

## Contra Terms and Conditions

### 1. Definitions

The following words and phrases used in this Agreement have the following meanings, and the singular shall include the plural:

“**Advert**” means a ‘spot’ advert for radio broadcast;

“**Advertiser**” means the party identified as such in the Contra Form, or otherwise any advertiser booking a Campaign;

“**Advertising**” means any activity booked by an Advertiser and/or Advertising Agency (including the broadcast of an Advert) that is not a Promotion or Sponsorship;

“**Advertising Agency**” means the party identified as such in the Contra Form, or otherwise the agency booking a Campaign on behalf of its Advertiser client;

“**Agreement**” means this agreement between you and us relating to the Client Benefits (including the Campaign, if applicable) and the Global Benefits and comprises the Contra Form and these Terms;

references to “**broadcast**” shall be deemed to include broadcast, transmission, publication, use or other delivery (as applicable) on all and any relevant Media Platforms;

“**Campaign**” means the content of the campaign which we have agreed to broadcast on your behalf as part of the Client Benefits during the Term on the Media Platform(s) as set out in the Contra Form (or otherwise agreed between us) including all and any advertising and promotional material, trailers, live reads, taglines, straplines or other content in any format relating to any (i) Advertising; (ii) Sponsorship and/or (iii) Promotion;

“**Client Benefits**” means the activities and/or obligations that we have agreed to provide to you as set out in the Contra Form, which may include a Campaign;

“**Contra Form**” means the contra form, media plan and/or any other document(s) or agreements entered into between the parties detailing the Client Benefits and Global Benefits, which shall include these terms and the delivery schedule;

“**Costs**” means (where applicable) the costs specified in the Contra Form including the Prize Fund and such other costs as may be agreed from time to time by the parties;

“**Data Controller**” means the person, corporate body, unincorporated association, partnership or other body which alone or jointly with others determines the purposes and means of the processing of Personal Data;

“**Data Privacy Laws**” means applicable laws relating to the processing of Personal Data including the Data Protection Act 2018 (DPA), Privacy and Electronic Communications Regulations 2003 (PECR) (as amended) and the European General Data Protection Regulation 2016 (GDPR);

“**Data Processor**” means the person, corporate body, unincorporated association, partnership or other body which processes Personal Data on behalf of the Data Controller;

“**Value**” means each of (i) the cost to us for delivery of the Client Benefits as may be set out in the Contra Form or as otherwise agreed between the parties; and (ii) the cost to you for delivery of the Global Benefits as may be set out in the Contra Form or as otherwise agreed between the parties;

“**Global**” means Global Radio Services Limited, company number 03296557, of 30 Leicester Square, London, WC2H 7LA;

“**Global Benefits**” means the activities and/or obligations that you have agreed to provide to us as set out in the Contra Form;

“**Group Company**” means any subsidiary undertaking of a company, that company’s ultimate parent company or any subsidiary company of the ultimate parent company from time to time; the words “**include**” and “**including**” shall not be interpreted as limiting the generality of any foregoing words;

“**IPR**” means any trade marks, copyright, moral rights, performance rights, goodwill, confidential information, trade secrets and all or any other intellectual or industrial property rights, both registered and unregistered anywhere in the world, including any renewals and extensions and including any such rights discovered or invented after the date of this Agreement;

**“Media Platform”** means all and any of the radio station(s), website(s), mobile or other platforms on which the Campaign is being broadcast as set out in the Contra Form or as otherwise agreed between the parties; **“Personal Data”** means any information relating to an identified or identifiable natural person, including a name, identification number, location data or online identifier;

**“Prize Fund”** means, in relation to a Promotion, the sum that you agree to pay us for us to source Prizes as set out in the Contra Form or as otherwise agreed between the parties;

**“Prizes”** means, in relation to a Promotion, the prizes to be supplied by you (if any) as set out in the Contra Form or as otherwise agreed between the parties;

**“Promotion”** means client association with a competition led broadcast that results in the awarding of a Prize;

**“Sponsorship”** means client association with either an on air show or an off air event;

**“Term”** means the term of this Agreement as set out in the Contra Form or as otherwise agreed;

**“Terms”** means these terms and conditions and references below to clauses shall be to clauses of these terms and conditions;

**“we”, “us” and “our”** means Global including any successors in title, assigns and Group Companies;

references to **“written”** and **“in writing”** shall not include correspondence by email;

**“you” and “your”** means the Advertiser and/or Advertising Agency (as applicable and being jointly and severally liable for all obligations contained herein) including any successors in title, assigns and Group Companies.

