

TERMS AND CONDITIONS

PURCHASE ORDER

1. Ownership / License: Purchaser is acting as agent for the client named on the Order (the "Client"). Supplier is acting as an independent contractor, and all materials created under the Order, including without limitation all artwork, layouts, photographs, scripts, ideas, concepts, characters, specifications, graphics, films, programs, software and other property or materials furnished hereunder (the "Materials"), are specially commissioned for but are not limited to, inclusion in advertising and/or commercial materials for Client. Subject solely to the limitations specifically set forth on the Order (if any), all Materials shall be deemed to be works for hire for Client under the Copyright Act of Japan, and will be and remain the absolute and exclusive property of Client, its successors and assigns, in perpetuity. Supplier further agrees to execute and cause others who in any way contribute to the creation of the Materials to execute all further documents that, in the judgment of Client and/or Purchaser, are required or useful to establish, protect or enforce the rights herein granted or confirmed. To the extent necessary to vest full ownership of the Materials with Client, Supplier hereby irrevocably sells, transfers, and assigns all rights, title and interest, including the copyright in and to the Materials to Client, and its successors and assigns, without limitation. Such rights include, but are not limited to: (a) the right to use, publish, display or reproduce the Materials in advertising or for the purposes of trade or for any other purpose whatsoever; (b) the right to alter, edit, retouch, or crop or simulate the Materials in any way, (c) rights provided for in Articles 27 and 28 of the Copyright Act of Japan); (d) the right to secure copyright in the Materials anywhere throughout the world; (e) the right to license, exploit, sell, assign, or otherwise dispose of the Materials or any of the said rights included therein for any purpose which Purchaser, Client and their assigns and licensees may see fit; and (f) any and all subsidiary rights in the Materials including characters or parts which are contained in the Materials. Without limiting the generality of the foregoing, Supplier hereby agrees not to exercise, regarding any use of the Materials by the Client, its successors and assigns, any and all claims of "moral rights" and other rights of any kind or nature that it has related to the Materials and hereby conveys to Client any such rights of Supplier as may exist without reservation or limitation to the maximum extent permitted under the applicable law. Supplier agrees that Purchaser shall have the right, without prior approval, to use the Materials following their publication to promote Purchaser's services, including without limitation, use on Purchaser's website. Supplier hereby confirms that the consideration for any sale, transfer, assignment of all rights, title and interest, including the copyright in and to the Materials to Client, and its successors and assigns under this section shall be included in the prices quoted and shown on this Order.

2. Representations and Warranties: Unless otherwise specified on the Order, Supplier hereby represents and warrants: (a) that all assignments, releases, permissions, clearances, consents and waivers (collectively, "Releases") have been obtained, in writing, from any and all persons or companies whose name, likeness, voice, prop, costume, property or other attribute is contained in the Materials provided in connection with this Order and may be used throughout the world and in perpetuity, without limitation, and Supplier shall furnish Purchaser with a copy of such signed Releases; (b) that it has the full and unencumbered right and authority to license, sell or assign the rights herein conveyed (as applicable), or in the case of Materials under the work for hire provisions of the Copyright Act of Japan to confirm the Client's authorship thereof under such statute, and the same may be used or reproduced for advertising or trade purposes, or for any other purpose whatsoever, without violating any laws or the rights of any third parties; (c) that it has not made and shall not make any disposition of any copyright or other interest in any of the Materials, whether in assignment or encumbrance, and confirms that all copyright and other rights stated herein are subject to the full and exclusive enjoyment by Client; (d) the prices specified in the Order are no less favorable than those which Supplier would be willing to offer to or accept from any other party for the services to be rendered or the goods to be sold and such prices comply in all aspects with the laws, rules and regulations relating thereto; (e) all goods and services provided hereunder will be provided in a professional manner with due care of a prudent manager, in compliance with all laws, rules and regulations, and in accordance with all specifications; and (f) Supplier will comply with the [WPP Code of Business Conduct – Supplier version](#) in connection with the goods and/or services Supplier is providing hereunder.

3. Cancellations: Purchaser may cancel this Order at any time prior to its acceptance of the Materials or work covered by this Order, upon written notice to Supplier. In such event, unless such termination is based on Supplier's breach, Purchaser shall be liable to pay Supplier, in lieu of the price specified in this Order, any verified direct costs incurred by Supplier in the performance of its obligations hereunder prior to such cancellation, provided, however, that the total amount of such costs shall not exceed the price specified on the Order for those Materials that have been completed, in whole or in substantial part, by Supplier. It is agreed that time is of the essence and that Purchaser may, at its election, cancel this order or any part thereof without further obligation if this Order is not fulfilled within the time specified or, if no time is specified, within a reasonable time.

