

## **TERMS AND CONDITIONS: TVC CLIENT SERVICES AGREEMENT**

These Terms and Conditions form part of the Agreement between TVC and the Company and refer to words defined in the Client Services Agreement and herein (or any agreement in which these terms are incorporated by reference).

### **Definitions:**

**"Affiliate"** means, in respect of a party to this Agreement, any entity controlled by, controlling or under common control with such party;

**"Applicable Laws"** means all laws, regulations, codes, standards determined by any governmental or regulatory authority and generally applicable industry or self-regulatory standards whether the same are regional, national or international which apply to such undertaking or to such circumstance;

**"Deliverables"** means all tangible or intangible items and work product of whatever nature which are or have been produced by or on behalf of TVC for the Company in connection with the Services or otherwise in connection with this Agreement.

**"Fees"** means the fees (as set out on the Statement of Services) payable to TVC for the provision of Services;

**"Force Majeure Event"** means any circumstance beyond a party's reasonable control including (but not limited to) war or other action of military forces, terrorism, riot, civil commotion, sabotage, vandalism, accident, any break down or failure of, or damage to, machinery or equipment or communication lines, the malfunction of any website, computer viruses, fire, flood, acts of God, strike, lock-out or other industrial disputes (whether or not involving employees of the relevant party) legislative or administrative interference;

**"Intellectual Property"** means any trade mark, patent, invention or utility model rights, any copyright, design right (whether registered or unregistered) and any other rights of a similar nature and any applications for any of the aforementioned, and rights in any know-how, trade secrets, data, consumer data, databases (including without limitation names, addresses, gender, birthdates, telephone numbers, occupation, consumption habits and buying habits) and domain names;

**"Services"** means the services described in the Schedule 1.

### **1. INTERPRETATION**

1.1 In this Agreement, capitalised words and phrases shall have the meanings set out above. Certain words and phrases are also defined in the front page and body of text.

### **2. APPOINTMENT AND DURATION**

2.1 This Agreement commences with effect from the Commencement Date and, unless terminated earlier in accordance with its terms, shall remain in force for a period of one year after the Commencement Date.

2.2 The terms of this Agreement shall apply to all of the Services.

### **3. THE SCOPE OF SERVICES**

3.1 The scope of the Services and the conditions for the provision of the Services are set out in Schedule 1 (the "**Services Specification**").

3.2 Changes to any of the Services will be communicated and agreed in writing between the parties.

3.3 Nothing in this Agreement shall prevent or restrict TVC from providing services to any party including, but not limited to, services similar to or the same as those outlined in this Agreement.

### **4. COMPANY'S OBLIGATIONS**

4.1 The Company shall co-operate with TVC in all matters relating to the Services.

4.2 The Company shall give TVC clear briefings and ensure that all facts given relating to the Services are accurate to enable TVC to provide the Services.

4.3 If TVC's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Company, its agents, subcontractors, consultants or employees, TVC shall not be liable for any costs, charges or losses sustained or incurred by the Company that arise directly or indirectly from such prevention or delay.

4.4 The Company shall be liable to pay to TVC, on demand, all reasonable costs, charges or losses sustained or incurred by TVC (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Company's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Agreement, subject to TVC confirming such costs, charges and losses to the Company in writing.

4.5 The Company warrants that to the best of its knowledge and belief, information supplied to TVC before and during the term of this Agreement will be accurate.

4.6 For Deliverables that include third parties or third party Intellectual Property, the Company shall not modify or add to the Deliverables in any manner without the prior written approval of TVC and the applicable third party.

4.7 The Company shall comply with all Applicable Laws.

## **5 TVC'S OBLIGATIONS**

5.1 TVC shall provide the Services, and deliver the Deliverables, to the Company, materially in accordance with the Services Specification, save as otherwise agreed with the Company.

5.2 TVC shall take reasonable care to provide the Services to a reasonable industry standard.

5.3 TVC warrants that, to the best of its knowledge, the Services and Deliverables, if used in accordance with this Agreement and in the manner and form intended, shall comply with all Applicable Laws.

5.4 TVC shall not be responsible for or liable to the Company or anyone else for any content that was created by or provided by the Company or on its behalf that is hosted and/or published on the DNA and/or any DNAi website and the Company shall indemnify TVC against any losses, expenses and costs arising out of any claim that such content infringes any third party's rights (including without limitation intellectual property rights) and/or breaches any laws.

5.5 Except as explicitly set out in the Services Specifications, TVC is under no obligation to retain any content or media (including, without limitation, any footage) developed by TVC for the Company.