## **2. Agreement**

2.1 In consideration for you providing the Global Benefits, we will provide the Client Benefits (including the Campaign, if applicable) on the terms of the Agreement. By signing the Contra Form and/or booking a Campaign with us you agree to be bound by the Agreement. The booking and broadcast of all Campaigns is subject to (i) our approval and (ii) availability on our Media Platforms.

2.2 The parties acknowledge and agree that the Value of the Client Benefits (including the Campaign, if applicable) and the Global Benefits is the same and will be documented by both sides raising and exchanging equal and opposite valid VAT invoices within 30 days of the date hereof.

2.3 If there is a conflict between the Contra Form and these Terms, the Contra Form will take priority.

## **3. The Campaign**

### **General**

3.1 Where we require your approval over content we have created for the Campaign, we will endeavour to give you a minimum of 5 working days to review and approve such content, although this may not always be possible. Any delay by you in giving your approval may cause the Campaign to be delayed.

3.2 Your Campaign must comply with the following:

3.2.1 all relevant legislation relating to the Campaign, including the Communications Act 2003, and to the product or service which is the subject of the Campaign;

3.2.2 any relevant regulations or codes of practice (whether voluntary or obligatory) including the Ofcom Broadcasting Code, the UK Code of Broadcast Advertising (BCAP Code) and the UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code);

- 3.2.3 our technical requirements as notified by us to you from time to time.
- 3.3 Occasionally we might need to make changes to the Campaign for a variety of reasons (including scheduling constraints, Ofcom requirements or changes in the law). Where we need to do this we will endeavour to give you as much notice as is practicable.
- 3.4 We may change the scheduled times and dates of the whole, or any part, of the Campaign at our absolute discretion. Where we plan to do this we will give you as much notice as is reasonably practicable.
- 3.5 If, for any reason other than by reason of your default (in which case we shall bear no liability for the following), the Campaign (i) is broadcast missing a material element; (ii) is broadcast containing a material error; or (iii) fails to achieve the level of impact, impressions or placement specified in the Contra Form, our liability will be limited, at our option (acting reasonably), to one of the following:
- 3.5.1 broadcasting the missing element(s) of the Campaign as soon as is reasonably practicable after the missing element(s) were scheduled to run and for such time as is necessary to generate a number of broadcasts of the Campaign equal to the shortfall; or
- 3.5.2 providing you with broadcast opportunities for the Campaign of a value equal to the shortfall; or
- 3.5.3 offer to you substitution rights of a broadly equivalent value or agree to a proportionate reduction to the Global Benefits that you are required to provide and/or grant to us.
- 3.6 Post Campaign Analysis is conducted in accordance with the Global PCA Policy which is available on request.

### **Sponsorships and Promotions**

- 3.7 Occasionally we need to substitute the presenter of a show with another presenter, but this will not affect your sponsorship of that show. Very rarely we might need to move your sponsorship to a different show, but we will never do so without consulting with you first.
- 3.8 Where the Campaign includes a Promotion:
- 3.8.1 you will provide either (i) the Prizes or (ii) the Prize Fund (and we will procure the Prizes), as specified in the Contra Form;
- 3.8.2 where you are providing and sending Prizes to winners, you must send the Prizes to arrive no later than 21 days after the conclusion of the Promotion;
- 3.8.3 where you are providing the Prizes but we are sending the Prizes out to winners, you will provide us with the Prizes no later than 10 days from the date the Prize is won, or earlier if agreed between the parties;
- 3.8.4 If the winners or we do not receive the Prizes within the time limit specified above, we will invoice you for the Prizes at cost price to us and you will pay such invoice within 7 days following the date of invoice.
- 3.9 We reserve the right to use premium rate telephone lines as the mechanism for entry to competitions.

## **Radio Advertising**

- 3.10 The guidelines for delivery of Adverts can be found at [here](#). We may update these, or notify you of other requirements, from time to time.
- 3.11 Radiocentre clearance is required prior to broadcast of Adverts in certain categories identified in the BCAP code, as well as for Adverts running across multiple stations. If your Advert requires Radiocentre clearance, we will require from you, prior to broadcast:
- 3.11.1 the Radiocentre clearance number (such clearance being within 6 months prior to the start of the Campaign, even for repeat Campaigns running the same script);
- 3.11.2 details of any clearance conditions imposed by Radiocentre, including scheduling, scripting or production requirements.
- Radiocentre clearance does not guarantee that an Advert is compliant with the law or Ofcom regulations, or that the Advertising Standards Authority (ASA) will not uphold a complaint against it. Where an Advert does not require Radiocentre clearance we are required by the BCAP code to clear the Advert internally before broadcast.
- 3.12 We are unable to broadcast any Advert that:
- 3.12.1 has failed to obtain Radiocentre clearance (where Radiocentre clearance is required);
- 3.12.2 does not comply with any requirements or conditions explicitly imposed by Radiocentre as a pre-condition for clearance;
- 3.12.3 is the subject of an upheld complaint by the ASA; and/or
- 3.12.4 contains claims that, in our reasonable opinion, require substantiation and/or Radiocentre clearance.
- 3.13 Where the Contra Form specifies the level of on air impacts (which are measured on Rajar data for adults 15+ audience as at the date of this Agreement) likely to be achieved as a result of the Campaign, such impacts are guaranteed to a variance of +5/-5%.

## **Online Advertising**

- 3.14 The guidelines for delivery of online and mobile campaigns can be found [here](#). We may update these, or notify you of other requirements, from time to time.
- 3.15 Where the Contra Form specifies online impressions (which are measured on total views) likely to be achieved as a result of the Campaign, such impressions are guaranteed to a variance of +5/-5%.
- 3.16 Where you use third party advertising tags to deliver an online advert, there may be a discrepancy between our delivery statistics and those of the third party. We endeavour to deliver to within 10% of a third party's advertising server's statistics, in accordance with IAB guidelines, but we shall bear no liability for any discrepancy.

#### **4. Value**

- 4.1 If there is a material failure by you to deliver any of the Global Benefits, you shall offer to us for our approval appropriate substitution rights of a broadly equivalent value to the Global Benefits that you have failed to deliver.
- 4.2 If you fail to deliver any of the Global Benefits on or before the due date for delivery we may refuse to broadcast, or immediately cease broadcasting, the Campaign without any obligation to you and you shall have no claim against us; and/or terminate the Agreement for material breach in accordance with clause 9.2.1.
- 4.3 If the Global Benefits comprise an event(s) or activity which is cancelled (in whole or in part) for any reason, the parties will discuss such cancellation in good faith and ascertain whether it is possible to grant alternative rights as a substitute to those granted hereunder, which may include providing additional Global Benefits for alternative event(s) and/or activities.

#### **5. IPR**

- 5.1 Neither party shall acquire any rights or interests in the other party's IPR as a result of this Agreement.
- 5.2 Except to the extent that you have provided content for the Campaign, we own the IPR in the Campaign and all the content, materials and deliverables created for the Campaign together with any associated goodwill.
- 5.3 The Campaign materials we produce under this Agreement are to be used in relation to the Campaign only and you shall not be entitled to use, or permit a third party to use, the materials independently of the Campaign.
- 5.4 Where you are providing content for us to deliver the Client Benefits (including the Campaign, if applicable) you grant to us (and/or procure that any third party owner of the IPR in the content grants to us) an irrevocable, non-exclusive, royalty-free licence to use such content during the Term so that we can deliver the Client Benefits and broadcast the Campaign in accordance with the terms of this Agreement.
- 5.5 Where we are providing you with content (including any of our logos), we grant to you a non-exclusive, royalty-free licence to use such content for the limited purposes of delivering the Global Benefits under and in accordance with this Agreement Provided That (i) you obtain our prior written approval for each and every use of such content; (ii) such use is in accordance with ours instructions and our brand guidelines (as may be amended from time to time); and (iii) you shall not in any way alter such content.

#### **6. Limitation of Liability**

- 6.1 Nothing in this Agreement limits or excludes our liability for:
  - 6.1.1 death or personal injury resulting from our negligence; or
  - 6.1.2 fraud or fraudulent misrepresentation.
- 6.2 Without prejudice to the terms of clause 6.1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 6.3 Subject to clauses 6.1 and 6.2:

- 6.3.1 we shall not under any circumstances be liable for (i) loss of profits or anticipated profits, damage to reputation or goodwill, loss of business or anticipated business or any pure economic loss; or (ii) any special, indirect or consequential loss, costs, damages, charges or expenses; and
- 6.3.2 our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising in connection with the performance or contemplated performance of this Agreement, including any statutory interest, shall in all circumstances be limited to the amount of the Value under this Agreement.
- 6.4 Without prejudice to the terms of clauses 6.1 to 6.3, we shall not under any circumstances be liable for any loss, damage, unauthorised use or delay in delivery of any recordings, scripts or other material relating to the Campaign. We may destroy Campaign materials after a period of three months following the end of the Campaign without further reference to you.

## **7. Warranties and Indemnities**

- 7.1 You warrant, represent and undertake to us that:
  - 7.1.1 you have the full right, power and authority to enter into the Agreement;
  - 7.1.2 you own or have obtained and paid for and will maintain all necessary licences and consents, rights and waivers required for the broadcast of any material protected by any IPR or other rights contained in any materials provided by you for us to deliver the Client Benefits (including the Campaign, if applicable);
  - 7.1.3 any materials provided by you will not (i) infringe the IPR of, be defamatory of or otherwise infringe any rights of any third party or give rise to a claim for passing off or (ii) be inaccurate, misleading, obscene or offensive or (iii) in any way contravene any relevant legal or regulatory requirement or code of practice (whether voluntary or obligatory) from time to time;
  - 7.1.4 you shall comply with clause 3.8 and all and any Prizes offered by you in connection with the Campaign will be lawful, safe and compliant with any relevant laws and regulations;
  - 7.1.5 the products or services which are the subject of, and/or which are reasonably associated with, the Campaign, are safe and fit for their intended purpose and comply with all legal and regulatory requirements or codes of practice (whether voluntary or obligatory) including those relevant to your particular industry;
  - 7.1.6 you will not use illegal fly-posting of any material containing any name, logo and/or trademark owned by us. In the event that you breach this warranty you agree to immediately remove any such illegal fly-posting upon our request at your sole expense;
  - 7.1.7 the Campaign is legal, decent, honest and true;
  - 7.1.8 any claims made in the Campaign are accurate and fair and can, if required, be substantiated by documentary evidence.
- 7.2 You will fully indemnify us and hold us harmless against any and all actions, proceedings, losses, costs (including legal and other professional fees), damages, fines, expenses, penalties, claims, demands, liabilities and damages (including any direct, indirect or consequential losses and any loss of profit, goodwill or reputation) arising from any breach of clause 7.1.

## **8. Data Protection**

- 8.1 Each Data Controller and or Data Processor shall comply with Data Privacy Laws when processing Personal Data in in the performance of its obligations under this Agreement.
- 8.2 When processing Personal Data, each Data Controller or Data Processor shall put in place appropriate technical, physical and organisational measures against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, unauthorised disclosure of or access to Personal Data;
- 8.3 When processing Personal Data, a Data Processor shall:
- 8.3.2 ensure that it does not disclose any Personal Data to any third party without the prior written consent of the Data Controller; and
  - 8.3.3 not cause or permit any Personal Data to be transferred outside the European Economic Area without the prior written consent of the Data Controller.

