from the Supplier and request the insurers to endorse a note of such interest on the Policy of insurance naming the Supplier as loss payee, shall on demand and before commencement of this agreement show the Supplier the policy of insurance, premium receipts and insurance certificate and shall not use or allow the Equipment to be used for any purpose not permitted by the terms of the policy of insurance or do or allow to be done anything or act whereby the insurance may be invalidated. If the Customer shall make default in the payment of any premium in respect of the insurance the Supplier may pay such premium in which event the Customer shall repay the amount thereof to the Supplier on demand. The Customer shall indemnify the Supplier against all loss or damage to the Equipment not recoverable under the policy of insurance.

9.2 Where any event or accident shall occur which is a risk covered by the Customer's insurance hereunder the Customer shall immediately notify the Supplier thereof, shall not compromise any claim without the consent of the Supplier, shall allow the Supplier to take over conduct of the negotiations (except in relation to claims by the Customer for personal injuries, loss of use of the Equipment or loss or damage to property unconnected with the Equipment) and shall at the expense of the Customer take such proceedings (in the sole name of the Customer or jointly with the Supplier) as the Supplier shall direct holding all sums recovered, together with any monies received by the Customer under its policy of insurance, on trust for the Supplier and paying or applying the same as the Supplier directs and as herein provided. If any Equipment is declared a total loss, the hire thereof shall terminate. In such event the Supplier shall apply any proceeds of insurance received by it at its option:

9.2.1 towards a replacement of equivalent value which replacement shall be deemed to be included in this agreement for all purposes and the Customer shall continue to be liable to any Charges as if such loss had not taken place, or

9.2.2 in or towards payment to the Supplier of the sum necessary to compensate the Supplier for the loss suffered as a result of the loss of that Equipment.

9.3 The Supplier shall have the right itself to repair or have repaired any Equipment which suffers damage. If the Supplier does not choose to do so the Customer shall be liable to reinstate or repair (subject to clause 5.2.1) at its own expense any of the Equipment which has not become a total loss. In any event, in the case of any damage to the Equipment the Customer shall continue to pay Rental in respect of such Equipment during reinstatement or repair whether by the Supplier or the Customer.

9.4 The Customer will be liable to pay to the Supplier any amount deducted by the insurers by way of excess or in respect of damage caused to the Equipment prior to the date of total loss and (subject to the application of insurance proceeds under clause 9.2.2 above) shall indemnify the Supplier against all and any loss suffered by it in consequence of the total loss of all or any part of the Equipment.

## **10. General Liability**

10.1 The Customer shall be solely responsible for and hold the Supplier fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses which may be brought against or incurred by the Supplier as a result of any accident involving the Equipment (other than death or personal injury resulting from the negligence of the Supplier or its employees or agents).

10.2 The Supplier does not hire the Equipment subject to any condition or warranty express implied or statutory in connection with the fitness for any purpose or age of the Equipment and any conditions and warranties are hereby expressly excluded insofar as permitted by Statute and (save for the Supplier's liability for death or personal injury caused by the negligence of the Supplier or its employees or agents in which event the Supplier's liability shall not be limited) the Supplier will not be responsible for any liability, claims, loss, damage or expense of any kind or nature caused directly or indirectly by the Equipment or its use.

10.3 The Customer shall be solely responsible for and hold the Supplier fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses suffered or incurred by the Supplier as a result of any breach or default on the part of the Customer in the discharge of its obligations under these Terms.

## **11. Ownership**

11.1 The Equipment shall at all times remain the property of the Supplier and the Customer shall have no rights to the Equipment other than as mere bailee and the Customer shall not do or permit or cause to be done any matter or thing whereby the rights of the Supplier in respect of the Equipment are or may be prejudicially affected.

11.2 The Supplier may assign and sell its rights under this agreement and its rights in and to the Equipment.

11.3 The Customer shall not sell, assign, charge or create any encumbrance, security interest or sub-lease over or otherwise dispose of or abandon the Equipment, nor allow the Equipment to become a fixture on any land or property.