## **6. FEES & INVOICING**

6.1 The Company shall pay to TVC the Fees and the Expenses.

6.2 The Company acknowledges that any expenses will be charged separately from the Fees and shall be calculated in accordance with the Statement of Services.

6.3 All Fees and Expenses expressed herein are exclusive of sales tax, value added tax, or any other taxes and duties which, if applicable, shall be charged to the Company in addition to the Fees and Expenses.

6.4 TVC will invoice the Company in accordance with the Statement of Services.

6.5 Payment of such invoices shall be made by or on behalf of the Company within 30 days from the date of the invoice.

6.6 TVC may charge interest at an annual rate of 3% percent above the base rate of the Bank of England from time to time on unpaid sums from the date on which any sums fell due under this Agreement

to the date on which the payment (including all such interest) is paid in full and interest shall be charged on a daily basis.

## **7. INTELLECTUAL PROPERTY**

7.1 Nothing in this Agreement shall be deemed to vest in TVC any legal or beneficial right in any Intellectual Property owned by the Company or provided by the Company to TVC ("**Company Materials**"), all of which shall at all times remain the property of the Company. Company hereby grants a non-exclusive, royalty-free licence in favour of TVC to use the Company Materials as necessary solely to provide the Services.

7.2 Company warrants, represents and covenants to TVC that any Company Materials provided to TVC under this Agreement will not constitute an infringement, misappropriation, violation or unlawful use or disclosure of any Intellectual Property or other right of any third party.

7.3 As between the Company and TVC, save for TVC Material (defined below), all Intellectual Property rights in and to the Deliverables shall be owned by the Company and, insofar as may be necessary, TVC agrees to assign to the Company all present and future Intellectual Property rights which may subsist in the Deliverables. Such assignment shall be with full title guarantee and free from all third party rights

7.4 Nothing in this Agreement shall be deemed to vest in Company any legal or beneficial right in any Intellectual Property owned by TVC (or any of its Affiliates) prior to the Commencement Date or any third party Intellectual Property licensed by TVC and included in the Deliverables, any material created by TVC not for the sole purpose of performing the Services, all of which shall at all times remain the property of TVC (or its licensors) (the "**TVC Material**"). For the avoidance of any doubt TVC's DNA Web-site, and any development thereto whether or not in connection with this Agreement or the Services shall be deemed to be TVC Material. TVC grants to the Company a license to use TVC Material that are included in the Deliverables, subject to the terms of this Agreement and any imposed by applicable licensors (as may be communicated by TVC to the Company). Further, Company acknowledges and agrees that it will not distribute the Deliverables in any other channels not defined in the Distribution Channels above without the prior written consent of TVC, and any third-parties appearing in or associated with the Deliverables, for which additional fees may apply

7.5 In respect of any DNA/DNA Inside (the "DNA") Services provided by TVC, the software that provides the DNA's functionality is proprietary software and the Company may not copy, reverse engineer, modify or otherwise deal with the software.

7.6 Subject to prior approval by the Company in each case, the Company hereby grants TVC a non-exclusive, worldwide, royalty-free, revocable licence to use the Deliverables for purposes of promoting and marketing TVC's services.

## **8. CONFIDENTIALITY**

8.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of five years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of Affiliates of the other party except as permitted by Clause 8.2.

8.2 Each party may disclose the other party's confidential information: (a) to its employees, offices, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement; and (b) as may be required by law, court order or any governmental or regulatory authority. Each party shall ensure that its employees, officers, representatives or advisors to whom it discloses the other party's confidential information comply with this clause 8.

8.3 No party shall use the other party's confidential information for any purpose other than to perform its obligations under this Agreement.

8.4 Each party shall ensure that any mailing list or customer database supplied to the other party shall comply with the requirements of all legislation in force from time to time including, without limitation, the Data Protection Act 1998, and that each party shall comply with the relevant obligations of the Data Protection Act 1998.

## **9. TERMINATION**

Without affecting any other rights and remedies it may have, TVC may terminate this Agreement forthwith if: (a) there is a material default, breach or failure of the Company to perform any of its obligations, representations, or warranties and the Company shall have failed to completely cure the default within 10 days after being given written notice; or (b) the Company is in or has threatened breach of any other term of this Agreement and either the breach is incapable of remedy, or the Company has failed to remedy, or has otherwise failed to take steps satisfactory to TVC in relation to the breach, in either case within 30 days of the breach or threatened breach; or (c) the Company is unable to pay its debts within the meaning of s123 Insolvency Act 1986 or any statutory modification or re-enactment thereof or equivalent provision in another jurisdiction; or (d) the Company has any step, application, order, proceeding or appointment taken or made by or in respect of it for distress, execution, composition or arrangement with creditors, winding-up, dissolution, administration, receivership (administrative or otherwise) or bankruptcy, or if it is unable to pay its debts or ceases to carry on business as a going concern in any jurisdiction to which it is subject (including, without limitation, the one in which the Company is incorporated); or (e) in any jurisdiction to which it is subject (including, without limitation, one in which the Company is incorporated) any step, action, application or proceeding is taken by or in respect of the whole or any part of the undertaking of the Company which has an effect similar or equivalent to any of the events mentioned in clauses 9 (b), (c) and (d) above.