4. Early Delivery: Supplier's signature on the Order confirms Supplier's agreement to the terms herein. Notwithstanding the foregoing, if delivery is made prior to Supplier's signing this Order, Supplier's delivery of the Materials will constitute its unqualified acceptance of all the terms of this Order, including the transfer of copyright to Client.

5. Acceptance: The Materials supplied hereunder must comply with Purchaser's specifications and are subject to Purchaser's approval. Purchaser's payment for the Materials shall not constitute its acceptance thereof and the Materials shall be received subject to inspection and approval. If, even after Purchaser's approval, any defect that is not immediately obvious under the said inspection is found within ● month/year after the receipt of the Materials, the Purchaser may request the Supplier, at Purchaser's discretion and without limiting any other remedies available to Purchaser including but not limited to indemnification claim, (i) to repair or replace them at Supplier's cost or (ii) to return them at Supplier's cost. In the event of such return, Purchaser shall be entitled to a refund of all amounts paid. Defects are not waived by Purchaser's failure to notify Supplier of such defects upon receipt of the Materials.

6. Assignment: This Order or any sums payable hereunder may not be assigned by Supplier without the prior written consent of Purchaser.

7. Taxes: Supplier agrees that prices quoted and shown on this Order include any and all applicable taxes. Liability for any other consumption or similar taxes and any penalties and interest charges due on these taxes shall be Supplier's sole responsibility. In the event Purchaser is required to pay such amounts for whatever reason, Supplier agrees to immediately reimburse Purchaser therefor.

8. Property: Any and all property of Purchaser or Client, in the possession or control of Supplier, shall be and remain the property of Purchaser or Client (as applicable), and Supplier shall be responsible for any loss or damage occurring to such property while such is in Supplier's possession or control.

9. Books and Records: Supplier agrees to keep such books and records as shall readily disclose the basis for any charges ordinary or extraordinary billed to Purchaser under this Order, and shall make them available for examination and audit by Purchaser and/or Client or an outside auditor chosen by and paid for by Purchaser and/or Client for a period of three years after receipt by Supplier of final payment under this Order. For such period of three years, Purchaser and/or Client shall have the right to audit (i) the books and records relating to all such charges, and (ii) any other materials related to Supplier's compliance with the terms and conditions of this Order, and Supplier, upon request of Purchaser or Client, shall make all such books and records available for such examination. If, upon such audit, Client or Purchaser shall determine that Supplier's charges exceed the amounts properly chargeable to Purchaser or Client as the case may be, Supplier shall without limiting Purchaser's other available rights or remedies promptly refund to Purchaser or Client, as appropriate, the amount of such overcharges.

10. Confidentiality: Supplier covenants and agrees that it will not, at any time, disseminate, reveal or otherwise make available to any person, or use for its own purposes, any information of a proprietary or confidential nature concerning Purchaser or Client obtained by it regarding, but not limited to, trade secrets and confidential information, advertising matters, ideas, plans, techniques and accounts, products, business, customers or methods of operation, except as otherwise required in the performance of its obligations hereunder. Supplier expressly agrees that the existence and negotiation of this Order shall be considered Purchaser's and Client's confidential information subject to the restrictions contained in this provision. Prior to using the Materials for self-promotional purposes, Supplier must obtain written approval from Purchaser. Supplier further agrees to execute Purchaser's and/or Client's standard confidentiality agreement upon request by Purchaser.

11. Indemnification: Supplier agrees to indemnify and hold harmless Purchaser, Client, and their respective subsidiaries, affiliates, parents, partners, officers, directors, employees, agents, assigns and licensees from and against any damages, claims, losses or expenses (including reasonable attorney's fees and expenses) any of them may incur or be liable for arising out of or resulting from: (a) any breach or alleged breach by Supplier of any representation or warranty made by Supplier hereunder; (b) the performance of this Order by Supplier (including but not limited to Supplier's employees, agents, subcontractors and designees); and (c) the use or reproduction in any manner whatsoever, including advertising or trade purposes, of the Materials.

12. Limitation of Liability: IN NO EVENT SHALL PURCHASER OR CLIENT OR ANY OF THEIR RESPECTIVE PARENTS, AFFILIATED COMPANIES, DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, LICENSEES OR AGENTS BE LIABLE TO SUPPLIER FOR MORE THAN THE TOTAL AMOUNT ACTUALLY DUE AND PAYABLE TO SUPPLIER AS SPECIFIED IN THE ORDER. UNDER NO CIRCUMSTANCES SHALL PURCHASER OR CLIENT OR ANY OF THEIR RESPECTIVE PARENTS, AFFILIATED COMPANIES, DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, LICENSEES OR AGENTS BE LIABLE TO SUPPLIER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING UNDER CONTRACT, WARRANTY, OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER PURCHASER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

13. Insurance: Supplier shall carry and maintain commercially reasonable amounts of ordinary and necessary business insurance covering Supplier's obligations hereunder, and upon request, shall provide Purchaser with certificates of insurance that list Purchaser as additional insured.

14. Payments: Delivery charges must be fully prepaid by Supplier unless other terms are specified herein. Payments shall be made by Purchaser, at such time as Purchaser is in receipt of satisfactory materials, Releases and invoices, as herein above described. If any and all additional costs occurs due to changes in specifications/amount of the Materials set forth in this Order, the Supplier shall submit to the Purchaser the estimate for such additional costs and shall obtain the prior written consent to such estimate from the Purchaser. Purchaser is not responsible for any unapproved additional costs. All vendors that Supplier hires will bill Supplier directly (as opposed to Purchaser or Client) except as otherwise expressly agreed by Purchaser in writing.

15. Gifts and Conflicts of Interests: Supplier shall not make or offer a gratuity or gift of any kind to Purchaser employees or their families. Supplier shall not engage in any activity with Purchaser employees, competitors, or affiliates that could be perceived as creating a conflict of interest situation unless, after full disclosure of all relevant facts, Purchaser agrees that no conflict in fact is present.

16. Miscellaneous: The terms and conditions set forth herein constitute the entire agreement between the parties with respect to the Materials or work to be performed pursuant to this Order and said terms and conditions may not be modified or amended, except by an agreement in writing that specifically references these terms and conditions and that has been signed by Purchaser's authorized representative. Notwithstanding Purchaser's payment hereunder, any other documents originating with Supplier shall not satisfy the requirements of the preceding sentence. It is a condition of this Agreement under this Order that Supplier does not attempt to impose its own terms and conditions on Purchaser, and any attempt by Supplier to unilaterally amend the Order or to impose additional obligations on Purchaser shall be deemed null and void and to be a material breach hereof. No waiver by Purchaser shall be valid unless in writing and signed by Purchaser. This Order shall be construed pursuant to the laws of Japan regardless of its conflict of laws provisions. The parties hereto agree that any and all disputes, controversies or matters arising herefrom or related hereto shall be subject to the exclusive jurisdiction of the Tokyo District Court.

17. Severability: If any provision of this Order is held to be invalid, illegal or unenforceable for any reason whatsoever, then notwithstanding such invalidity, illegality or unenforceability, such provision shall be enforced to the maximum extent permitted by law and the remaining terms and provisions of this Order shall remain in full force and effect in the same manner as if the invalid, illegal or unenforceable provision had not been contained herein.

18. Software / Hardware: In addition to the Terms and Conditions which are hereby incorporated by this reference, if the Order requires software or hardware to be provided, then the following shall also be applicable to Supplier: Notwithstanding any other provision herein, to the extent any of Supplier's or any third party's software applications, databases, computer programs (including source code and object code for any such programming), executable code or computer hardware (collectively, "Software/Hardware") are incorporated into the Materials or are otherwise provided hereunder, Supplier agrees to identify any pre-existing Software/Hardware and further agrees that unless otherwise specified in this Order, Supplier grants to Purchaser a perpetual, irrevocable, fully paid-up, royalty free, transferable, sublicensable (through multiple levels of sublicensees), worldwide, non-exclusive right and license to use, reproduce, distribute, display and perform (whether publicly or otherwise), transmit, prepare derivative works of and otherwise modify, make, import, export and otherwise use and exploit (and have others exercise such rights on behalf of Purchaser) all or any portion of the pre-existing Software/Hardware incorporated into the Materials or otherwise delivered to Purchaser in connection with the this Agreement. Supplier hereby confirms that the consideration for such right and license shall be included in the prices quoted and shown on this Order. For clarity, it is understood that, subject to Supplier's rights in all pre-existing Software/Hardware, Purchaser shall own all original Software/Hardware created hereunder and such original Software/Hardware shall be deemed part of the Materials. Supplier represents and warrants that: (a) the Software/Hardware, and the ideas they express, are original and do not violate or infringe the rights of any other party and that it has the unencumbered right and authority to grant all licenses herein granted; (b) that all Software/Hardware provided under this Order will perform in accordance with specifications; (c) that the provision of the Software/Hardware (and Customer's exercise of its license to use the same) will not in any way constitute an infringement or other violation of any copyright, patent, trademark, trade secret or other proprietary or personal rights of any third party or any applicable law or regulation; and (d) that the Software/Hardware shall be free of any virus, Trojan horse, timebomb or other harmful or disabling code.

ART AND PHOTOGRAPHY

In place of the Terms and Conditions stated above, if the Order requires photography, artwork, models or beauty stylist services to be provided, then the following terms and conditions shall instead be applicable to Supplier.

1. Ownership / License: Purchaser is acting as agent for the client named on the Order (the "Client"). Supplier is acting as an independent contractor, and all materials created under the Order, including without limitation all artwork, layouts, photographs, ideas, concepts, characters, specifications, graphics, films, and other property or materials furnished hereunder (the "Materials"), are specially commissioned for but are not limited to, inclusion in advertising and/or commercial materials for Client. Subject solely to the limitations specifically set forth on the Order (if any), Supplier hereby irrevocably sells, transfers, and assigns all rights, title and interest, including the copyright in and to the Materials to Client, and its successors and assigns, without limitation. Such rights include, but are not limited to: (a) the right to use, publish, display or reproduce the Materials in advertising or for the purposes of trade or for any other purpose whatsoever; (b) the right to alter, retouch, or crop or simulate the Materials in any way, (c) the rights provided for in Articles 27 and 28 of the Copyright Act of Japan; (d) the right to secure copyright in the Materials anywhere throughout the world; (e) the right to license, exploit, sell, assign, or otherwise dispose of the Materials or any of the said rights included therein for any purpose which Purchaser, Client and their assigns and licensees may see fit; and (f) any and all subsidiary rights in the Materials including characters or parts which are contained in the Materials. Without limiting the generality of the foregoing, Supplier hereby agrees not to exercise, regarding any use of the Materials by the Client, its successors and assigns, any and all claims of "moral rights" and other rights of any kind or nature that it has related to the Materials and hereby conveys to Client any such rights of Supplier as may exist without reservation or limitation to the maximum extent permitted under the applicable law. Supplier agrees that Purchaser shall have the right, without prior approval, to use the Materials following their publication to promote Purchaser's services, including without limitation, use on Purchaser's website. Supplier hereby confirms that the consideration for any sale, transfer, assignment of all rights, title and interest, including the copyright in and to the Materials to Client, and its successors and assigns under this section shall be included in the prices quoted and shown on this Order.

2. Warranties: Unless otherwise specified on the Order, Supplier hereby represents and warrants: (a) that all assignments, releases, permissions, clearances, consents and waivers (collectively, "Releases") have been obtained, in writing, from any and all persons or companies whose name, likeness, voice, prop, costume, property or other attribute is contained in the Materials provided in connection with this Order and may be used throughout the world and in perpetuity, without limitation, and Supplier shall furnish Purchaser with a copy of such signed Releases; (b) that it has the full and unencumbered right and authority to license, sell or assign the rights herein conveyed (as applicable), and the same may be used or reproduced for advertising or trade purposes, or for any other purpose whatsoever, without violating any laws or the rights of any third parties; (c) all goods and services provided hereunder will be provided in a professional manner with due care of a prudent manager, in compliance with all laws, rules and regulations, and in accordance with all specifications; and (d) Supplier will comply with the [WPP Code of Business Conduct – Supplier version](#) in connection with the goods and/or services Supplier is providing hereunder.

3. Cancellation: Purchaser may cancel this Order at any time prior to its acceptance of the Materials or work covered by this Order, upon written notice to Supplier. In such event, unless such termination is based on Supplier's breach, Purchaser shall be liable to pay Supplier, in lieu of the price specified in this Order, any verified direct costs incurred by Supplier in the performance of its obligations hereunder prior to such cancellation, provided, however, that the total amount of such costs shall not exceed the price specified on the Order for those Materials that have been completed, in whole or in substantial part, by Supplier. It is agreed that time is of the essence and that Purchaser may, at its election, cancel this order or any part thereof without further obligation if this Order is not fulfilled within the time specified or, if no time is specified, within a reasonable time.

4. Early Delivery: Supplier's signature on the Order confirms Supplier's agreement to the terms herein. Notwithstanding the foregoing, if delivery is made prior to Supplier's signing this Order, Supplier's delivery of the Materials will constitute its unqualified acceptance of all the terms of this Order, including the transfer of copyright to Client.

5. Acceptance: The Materials supplied hereunder must comply with Purchaser's specifications and are subject to Purchaser's approval. Purchaser's payment for the Materials shall not constitute its acceptance thereof and the Materials shall be received subject to inspection and approval. If, even after Purchaser's approval, any defect that is not immediately obvious under the said inspection is found within ● month/year after the receipt of the Materials, the Purchaser may request the Supplier, at Purchaser's discretion and without limiting any other remedies available to Purchaser including but not limited to indemnification claim, (i) to repair or replace them at Supplier's cost or (ii) to return them at Supplier's cost. In the event of such return, without limiting any other remedies available to Purchaser, Purchaser shall be entitled to a refund of all amounts paid. Defects are not waived by Purchaser's failure to notify Supplier of such defects upon receipt of the Materials.

6. Assignment: This Order or any sums payable hereunder may not be assigned by Supplier without the prior written consent of Purchaser.

7. Taxes: Supplier agrees that prices quoted and shown on this Order include any and all applicable taxes.

8. Property: Any and all property of Purchaser or Client, in the possession or control of Supplier, shall be and remain the property of Purchaser or Client (as applicable), and Supplier shall be responsible for any loss or damage occurring to such property while such is in Supplier's possession or control.

9. Books and Records: Supplier agrees to keep such books and records as shall readily disclose the basis for any charges ordinary or extraordinary billed to Purchaser under this Order, and shall make them available for examination and audit by Purchaser and/or Client or an outside auditor chosen by and paid for by Purchaser and/or Client for a period of three years after receipt by Supplier of final payment under this Order. For such period of three years, Purchaser and/or Client shall have the right to audit (i) the books and records relating to all such charges, and (ii) any other materials related to Supplier's compliance with the terms and conditions of this Order, and Supplier, upon request of Purchaser or Client, shall make all such books and records available for such examination. If, upon such audit, Client or Purchaser shall determine that Supplier's charges exceed the amounts properly chargeable to Purchaser or Client as the case may be, Supplier shall without limiting Purchaser's other available rights or remedies promptly refund to Purchaser or Client, as appropriate, the amount of such overcharges.

10. Confidentiality: Supplier covenants and agrees that it will not, at any time, disseminate, reveal or otherwise make available to any person, or use for its own purposes, any information of a proprietary or confidential nature concerning Purchaser or Client obtained by it regarding, but not limited to, trade secrets and confidential information, advertising matters, ideas, plans, techniques and accounts, products, business, customers or methods of operation, except as otherwise required in the performance of its obligations hereunder. Supplier expressly agrees that the existence and negotiation of this Order shall be considered Purchaser's and Client's confidential information subject to the restrictions contained in this provision. Prior to using the Materials for self-promotional purposes, Supplier must obtain written approval from Purchaser. Supplier further agrees to execute Purchaser's and/or Client's standard confidentiality agreement upon request by Purchaser.

11. Indemnification: Supplier agrees to indemnify and hold harmless Purchaser, Client, and their respective subsidiaries, affiliates, parents, partners, officers, directors, employees, agents, assigns and licensees from and against any damages, claims, losses or expenses (including reasonable attorney's fees and expenses) any of them may incur or be liable for arising out of or resulting from: (a) any breach or alleged breach by Supplier of any representation or warranty made by Supplier hereunder; (b) the performance of this Order by Supplier (including but not limited to Supplier's employees, agents, subcontractors and designees); and (c) the use or reproduction in any manner whatsoever, including advertising or trade purposes, of the Materials.