11.4 The Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.1; and  
(e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

11.5 If the Customer becomes subject to any of the events listed in clause 12.1, then, without limiting any other right or remedy the Supplier may have:

(a) the Supplier may at any time:

(i) require the Customer to deliver up all Goods in its possession; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them. The Customer shall be responsible for all costs, charges and expenses to be incurred in retaking possession of the Equipment. The Customer agrees to indemnify the Supplier and keep the Supplier indemnified against all costs incurred by the Supplier in removing the Equipment and against all claims against the Supplier in removing the Equipment and arising from such removal. The Customer shall also bear the reasonable costs incurred

## **12. Termination**

12.1 If the Customer shall fail to pay any Charges or other sum or shall commit a breach of these Terms or any other terms whether express or implied or shall do or allow to be done any act or thing which in the opinion of the Supplier may jeopardise the Supplier's rights in the Equipment or any part thereof, then in each and every such case the Customer shall be deemed to have repudiated the agreement to provide the Services and the Supplier may thereupon or at any time, or otherwise within three months thereafter forthwith terminate the Supply of Services.

12.2 If any of the following events shall occur, namely:

12.2.1 if any distress, execution or other legal process shall be levied on or against the Equipment or any part thereof or against any premises where the same may be against any of the Customer's goods or other property or the Customer shall permit any judgment against it to remain unsatisfied for seven days; or

12.2.2 if the Customer, being an individual, shall die, shall suffer an interim order (within the meaning of the Insolvency Act 1986) to be made against him or enter into a voluntary arrangement or suffer the making of a Statutory Demand or the presentation of a petition for a bankruptcy order; or similar or analogous order is made or proceedings commenced or action taken in any jurisdiction outside the United Kingdom in consequence of debt; or

12.2.3 if the Customer, being a body corporate, shall enter into any liquidation, shall call any meeting of its creditors or shall have a receiver or receiver and manager of all or any of its undertaking or assets appointed, or shall suffer the appointment or the presentation of a petition for the appointment of an Administrator under the provisions of Part II of the Insolvency Act 1986, or shall be deemed by virtue of s123 of the Insolvency Act 1986 to be unable to pay its debts, or any similar or analogous order is made or proceedings commenced or action taken in any jurisdiction outside the United Kingdom in consequence of debt, then in each and every such case the provision of any Services shall and without notice terminate and no payment subsequently accepted by the Supplier shall in any way prejudice or affect the operation of this clause.

12.3 Without prejudice to the foregoing, the Supplier at its sole discretion may at any time and without giving any reason by seven days' notice in writing to the Customer for all purposes terminate any agreement to provide Services.

12.4 The Customer shall upon any termination under clauses 4.3.1, 4.4, 11.1, 11.2 or 11.3 above pay to the Supplier:

11.4.1 all arrears of Charges then due and all other sums accrued due and unpaid at the date of termination, together with interest thereon payable under clause 4.3.3 hereof; and

12.4.2 the cost of all repairs required as at the date of termination; and

12.4.3 compensation for the loss suffered by the Supplier as a result of such termination, such loss being determined by the Supplier; and

12.4.4 any other sums which are or become due to the Supplier or to which the Supplier is or may be entitled by way of damages.

12.5 The termination of the supply of Services shall not affect the rights of the Supplier or the liabilities of the Customer subsisting at the date of termination.

12.6 On termination of the supply of the Services howsoever or whenever occasioned or on expiry of the Period, the Customer shall no longer be in possession of the Equipment with the Supplier's consent and shall (unless otherwise agreed with the Supplier) forthwith return the Equipment to the Supplier at such address as the Supplier may direct in good working condition and at the Customer's expense and risk. Without prejudice to the foregoing or to the breach by the Customer of these Terms or any other rights hereunder, the Supplier or its authorised representatives may at any time after such termination or expiry of the Period without notice retake possession of the Equipment and for such purpose may enter upon any premises belonging to or in the occupation or control of the Customer and the Customer shall be responsible for all costs, charges and expenses to be incurred in retaking possession of the Equipment as aforesaid. The Customer shall also bear the reasonable costs incurred by the Supplier at any time in ascertaining the whereabouts of the Equipment and/or the Customer.