## **9. Termination**

- 9.1 Either party may terminate this Agreement by giving to the other notice in writing no later than 28 days before the scheduled start date of the Campaign. If you terminate in accordance with this clause 9.1, then without prejudice to our other rights and remedies, you will pay to us a sum equal to all Costs incurred by us up to the date of termination (if any).
- 9.2 Without prejudice to other rights and remedies, either party may terminate this Agreement immediately by notice in writing to the other party if the other party:
- 9.2.1 is in material breach of any of the terms of this Agreement 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;
  - 9.2.2 ceases, or threatens to cease, to carry on business;
  - 9.2.3 becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors;
  - 9.2.4 has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or
  - 9.2.5 (being a company) 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, (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies.
- 9.3 Without prejudice to other rights and remedies, we may, at any time and without incurring any liability to you whatsoever, discontinue or decline to broadcast the Campaign without giving any reason in which case we shall offer to you substitution rights of a broadly equivalent value or agree to a proportionate reduction of the Global Benefits that you are required to provide and/or grant to us..
- 9.4 If in our reasonable opinion, you act in a way which has the potential to bring us or a Group Company into disrepute or have an adverse impact on us and/or our business activities, we shall have the right to terminate this agreement with immediate effect.

9.5 Termination or expiry of this Agreement shall not affect a party's accrued rights and obligations as at the date of termination and those clauses intended to remain in effect after termination or expiry shall survive termination or expiry of this Agreement.

## 10. **Force Majeure**

10.1 We shall have no liability to you if we are prevented, hindered or delayed in carrying out any of our obligations under this Agreement by any act or thing beyond our control or any other act or event that affects or may affect our programming or campaigns (including any law or regulatory order, power failure, breakdown or failure of software or machinery, interruption of broadcast, unforeseen technical failure, accident, act of God, storm, fire or flood, death of royalty or other public figure, terrorist action or war, failure of sub-contractors, suppliers or labour dispute) (a "**Force Majeure Event**").

10.2 If the Force Majeure Event continues for more than one month, either party may terminate the Agreement with immediate effect by written notice.

## 11. **General**

11.1 Any notice under this Agreement shall be in writing and sent by recorded delivery post or by-hand delivery at the last known address from which one party has communicated with the other in connection with the Agreement. In the case of the service of a notice by you upon us, such notice shall be addressed for the urgent attention of the signatory on the Contra Form and Managing Director (Commercial) with a copy to the Legal Department.

11.2 Except with our prior written consent you shall not assign or transfer any of your rights or obligations hereunder.

11.3 Each party undertakes to the others that it will treat as confidential this Agreement and its terms together with (i) all information relating in any manner to the business or affairs of the other party as may be communicated to it in connection with this Agreement and (ii) any information regarding the content, materials and deliverables produced under this Agreement other than content, materials and deliverables which are broadcast in accordance with the Campaign and will not disclose such information to any person firm or company (other than to professional advisers or Group Companies) except with prior written consent from the other parties.

11.4 To the extent permitted by law, the invalidity, illegality, or unenforceability of any provision in this Agreement does not affect or impair the continuation in force of the remainder of the provision or Agreement.

11.5 This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, misrepresentation, assurance or warranty (in each case whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

11.6 We reserve the right to vary our terms and conditions from time to time, provided that the terms and conditions in force at the date of this Agreement shall apply to it. No variation of the terms of this Agreement shall be effective unless specifically approved in writing between duly authorised representatives of each party.

11.7 Any failure or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or

remedies nor will any single or partial exercise by either party of any right preclude any further exercise of any other right.

- 11.8 This Agreement does not create any right or benefit enforceable by any person not a party to it (within the meaning of the Contracts (Rights of Third Parties) Act 1999).
- 11.9 Nothing in this Agreement will be deemed to create a partnership or joint venture between the parties.
- 11.10 This Agreement shall be governed by and interpreted in accordance with the law of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

Last updated: 23 July 2019

Registered Office: Global Radio Services Limited, 30 Leicester Square, London WC2H 7LA

Registered in England: No. 03296557