



# General Terms & Conditions

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DU-QSI-TC-2010-002

## PT. Delphi Utama & QSi Holding Ltd. - General Terms & Conditions

### 1. DEFINITIONS

- a) "Advertiser" means any person, firm or company who acting as Principal gives an Booking.
- b) "Advertising Agency" means any person, firm, company or outdoor specialist recognized as an Advertising Agency by the Contractor and who acting as Principal gives an Booking.
- c) "Agreement" means a legally binding agreement between the Parties consisting of Terms and Conditions and Booking Confirmation and any other terms agreed in writing between the Parties from time to time.
- d) "Advertisement Copy" means digital media files, posters and any other advertising media intended for display by the Contractor.
- e) "Booking Confirmation" means the documents headed "Booking Confirmation" and "Advertising Contract" which shall be sent to the Principal by the Contractor at the address referred to in Clause 11 detailed below.
- f) "Contractor" means PT. Delphi Utama, whose registered office is Jl. Cimandiri No. 6, Cikini, 10330 Jakarta Pusat, INDONESIA, and its successors in title.
- g) "Due Date" means thirty (30) days after the invoice date.
- h) "Fee" means the amount specified in the Booking Confirmation.
- i) "In Charge Date" means the date from which the specified Advertisement Copy will be displayed.
- j) "Landlord" means the person, firm or company with whom the Contractor has a concession to display advertising on their property.
- k) "Booking" means an order or intent for advertisement submitted by the Principal to the Contractor for the display of Advertisement Copy (which is always subject to the Terms and Conditions).
- l) "Parties" means the Contractor and Principal.
- m) "Posting Period" means the period specified in the Booking Confirmation within which the Contractor will post Advertisement Copy.
- n) "Principal" means any Advertiser or Advertising Agency and shall include their successors in title and assigns who gives a Booking as the Principal to the Contractor and as such is liable for payment of display of Advertisement Copy.
- o) "Production Specifications" means the last published document headed Production Specifications published by the Contractor.
- p) "Sites" means the locations at which the Contractor may display Advertisement Copy.
- q) "Terms and Conditions" means the terms and conditions set out in this document.
- r) "Working Day" means any day from Monday to Friday inclusive except any Indonesian Bank Holiday or Indonesian Public Holiday.

### 2. APPLICATION OF THESE TERMS AND CONDITIONS

- a) The Principal shall be ultimately responsible for the payment of Fees and shall be deemed to have full authority in all matters connected with the placing of the Booking and the approval or amendment of Advertising Copy. A media agency or specialist media buyer shall be regarded for all purposes as the Principal unless such person, firm or company is accepted in writing as an agent for another party acting as Principal by the Contractor. For the avoidance of doubt, every Booking accepted by the Contractor will be for a specified Advertiser and any change to the Advertiser must be agreed in writing by the Contractor.

- b) The Terms and Conditions together with any additional terms set out in the Booking Confirmation will be legally binding on the Contractor and the Principal in respect of each Booking submitted by the Principal one (1) Working Day after the date of the Booking Confirmation unless:

- i. the Principal notifies the Contractor of an objection to the Booking Confirmation within such period; or
- ii. a shorter timescale is agreed in writing between the Parties.

- c) For the avoidance of doubt, failure by the Principal to return a signed Booking Confirmation to the Contractor will not prejudice the terms of the Agreement. Any performance by the Contractor will be deemed to be on these terms and conditions.

- d) Any Bookings accepted shall only be used for displaying the Advertisement Copy specified in the Booking Confirmation.

### 3. DISPLAY OBLIGATIONS

- a) The Contractor will (subject to Clause 2 above) unless otherwise agreed in writing, display Advertisement Copy at the number of Sites as stipulated in the booking confirmation, in accordance with the Posting Period and subject to Clause 4, and from time to time as necessary renew them with spare Advertisement Copy to be provided by or at the expense of the Principal.

- b) When the Principal is entitled under the Booking Confirmation to a change of Advertisement Copy on display at a given Site and stipulates a date upon which such a change should be commenced, the Contractor shall complete such change within any period specified in the Posting Period as if the stipulated date were the In Charge Date for a new campaign, provided the Contractor has received the relevant Advertisement Copy in accordance with Clause 4 below.

- c) In the case of general and/or pre-selected distribution campaigns the Contractor reserves the right to display Advertisement Copy at Sites using its discretion and to substitute planned Sites for other Sites of a similar quality where the Contractor considers this is necessary for operational reasons.