## **13. Continuation Payment**

13.1 Without prejudice to the provisions of clause 12.6, as from the due expiration of the Period and until such time as the Equipment shall have been returned or where the Equipment is returned damaged the Equipment is duly repaired the Customer shall pay by way of recompense for the continued use of the Equipment and for the Supplier's inability to hire the equipment to other person's, a daily sum (payable in arrears) at the same rate per day (pro rata if the rate in the Order Acknowledgement Form is expressed as other than per day) as the Charges were previously due in respect thereof in addition to any amounts payable by the Customer to the Supplier for the repair of any damaged Equipment pursuant to clause 8.1.5 or for any costs, liabilities, expenses, damages or other loss suffered by the Supplier as a result of the late return of the Equipment and/or the Equipment being returned damaged pursuant to clause 10.3.

13.2 This clause shall not confer upon the Customer any right to the continued use or possession of the Equipment.

## **14. Value Added Tax**

All sums due from the Customer to the Supplier shall be increased to include VAT at the rate or rates for the time being in force.

## **15. Supplier's Intervention**

If the Customer fails to comply with or commits a breach of any provision of these Terms, the Supplier may without in any way being obliged to do so or responsible for so doing and without prejudice to the ability of the Supplier to treat that noncompliance as an event entitling it to terminate any agreement to supply the Services, effect compliance on behalf of the Customer whereupon the Customer will become liable to pay immediately any sums expended by the Supplier together with all costs and expenses including legal costs in connection.

## **16. Force Majeure**

Although the Supplier will use all reasonable endeavours to discharge its obligations under this agreement in a prompt and efficient manner, it does not accept responsibility for any failure or delay caused by circumstances beyond its control. If the Customer gives notice of an event of Force Majeure or seeks to cancel for any reason or if the equipment has been despatched, less than 72 hours before the event, the Supplier reserves the right to recover all Charges.

## **17. Forbearance**

No forbearance, indulgence or relaxation on the part of the Supplier shown or granted to the Customer in respect of any of the provisions of these Terms shall in any way affect, diminish, restrict or prejudice the rights or powers of the Supplier under these Terms or operate as or be deemed to be a waiver of any breach by the Customer of these Terms.

## **18. Concurrent Remedies**

No right or remedy herein conferred upon or reserved to the Supplier is exclusive of any other right or remedy herein or by law or equity provided or permitted but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing and may be enforced concurrently therewith from time to time.

## **19. Waiver of Set Off**

The Customer hereby waives all and any future claims and rights of set off against any instalment of Charges or any payment due hereunder and agrees to pay the Charges and other amounts hereunder regardless of any equity, set off or cross-claim on the part of the Customer against the Supplier.

## **20. Notices**

All notices or other communications hereunder to any party hereto shall be in writing and shall be deemed to be duly given or made when delivered (in the case of personal delivery), when despatched and proper receipt of successful transmission obtained (in the case of facsimile copy or e-mail) or on the second day following the day of posting (in the case of a posted letter) to such party addressed to it at its address specified on the Order Acknowledgement Form or at such address or at such facsimile or e-mail number as such party may hereafter specify for such purpose by notice in writing.

**21. General**

21.1 Where there are two or more parties as Customer their liability shall be joint and several. In these Terms and where the context so admits or requires the masculine gender shall include the feminine or neuter (and vice versa) and expressions in the singular shall include the plural.

21.2 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provision in question shall not be affected thereby.

21.3 These Terms shall be governed by the Laws of England and Wales. The Customer irrevocably submits to the exclusive jurisdiction of the English Courts.

21.4 The headings in these Terms are for convenience only and shall not affect interpretation.

21.5 None of these Terms are enforceable under the Contracts (Rights of Third Parties" Act 1999 by a person who is not a party.

21.6 The Customer hereby acknowledges and agrees to these Conditions by signing where indicated below:

Customer:

Date: