

1. Interpretation

1.1. In these terms: "mclcreate" means MCLCREATE LTD; "Client" means the legal entity accepting mclcreate's quotation for the supply of Equipment or Services or whose order for Equipment and/or Services is accepted by mclcreate or the party otherwise commissioning the Services in each case as named on mclcreate's invoice; "Equipment" shall mean all and each item of equipment referred to in the Order to be supplied by mclcreate and all additions, alterations and replacements to that Equipment; "Dry Hire" shall mean the hire of Equipment without the supply of operational personnel; "Hire Charge" means mclcreate's charges for Dry Hire and/or Services; "Services" shall mean the provision of equipment, its installation and any additional services as required such as creative, delegate management and digital services; and "writing" shall include electronic mail.

2. Provision of Equipment and Services

2.1. mclcreate shall provide and Client shall accept the Equipment and/or engage the Services of mclcreate at the location(s) where such Services are provided ("Venue") as described in mclcreate's quotation, hire contract or order (as the case may be) or, if none, mclcreate's most recent quotation, hire contract or order (as the case may be) for the event subject to these terms (in each case, hereinafter referred to as the "Order"), which contain the entire agreement between mclcreate and the Client and shall apply to the exclusion of all other terms and conditions and shall not be varied except as confirmed in writing by mclcreate.

2.2. Client acknowledges that Equipment was selected by Client as suitable for its purpose and Client has not been induced to enter into the Order by any prior representation (whether innocently or negligently made) except as specifically contained in the Order.

2.3. Unless otherwise expressly agreed in writing by mclcreate, all Equipment supplied by mclcreate is supplied on hire in accordance with these terms and no ownership interest in the Equipment shall pass to Client or any third party.

2.4. mclcreate will use reasonable efforts to ensure Equipment is in good working order on delivery and of satisfactory quality and will provide the Services using reasonable care and skill and in accordance with these terms.

3. Order Acceptance and Cancellation

3.1. No order or booking submitted by the Client shall be deemed accepted unless and until mclcreate has issued a quotation or order acceptance signed on behalf of mclcreate or by some other act of acceptance on the part of mclcreate or unless mclcreate in its discretion waives any such requirement. mclcreate may stipulate payment of an initial deposit(s) and shall inform the Client in advance if such deposit is required.

3.2. Client shall be responsible for ensuring the accuracy of any order but mclcreate reserves the right to make changes in the manner of performance of the Services to comply with health and safety and other applicable legal requirements.

3.3. Following acceptance of a quotation or order by the Client of Dry Hire or Services (as applicable), if the Client cancels, the following provisions shall apply:

3.3.1. if the Client cancels less than 7 business days from the commencement of Dry Hire or Services, it shall reimburse mclcreate 100% of the Hire Charges (including, without limitation, mclcreate's loss of profit and reimbursement of all costs) incurred prior to or as a result of cancellation or termination;

3.3.2. if the Client cancels less than 14 business days but more than 7 business days (inclusive) from the date Services are to be provided, it shall indemnify mclcreate up to 75% of the Hire Charges (including, without limitation, mclcreate's loss of profit and reimbursement of all costs) incurred prior to or as a result of cancellation or termination;

3.3.3. if the Client cancels less than 28 business days but more than 14 business days (inclusive) from the date Services are to be provided, it shall indemnify mclcreate up to 50% of all costs (including, without limitation, mclcreate's loss of profit and reimbursement of all costs) incurred prior to or as a result of cancellation or termination; and

3.3.4. if the Client cancels more than 28 business days from the date Services are to be provided, it shall reimburse mclcreate all reasonable costs incurred by mclcreate plus a 10% administration fee (of the costs incurred).

4. Hire Charges

4.1. mclcreate's Hire Charges for provision of Equipment and/or Services shall be as stated in the Order. Any extra Equipment or Services later required will be chargeable in addition. If the Client is responsible for arranging and booking the Venue, the Client shall be liable for continuing Hire Charges at the same rate as provided in the Order: if Equipment is lost, stolen, damaged or destroyed, until its repair or replacement (in such case any continuing Hire Charges not to exceed a further 13 weeks rental); and, in the case of a Dry Hire or where Client arranges transit, if Equipment is returned late, until date of its actual return to mclcreate.

4.2. Client shall pay Hire Charge (and any VAT), notwithstanding that performance may not have taken place, to be received by mclcreate in cleared funds on or before the date(s) specified for payment or, if none, on or before the earlier of (i) 3 working days prior to date of supply of the Equipment or Services and (ii) 30 days from date of mclcreate's invoice. It is a condition that each payment due under the Order is paid on time without any deduction, set-off or counterclaim. Any discounts quoted or agreed may be forfeited at mclcreate's discretion if payment is received later than five business days after the due date.

4.3. If the Client fails to pay any sum on the due date then, without limiting any other right or remedy, mclcreate may: cancel or suspend provision of Services and Equipment to the Client under this or any other agreement between the parties; apply any payment made by Client (notwithstanding any express instruction by Client) towards the discharge of any sums due to mclcreate under this or any other agreement between the parties; and/or charge Client interest (both before and after judgement) on the amount unpaid at the rate of 8% above the base rate of the Bank of England calculated on a daily basis until payment in full together with all costs, charges and expenses reasonably incurred by mclcreate (including legal fees) in recovering overdue amounts.

4.4. mclcreate may, at any time before performance, increase the Hire Charge to reflect any matter apparent on subsequent site survey, any increase in a cost due to any factor beyond the control of mclcreate or change or delay caused by the Client. mclcreate will provide 10 business days' written notice to the Client of any such increase. To the extent the Order has not been performed (but not otherwise), if the Client following consultation with mclcreate does not accept the increase and mclcreate does not waive it, the Client may cancel the Order by written notice given within 5 business days of notice of increase (but not less than 3 working days prior to commencement of Dry Hire or Services).

5. Risk and Insurance

5.1. This Clause 5 shall apply only to Clients who have booked the Venue where Services are to be provided or Clients who shall be responsible for operating the Equipment.

5.2. The Equipment shall be at the risk of the Client from the time of delivery at the Venue or, if

earlier, delivery to Client's carrier, until its return to mclcreate's premises or, if earlier, possession is taken by mclcreate's carrier.

5.3. In the event of a Dry Hire, the Client shall at its own expense insure Equipment with an insurance company of repute (naming mclcreate as a loss payee): against all loss or damage (whether or not the Client's or mclcreate's fault) in an amount equal to its replacement cost new; and against liability for any continuing Hire Charges under Clause 4.1 until earlier of: return of Equipment to mclcreate in good working order and condition (fair wear and tear excepted) or (if not capable of economic repair) its replacement with equivalent new equipment; or receipt by mclcreate of payment in full of its replacement cost new and all other sums due hereunder.

5.4. Client hereby irrevocably authorises mclcreate in name and on behalf of Client to make any claims under the insurance in respect of loss of or damage to Equipment; to settle or compromise such claims; and to receive and give good discharge to insurers for any moneys payable. Client shall not do or allow to be done any act or thing whereby insurance of Equipment may be invalidated.

5.5. If Equipment is lost or damaged, Client shall notify mclcreate forthwith, assist in making appropriate claims under such insurance and not without mclcreate's consent settle or compromise any claim.

5.6. Client will on request at any time produce to mclcreate the insurance policy and receipt for current premium. If Client fails to keep Equipment insured to mclcreate's satisfaction or to produce policy or receipt or if mclcreate so agrees in writing, mclcreate may insure Equipment, in consideration of which Client will pay mclcreate further sum equal to 15% of mclcreate's charges (before any discount) for relevant Equipment or Services.

5.7. mclcreate accepts no responsibility for loss or damage to any equipment or materials of the Client or any third party, which mclcreate may agree to store or transport, and any such equipment or materials shall at all times be at the Client's risk.

6. Health and Safety

6.1. Where the Client has booked the Venue where Services are to be provided, the Client shall take all reasonable steps to safeguard the health, safety and welfare of mclcreate's personnel while at the Venue, to safeguard the Equipment from theft, loss or damage and to give mclcreate adequate notice of any unusual risks. Without prejudice to the foregoing, the Client acknowledges that mclcreate shall not be obliged to continue supply of Equipment or Services (and may take down all or any Equipment previously installed) where, in mclcreate's reasonable opinion, the installation poses a material risk to health and safety or to the Equipment;

6.2. Where a support structure is supplied by the Client, Client shall ensure that the surface, on which the Equipment and structure will be installed, will be stable under load and that the structure will be fit for the purpose (taking account of prevailing wind speeds) and will comply with all health and safety and other relevant regulations. Client shall provide mclcreate on request with copies of certificates of compliance and structural engineering calculations verifying adequacy of Client's structure. Equipment dimensions and weights and representational drawings of structures are available on request from mclcreate but are approximate and representational only and do not obviate the need for the Client to obtain appropriate professional advice.

7. Client's Undertakings

Client undertakes to mclcreate that Client shall:

7.1. Where the Client has booked the Venue where Services are to be provided, grant or procure access for mclcreate to and from the Venue at such times as mclcreate may reasonably require to discharge its obligations;

7.2. where applicable, where the Client has booked the Venue where Services are to be provided, provide free of charge within a reasonable distance of the operating position of the Equipment at the Venue: a video feed of the relevant format; an uninterrupted power supply terminated in an appropriate connection; and such other facilities as mclcreate may reasonably require.

7.3. where mclcreate's Services are dependent on provision of equipment or services by Client or its contractor, ensure that all such equipment and services are provided on time when required; the equipment is of adequate quality and specification and in good working order; and the services are provided by persons of adequate competence and experience using reasonable care and skill;

7.4. obtain all necessary licences and consents relating to the Venue and the communication or use by mclcreate of live or pre-recorded material;

7.5. if transit of Equipment is arranged by Client, arrange any necessary customs clearances, comply with all applicable import/export regulations and pay all related duties;

7.6. (except in case of a Dry Hire) not permit the Equipment to be operated other than by mclcreate personnel nor open the outer case or otherwise interfere with the Equipment;

7.7. in event of Equipment breakdown or malfunction, not attempt or arrange any repair without mclcreate's prior authorisation;

7.8. not to sell, sub-let or otherwise dispose of or part with Equipment or any interest therein or do or permit to be done any act or thing which may prejudice or jeopardise mclcreate's rights in the Equipment but to keep Equipment in its or mclcreate's possession and control free from lien, charge or encumbrance so that Equipment shall at all times remain property of mclcreate or its legal owner;

7.9. permit or procure for mclcreate or its agents access to any premises to inspect or remove Equipment;

7.10. notify mclcreate in writing of any change in Client's contact details and forthwith upon request inform mclcreate of the location of Equipment;

7.11. (notwithstanding termination of the Order) indemnify mclcreate and keep mclcreate fully and effectively indemnified against all liabilities whatsoever arising out of any breach by Client of the Order (including without limitation any direct loss, damage or injury caused by any negligent act or omission or wilful misconduct of the Client, its employees, agents or sub-contractors or any claim that any such use or communication of any material infringes any patent, copyright, trade mark, registered design, design right or other intellectual property right of any third party) and against all costs, claims, demands, expenses and liabilities incurred by mclcreate in connection therewith provided such indemnity shall not extend to liability for mclcreate's negligence.

8. Additional Client Undertakings (Dry Hire Only)

Client undertakes during the continuance of the Order and until return of Equipment to mclcreate:

8.1. to check Equipment before taking into use, to notify mclcreate forthwith of any repair or maintenance required to Equipment and not to permit such repair or maintenance other than by mclcreate or with its authority;

8.2. to ensure Equipment is only used in a proper manner without risk to health and safety and not contrary to any law or for any purpose for which Equipment is not designed or reasonably suited; and not to make any modification to Equipment, open the outer case

(unless required in normal use) or remove any notices or serial numbers on the Equipment.

9. **Exclusion and Limitation of Liability**

9.1. Client acknowledges that electronic equipment may suffer breakdown or malfunction from time to time without fault and that consequences to Client of breach of the Order by mclcreate may be disproportionate to mclcreate's Hire Charges. Therefore, Client agrees that mclcreate's entire liability to the Client in respect of the Order and any breach or negligent act or omission (including liability for acts or omissions of mclcreate's employees, agents and sub-contractors) shall be limited as follows:

9.1.1. except as provided in the Order, all conditions, warranties and representations concerning the Services and Equipment, their state, quality, description, fitness for purpose or otherwise are excluded to the fullest extent permitted by law;

9.1.2. mclcreate's liability in respect of each event or series of connected events shall not exceed the total Hire Charges received by mclcreate except that in the case of recorded material, mclcreate's liability shall be limited to the cost of replacing blank media only and in the case of loss of or damage to physical property caused by mclcreate's negligence, mclcreate's liability shall be limited to £1,000,000;

9.1.3. mclcreate will not be liable for; any loss, damage or expense caused by any interruption or loss of use of Equipment, increased cost of working, delay, loss of profit or goodwill, special, consequential or indirect damage however caused, even if reasonably foreseeable or mclcreate was advised of the risk of its occurrence;

9.1.4. Client shall give mclcreate reasonable details of any claim in writing without delay and no later than 90 days of occurrence of the matter giving rise to the claim;

9.1.5. all Equipment agreed to be sold by mclcreate is sold "as is" and no warranty is given as to performance, functionality, fitness for purpose or that it is of satisfactory quality, unless otherwise agreed by mclcreate in writing.