- d) The Fees include the maintenance of display of Advertisement Copy at Sites in good condition provided the Contractor has been supplied with any necessary replacement Advertisement Copy requested by the Contractor from time to time in accordance with Clause 4.

- e) The Contractor will only provide photographs of displayed Advertisement Copy at Sites if expressly agreed in the Booking Confirmation.

- f) In the case of interruption or temporary cancellation of display the Advertisement Copy, the Contractor in its sole and absolute discretion will display the Advertisement Copy at the next available time as compensation on the Site where the interruption or temporary cancellation occurred.

- g) The Contractor will provide a campaign evaluation report with the factual showings of the Advertisement Copy, occurred interruption or temporary cancellations, compensation, and the estimated amount of viewers based on demographical data as acquired by the Contractor.

### 4. SUPPLY OF MATERIAL

- a) All Advertisement Copy (subject to any other terms in the Booking Confirmation) is to be delivered carriage paid and shall be supplied to the Contractor at the place(s) and within the time specified in the Booking Confirmation. All Advertisement Copy shall be produced and supplied to the Contractor in accordance with the Production Specifications.



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b) In the event that the Parties agree that the Contractor will undertake production of Advertisement Copy, then the Principal shall adhere to the Production Specifications and provide all detail necessary to allow such production to take place within the necessary timeframe.

c) The Contractor shall be supplied with Advertisement Copy in accordance with the Production Specifications so as to enable the Contractor to maintain the display in good condition.

d) Should the Principal fail to deliver Advertisement Copy in accordance with this Clause 4 the Contractor is not obliged to display the undelivered Advertisement Copy but the Principal shall, nonetheless, be liable to pay the corresponding Fees. The Contractor will use reasonable endeavors to display the undelivered Advertising Copy but without any commitment to meet the In Charge Date.

e) A part delivery of the Advertisement Copy or a delivery not meeting the Production Specification or the provisions of this Clause 4 shall be deemed to be no delivery for the purposes of this Clause.

f) Delivery of Advertisement Copy shall not be deemed to have been made until the relevant posting instructions have been given to and received by the Contractor.

g) Any Advertising Copy used during a campaign shall be disposed of in such manner as the Contractor shall decide, unless agreed otherwise at the time of Booking Confirmation.

h) Surplus Material: If any Advertisement Copy in the Contractor's possession is not collected by the Principal within ten (10) days from the end of the Posting Period then the same shall become the Contractor's property and be disposed of in such manner as the Contractor shall decide.

## 5. INVOICING AND CHARGES

a) Invoices will be issued in the month of the In Charge Date and monthly thereafter, unless otherwise stated in the Booking Confirmation.

b) Payment of Fees is due by the Due Date. If Fees are not paid by the Due Date the Contractor may, without prejudice to any other remedy it may have and without prejudice to Principal's obligation to pay the Fees, refuse to display any Advertisement Copy or withdraw currently displayed Advertisement Copy.

c) Invoices shall be sent by post, by fax, or by email to the Principal for payment by the Principal unless otherwise expressly agreed between the Parties in writing. Where the Contractor has been notified by the Principal in writing that an agent has been appointed by the Principal and the Contractor has agreed in writing, copy invoices will be sent to the Principal's agent and shall clearly identify the Principal for whom the agent is acting. Appointment of an agent will not affect the Principal's obligation to pay Fees on the Due Date.

d) In the event of failure to comply with any of the provisions of this Clause 5 the Contractor reserves the right to require any other Booking to be dealt with in accordance with revised payment terms.

e) In respect of any Fees not received by the Contractor by the Due Date the Principal will be liable to pay to the Contractor interest at a rate of 4% above the published base interest rate for Bank Mandiri in Indonesia from time to time.

## 6. RIGHT OF SET OFF

The Contractor shall be entitled but not obliged at any time or times without notice to the Principal to set off any liability of the Principal to the Contractor against any liability of the Contractor to the Principal (in either case howsoever arising and whether any such liability is present or future,

liquidated or un-liquidated and irrespective of the currency of its denomination) and may for such purpose convert or exchange any currency. Any exercise by the Contractor of its rights under this Clause shall be without prejudice to any other rights or remedies available to the Contractor.

## 7. WARRANTIES, LIABILITY AND INDEMNITY

a) The Contractor accepts full responsibility for compliance with statutory and other legal requirements so far as concerns the use and maintenance of Sites.

b) The Principal warrants and undertakes that:

i. all Advertisement Copy will comply with all statutory and legal requirements and regulations from time to time in force including the Indonesian Law or applicable Commission, Council or Code of Advertising (or such replacement or supplementary body or code as instituted or issued from time to time) and Landlords' advertising rules and regulations as issued from time to time;

ii. they will be responsible for obtaining and paying for all necessary licenses and consents for the posting and/or displaying and/or reproduction of any Advertisement Copy or copyright material contained in or the appearance of any person in his Advertisement Copy; and

iii. no Advertisement Copy will breach the copyright or other intellectual property rights or be defamatory of any third party.

c) The Principal will indemnify and keep the Contractor (in respect of itself and its employees, director, subcontractor and agents) indemnified against all actions, proceedings, costs, damages, expenses, penalties, claims, demands and liability (including legal fees) incurred and arising from any breach of the above warranties or in any manner whatsoever.

d) The Contractor shall have the right to refuse to display or to continue to display any Advertisement Copy which does not or which in the Contractor's opinion may not comply in all respects with the Principal's warranties and undertakings detailed in Clause 7(b) above. In such event the Contractor shall not be liable to the Principal for any damage loss or expense whatsoever and in addition to any remedy and/or damages and/or loss that may be claimed by the Contractor against the Principal, the Fees corresponding to display of such Advertisement Copy will be due in full notwithstanding that the Advertisement Copy has not been displayed.

e) The Contractor reserves the right not to display Advertisement Copy or to remove a display of Advertisement Copy at any time if in its absolute discretion, the Contractor believes the Principal or the Advertising Copy is not in compliance with the warranties in Clause 7(b) above. In such event the Contractor shall not be liable to the Principal for any damage loss expense whatsoever.

f) The due performance of any Agreement is subject to suspension, variation or cancellation by the Contractor (in whole or in part) owing to acts of nature, strikes, lockouts, legal restrictions, electricity supply failures, or the loss of any Sites which were included in the Agreement or for any other reason beyond the Contractor's control. In the event of suspension, variation or cancellation for any of the foregoing reasons the Contractor shall be entitled to be paid by the Principal the full Fees corresponding to the Sites in question up to and until the time at which such suspension, variation or cancellation occurs, but the Contractor shall not be liable to pay any damages losses or expenses to the Principal as a result or in respect of such suspension, variation or cancellation.



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g) The Contractor shall not be liable for loss of or damage to any Advertisement Copy supplied to the Contractor in the event of fire, lightning, terrorism, explosion of boilers, storms and tempest, flood bursting or overflowing of water tanks, apparatus or pipes.

## 8. TERMINATION

a) The Agreement may be terminated by the Principal by written notice to the Contractor subject to the following cancellation payments of the Agreement value per the Booking Confirmation prior to the In Charge Date:

- 90 days or more – Nil
- 75 days or more – 15%
- 60 days or more – 30%
- 45 days or more – 40%
- 30 days or more – 70%
- 10 days or more – 90%
- Less than 10 days - 100%

b) Within ten (10) days of the In Charge Date the Agreement may not be terminated by the Principal and the Principal may not assign, transfer, charge or part with all or any of its rights and/or obligations under the Agreement without the prior written consent of the Contractor.

c) The Contractor may terminate the Agreement forthwith by notice in writing to the Principal if:

- i. the Principal shall become bankrupt or commit an act of bankruptcy or make any assignment for the benefit of his creditors or enter into any arrangement with his creditors or being a company shall become insolvent or if any petition for the winding up or administration of the company is presented or if any other step is taken for the purposes of the appointment of an administrator or an administrative receiver of the company or if any steps are taken or negotiations commenced by the company or by any of its creditors with a view to proposing any kind of compositions, compromise or arrangement involving the company and its creditors; or
- ii. the Principal ceases or in the Contractor's reasonable opinion threatens to cease to carry on business;
- iii. if any monies to be paid by the Principal to the Contractor shall be in arrears for twenty one (21) days; or
- iv. if there has been a breach by the Principal of any terms of the Agreement; or
- v. in the circumstances described in Clause 13.

## 9. CONSEQUENCES OF TERMINATION

a) Following termination of the Agreement the Principal will pay to the Contractor forthwith all outstanding Fees (plus interest, in accordance with Clause 5(e), above).

b) Any termination of the Agreement and payment of Fees due shall be without prejudice to any other right of action or remedy which the Contractor may have under the Agreement or at law.

c) In the event of termination under Clauses 8(c) i or 8(c) ii, the Contractor may continue to display any Advertisement Copy and may enter into any agreements with third parties as considered appropriate to secure payment for continuing such display.

d) In the event of a termination by the Contractor in accordance with Clause 13 the Contractor shall be entitled to be paid by the Principal the full rate for the Sites in question up to and until the time at which the display is discontinued together with any other Fees due and owing by the Principal to the Contractor but the Contractor shall not be liable to pay any damages losses or expenses to

the Principal as a result or in respect of such suspension, variation or cancellation.