## **10. CONSEQUENCES OF TERMINATION**

On termination of this Agreement for any reason: (a) the Company shall immediately pay to TVC all of TVC's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, TVC may submit an invoice which shall include any expenses incurred and, which shall be payable immediately on receipt; (b) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **11. LIMITATION OF LIABILITY**

11.1 Nothing in this Agreement limits or excludes TVC's liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

11.2 Subject to clause 11.1, TVC shall not be liable to the Company whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill;

- (f) loss of use or corruption of software, data or information;
- (g) any indirect or consequential loss.

11.3 Subject to clause 11.1 and clause 11.2, TVC's total liability to the Company, whether in contract, tort (including negligence) for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited in respect of all claims (connected or unconnected) in any consecutive 12 month period, to the equivalent of the total Fees paid by the Company in that period.

11.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

11.5 TVC cannot guarantee the nature of any media coverage that may occur, including, without limitation, whether such media coverage will be accurate and not detrimental or prejudicial to the Company's commercial interests, reputation, brand or public image. Neither TVC nor its affiliates can accept any responsibility or liability in respect of any media coverage. Whilst reasonable efforts will be made to achieve coverage on specific media targets, TVC cannot guarantee this with outright certainty.

## **12. VARIATIONS**

No variation or other modification or addition to this Agreement shall be enforceable by either party unless it is in writing, signed on behalf of both parties and the intention to vary, modify or add to this Agreement is clearly expressed.

## **13. SEVERABILITY AND REMEDIES**

13.1 If the whole or any part of this Agreement is held to be invalid, such invalidity shall not affect the validity of any other provision.

13.2 All remedies available to either party under this Agreement are cumulative and may be exercised concurrently or separately, and are in addition to any other remedies which may be available to either party at law.

## **14. NOTICES**

14.1 All notices sent under this Agreement shall be in writing and sent to the address of the other party as set out in this Agreement, or such other address as may have been notified to the sending party subsequently.

14.2 A "notice in writing" shall include a copy notice sent by fax. Service shall be deemed to have been made: (a) in the case of a notice sent by first class post, three days following its date of posting; and (b) in the case of fax, on the date of its transmission and in each case, receipt of a notice after 6.00 pm, or at the weekend or on a bank holiday shall mean that service shall be deemed to have taken place on the next usual working day.

14.3 Provided that, in the event of any dispute as to whether a notice has been received, it shall only be deemed to have been received and effective if: (a) in the case of delivery by hand, the sender has adequate evidence of the signature of the person who accepted the delivery; or (b) in the case of a notice sent by first class post, it has not been returned to the sender as undelivered within ten days of the dispute; or (c) in the case of a facsimile transmission, the sender can produce the transmission slip showing the number to which the facsimile was sent and the time and date of transmission.

## **15. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right shall preclude or restrict the further exercise of that or any other right or remedy.

## **16. RELATIONSHIP OF PARTIES**

Nothing in this Agreement shall be taken to imply any partnership, agency or joint venture relationship between the parties and for the

purposes of this Agreement, each party is acting solely as an independent contractor and has no power or authority to represent or bind the other party

## **17. PRIOR AGREEMENT; ENTIRE AGREEMENT**

This Agreement supersedes any prior written or oral agreements, commitments and obligations between the respective parties to this Agreement pertaining to the subject matter hereof, and any such prior agreement, commitment or obligation is hereby cancelled and of no further force and effect. This Agreement constitutes the entire understanding and agreement of the parties, and no representations, documents, promises or agreements, oral or otherwise, trade usage, or course of conduct between the parties not embodied herein will be of any force or effect.

## **18. FORCE MAJEURE**

Neither party shall be liable to the other for a failure to perform its obligations under this Agreement due to a Force Majeure Event. Notwithstanding anything herein to the contrary, (a) the Company shall have no obligation to pay TVC any fees for any period during which TVC's performance is suspended due to a Force Majeure Event, and (b) if TVC is unable to provide Services for a period of 30 consecutive days as a result of a continuing Force Majeure Event, the Company may, at its sole option, cancel any portion of, or terminate, this Agreement.