9.2. Nothing in the Order shall limit or exclude mclcreate's liability in respect of fraud, death or personal injury resulting from mclcreate's negligence.

9.3. If so requested by Client, mclcreate may consider accepting higher limits of liability subject to payment by Client of an additional charge.

9.4. mclcreate shall not be liable to the Client by reason of any delay or failure in performing mclcreate's obligations due to any cause beyond mclcreate's reasonable control including, without limitation, fire, flood, material adverse weather conditions (when mclcreate shall be entitled not to install or, if installed, may take down all or any of the Equipment), interruption of power supply, war, act of terrorism or civil disturbance, industrial action or trade dispute or blockade, legal or governmental restriction or embargo ("Force Majeure"). In the event of Force Majeure, if the Equipment has been installed at the Venue, Client shall be liable to pay the Hire Charge in full but otherwise the provisions of clause 3.3 shall apply.

10. **Termination**

10.1. The Order shall forthwith terminate without notice if Client (being an individual) dies or is subject to an interim order (within meaning of Insolvency Act 1986) or the presentation of a bankruptcy petition; or enters into any arrangement or composition with creditors; or (being a limited company) enters into compulsory or voluntary liquidation (not being for the purpose of reconstruction or amalgamation on terms previously approved by mclcreate in writing); or has a receiver appointed or a petition presented for an administration order; or has any distress, execution or other legal process made in respect of Client's property; or if anything analogous to the foregoing under the laws of any jurisdiction occurs in relation to the Client.

10.2. mclcreate may terminate the Order forthwith by notice without liability to Client if: Client fails to pay in full any sum owing to mclcreate or any affiliated company of mclcreate within five business days' of its due date for payment; Client commits a material breach of any other provision of this or any other agreement with mclcreate or an affiliated company of mclcreate and (if a breach capable of being remedied) fails to remedy such breach within 14 days after notice requiring the same; or performance by mclcreate is prevented by Force Majeure.

10.3. The Client may terminate the Order if mclcreate commits a material breach of the Order with mclcreate and (if the breach capable of being remedied) mclcreate fails to remedy such breach within 14 days after notice requiring the same.

10.4. Upon termination, all sums due under the Order shall become immediately payable by the Client and, in the case of a Dry Hire, Client shall no longer be in possession of Equipment with mclcreate's consent and (without prejudice to Client's obligations and other rights and remedies of mclcreate) Client shall at Client's expense return Equipment to mclcreate in good working condition (fair wear and tear excepted) and in default mclcreate may forthwith without notice repossess Equipment and all costs and expenses (including without limitation, any legal costs and expenses) incurred by mclcreate in locating, repossessing or restoring Equipment shall be payable by the Client.

10.5. Termination or cancellation shall not limit any other right or remedy of either party against the other under the Order or at law and all sums then owing to mclcreate by Client shall become immediately due and payable.

11. **Confidentiality**

11.1. Each party shall treat as it does its own confidential information all information obtained from the other pursuant to the Order which is marked "confidential" or the equivalent or has the necessary quality of confidence about it.

12. **General**

12.1. mclcreate shall be entitled to, at its sole discretion, raise interim invoices to the Client in respect of partially completed Services. Each provision of Services made under these terms shall be deemed to arise as though it were a separate contract and shall be invoiced separately; any invoice for a provision of Services shall be payable in full in accordance with the terms of payment provided for herein or in a particular order, without reference to and notwithstanding any other instalment for Services.

12.2. All amounts due under the Order shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

12.3. In the case of Dry Hire only, if the Client is more than one person, they shall be liable both individually and together.

12.4. The Contracts (Right of Third Parties) Act 1999 shall not apply the Order and no person other than mclcreate and Client shall have any rights under or to enforce the Order.

12.5. Neither party shall assign or otherwise transfer any of its rights or obligations under the Order except that mclcreate may sub-contract all or any of its obligations to a competent third party.

12.6. Any notice under the Order shall be in writing and may be served by hand, pre-paid first-class post or airmail, electronic mail or facsimile to its address or facsimile number set out in the Order or such other address as is notified for the purpose. A confirming copy of any notice served by electronic mail or facsimile shall be sent by post within 24 hours of

transmission.

12.7. Delay shall not prevent either party from enforcing any provision of the Order. Any waiver of a breach of the Order shall not be operate as a waiver of a later breach of the same or any other provision.

12.8. If any provision of the Order is held to be invalid or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected.

12.9. Headings in these terms are included for convenience only and shall not affect interpretation.

12.10. The Order shall be governed and construed in accordance with English law. The parties agree to submit to the non-exclusive jurisdiction of the English Courts.