## 10. VALIDITY

If any provision of these Terms and Conditions or the Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, the other provision of these Terms and Conditions and/or the Agreement and the remainder of the affected provisions shall continue to be valid.

## 11. NOTICES

a) All notices under this Agreement will be in writing.

b) Notices shall be deemed to have been duly given:

- i. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- ii. when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
- iii. on the fifth business day following mailing, if mailed by national ordinary mail, postage pre-paid; or
- iv. on the tenth business day following mailing, if mailed by airmail, postage pre-paid, in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party in writing.

## 12. REPLACEMENT

Except as provided herein, neither the Contractor nor the Principal may assign, transfer, charge or part with all or any of its rights and/or obligations under the Agreement save that:

a) The Principal agrees and acknowledges that the Contractor shall be entitled at any time to assign or transfer all or any of its rights and/or obligations under the Agreement to the extent that such rights and/or obligations relate to the display of Advertisement Copy on the Landlord's property;

b) The Principal shall, at the Contractor's request and expense, cooperate with the Contractor to procure the replacement of the Agreement to the Landlord or any other party nominated by the Landlord on such terms as the Contractor may require in relation thereto and shall execute such documentation and take such other action as the Contractor may request in relation to such replacement.

## 13. REMOVAL FOR PURPOSES OF LANDLORD'S UNDERTAKING

If the Landlord at any time in its absolute discretion requires the display of Advertisement Copy at his property to be interrupted or discontinued then the Contractor may interrupt or discontinue such display of Advertisement Copy without prior notice to the Principal and upon any such action of the Landlord the Contractor may terminate the Agreement whether wholly or in part notwithstanding anything therein contained. In the event of such termination, the Contractor's liability is limited as outlined in Clause 9(d) above.

## 14. ORDER OF PRECEDENCE

In the event of any conflict between the Terms and Conditions and a Booking Confirmation, the provisions of the Booking Confirmation shall prevail.

## 15. JURISDICTION AND GOVERNING LAW

These Terms and Conditions shall be governed by and construed in accordance with Indonesian Law and the



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Parties agree to submit to the exclusive jurisdiction of the Indonesian Courts.

## 16. AGENCY/PARTNERSHIP

The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

## 17. VARIATION

The Contractor reserves the right to revise these Terms and Conditions from time to time. The Contractor will post any revised Terms and Conditions on the PT. Delphi Utama website and the Principal should check this website for notice of any such revisions. The Principal's continued placement of a Booking after such revision has been made will be deemed an acceptance by the Principal of the Terms and Conditions existing at the time.

## 18. ENTIRE AGREEMENT

The Agreement contains the whole agreement between the Parties relating to the subject matter hereof and supersedes any and all prior agreements, arrangements and understandings between the Parties relating to that subject matter. Accordingly, all prior agreements, whether or not agreed or offered and all conditions and warranties whether express or implied, statutory or otherwise and all representations, statements, negotiations, understandings, and all undertakings either written or oral are superseded by the Agreement (save only in respect of liabilities which have accrued in respect of any such prior agreements which are so superseded) and the parties hereby acknowledge that no reliance is placed on any such representation made but not embodied in these documents.

## 19. COMMISSIONS

The Principal confirms that it is satisfied that all parties with whom it deals with (including advertisers and agencies it deals with directly) in the outdoor advertising market are aware of the fee and rebate arrangements which operate within that market.

## 20. WAIVER

No delay, neglect, or forbearance on the part of either party in enforcing against the other party any term or condition of the Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Agreement. No right, power or remedy in the Agreement conferred upon or reserved for either party is exclusive or any other right, power or remedy available to that party.

## 21. CONFIDENTIALITY

a) Each party will maintain the confidentiality of the other party's Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information other than as necessary for the performance of its rights and obligations under the Agreement. "Confidential Information" shall mean in relation to the other party, information (whether in oral, written or electronic form) belonging or relating to that party, its business affairs or activities which is not in the public domain and which:

- i. is marked as confidential or proprietary;
- ii. the receiving party is advised is of a confidential nature; or

iii. due to its character or nature, a reasonable person in a similar position under similar circumstances would treat as confidential.

b) The Contractor's Confidential Information will include the Fees payable under the Agreement.

## 22. COUNTERPARTS

An agreement will be executed by written confirmation of a Booking by the Principal and signature of the Booking Confirmation by the Contractor.