## **19. THIRD PARTY RIGHTS**

No person other than a party to this Agreement may enforce this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **20. JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales. Any proceedings relating to any claim or dispute arising under or in connection with this Agreement shall be brought in the courts of England and Wales and each party agrees that these courts shall have exclusive jurisdiction in respect of the claim or dispute in question.

## **21. GENERAL DATA PROTECTION REGULATION (GDPR)**

21.1 This parties acknowledge that each will be an independent Data Controller or a Data Processor in order to fulfil their obligations from time to time under the Agreement. Each of the parties warrant and undertake that they will comply with the requirements of applicable data protection laws and regulations from time to time including the Data Protection Act 1998 of the United Kingdom, Regulation (EU) 2016/679 (the General Data Protection Regulation 2016 or "GDPR") and similar regulations in other jurisdictions and that the parties will acquire all third party rights and consents necessary to fulfil its responsibilities under this Agreement (as applicable). Any references herein to Data Controller or Data Processor will have the same meaning as is defined in the GDPR, and such references will apply to each party as the specific circumstances require.

21.2 Further, should the Data Processor receive and/or process Personal Data (as defined below) as part of the services, the Data Controller acknowledges and agrees that such Personal Data of EU citizens may be accessed or sent outside of the European Economic Area in accordance with data processing and security standards.

21.3 The Data Processor acknowledges that any customer or other personal or personally identifiable information received by it from or collected or developed by it for or on behalf of Data Controller or any part of it ("Personal Data") will constitute confidential and proprietary information of Data Controller and that its use and security is governed by law. Without prejudice to the generality of paragraphs 1

and 2 above, the Data Processor will therefore treat the Personal Data accordingly and without limitation agrees and warrants that:

(i) it will keep Personal Data confidential and only process the Personal Data in accordance with and for the purposes set out in, instructions received from time to time from Data Controller persons acting on Data Controller's behalf or Data Controller's employees for the purpose of processing Personal Data under the Agreement;

(ii) it has and will at all times during the term of this agreement have, appropriate technical and organisational measures in place to protect any Personal Data against unauthorised or unlawful processing and against accidental loss, destruction or damage. The Data Processor further agrees and warrants that it will have taken all reasonable steps to ensure: (i) the reliability of any of the Data Processor 's staff who will have access to Personal Data and (ii) that Personal Data will only be available to such staff members who need to have access to it and have been trained to a suitable standard for compliance with applicable laws;

(iii) it will allow Data Controller or its representative access to any relevant premises owned or controlled by the Data Processor on reasonable notice to inspect its procedures, including as described at (ii) above;

(iv) it will consider all reasonable suggestions which Data Controller may put to the Data Processor to ensure that the level of protection the Data Processor provides for Personal Data is in accordance with these terms and the GDPR;

(v) it will ensure that the Data Processor and any third parties it uses in accordance with the Agreement have appropriate privacy notices, consents and mechanics to deal with data subject's rights and to process Personal Data in order to perform the services under the Agreement, in each case in accordance with the GDPR and all applicable laws;

(vi) it will deal promptly and properly with all enquiries from Data Controller relating to its processing or use of the Personal Data;

(vii) it will notify Data Controller forthwith if a legally binding request for disclosure of the Personal Data is made, or if the subject of any Personal Data ("Data Subject") makes a request for disclosure of the Personal Data or exercises any of a Data Subject's other rights under the GDPR in respect of his/her Personal Data; Data Processor will not respond to any such Data Subject request without the prior written consent of Data Controller;

(viii) it will, in any of the circumstances in (vii) above co-operate and provide assistance and information as reasonably requested by Data Controller to enable Data Controller to comply with all its obligations under the GDPR;

(ix) if it sub-contracts to any third party any of its obligations to process Personal Data on behalf of Data Controller, it will only do so after the Data Processor has confirmed who the subcontractor is and Data Controller has had the opportunity (whether or not it exercises that opportunity) to assess-subcontractors technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and

(x) on termination of the Agreement or at the earlier request of Data Controller, the Data Processor will return all the Personal Data and copies thereof, whether or not in machine readable form, to Data Controller and/or destroy such Personal Data and certify Data Controller that it has done so, unless legislation imposed on the Data

Processor prevents it from doing so. In that case, the Data Processor warrants that it: (i) will maintain the confidentiality of the Personal Data and will not process or use it any more except as instructed by Data Controller, and (ii) will destroy the Personal Data within a reasonable time period after such legislation ceases to prevent such action