12. Limitation of Liability: IN NO EVENT SHALL PURCHASER OR CLIENT OR ANY OF THEIR RESPECTIVE PARENTS, AFFILIATED COMPANIES, DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, LICENSEES OR AGENTS BE LIABLE TO SUPPLIER FOR MORE THAN THE TOTAL AMOUNT ACTUALLY DUE AND PAYABLE TO SUPPLIER AS SPECIFIED IN THE ORDER. UNDER NO CIRCUMSTANCES SHALL PURCHASER OR CLIENT OR ANY OF THEIR RESPECTIVE PARENTS, AFFILIATED COMPANIES, DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, LICENSEES OR AGENTS BE LIABLE TO SUPPLIER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING UNDER CONTRACT, WARRANTY, OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER THEORY OF LIABILITY, REGARDLESS OF WHETHER PURCHASER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

13. Payments: Delivery charges must be fully prepaid by Supplier unless other terms are specified herein. Payments shall be made by Purchaser, at such time as Purchaser is in receipt of satisfactory materials, Releases and invoices, as herein above described.

14. Gifts and Conflict of Interest: Supplier shall not make or offer a gratuity or gift of any kind to Purchaser employees or their families. Supplier shall not engage in any activity with Purchaser employees, competitors, or affiliates that could be perceived as creating a conflict of interest situation unless, after full disclosure of all relevant facts, Purchaser agrees that no conflict in fact is present.

15. Miscellaneous: The terms and conditions set forth herein constitute the entire agreement between the parties with respect to the Materials or work to be performed pursuant to this Order and said terms and conditions may not be modified or amended, except by an agreement in writing that specifically references these terms and conditions and that has been signed by Purchaser's authorized representative. Notwithstanding Purchaser's payment hereunder, any other documents originating with Supplier shall not satisfy the requirements of the preceding sentence. It is a condition of this Agreement that Supplier does not attempt to impose its own terms and conditions on Purchaser, and any attempt by Supplier to unilaterally amend the Order or to impose additional obligations on Purchaser shall be deemed null and void and to be a material breach hereof. No waiver by Purchaser shall be valid unless in writing and signed by Purchaser. This Order shall be construed pursuant to the laws of Japan regardless of its conflict of laws provisions. The parties hereto agree that any and all disputes, controversies or matters arising herefrom or related hereto shall be subject to the exclusive jurisdiction of the Tokyo District Court.

16. Severability: If any provision of this Order is held to be invalid, illegal or unenforceable for any reason whatsoever, then notwithstanding such invalidity, illegality or unenforceability, such provision shall be enforced to the maximum extent permitted by law and the remaining terms and provisions of this Order shall remain in full force and effect in the same manner as if the invalid, illegal or unenforceable provision had not been contained herein.

PRODUCTION OF DIGITAL CONTENT

1. Quality: The material produced hereunder ("Digital Content") shall be subject to Agency's acceptance testing and approval. Producer agrees that the Digital Content shall be of first class physical and aesthetic quality, technically correct and of a quality at least equal to current standards for Digital Content created for the Internet and will conform with all technical requirements. The quality and timely delivery of the completed Digital Content is of the essence of this agreement under this Order (this "Agreement"). Producer will bear any costs resulting from its failure to satisfactorily perform its obligations hereunder.

2. Changes and Variations: If at any time, Agency desires to make any changes in or variations from the script(s) or storyboard(s) or specifications of the Digital Content or from any material or work in progress and such changes result in additional costs to Producer, Producer agrees to notify Agency's authorized representative in writing of the amount of such additional costs before any such additional costs are incurred and to proceed only after receiving written authorization from such representative. Reimbursement for such additional costs shall be payable at the same time as the final payment.

3. Agency: Agency is acting on behalf of the client named on this Order (the "Client") as agent thereof with respect to all matters arising under this agreement. Agency will make payment of all appropriate sums paid to it by its Client (and Producer shall look to Agency solely to the extent Agency was paid by Client). Notwithstanding anything to the contrary contained in any order, acknowledgment or other documents submitted by Producer, if there is a failure to make any payment hereunder which results from Client's failure to pay Agency, the Agency shall not be responsible to the Producer for such failure to make payment.

4. Acceptance Testing: Upon the delivery to Agency of any Digital Content or deliverable(s), Agency shall have thirty (30) days from the receipt to review for performance. Producer will review Agency's objections, if any, and shall have ten (10) days from the receipt of such objections to correct the deficiencies. Upon correction of the deficiencies, Agency shall then proceed to re-test and reevaluate the Digital Content or deliverable. Any failure by Producer to correct a material deficiency shall be deemed a material breach of this Agreement, entitling Agency to any and all available remedies, including, but not limited to, a refund of the fees paid to Producer under this Agreement, the cost of cover, and termination of this Agreement. No Digital Content or deliverable shall be deemed to be accepted until Agency delivers a written notice of its final acceptance to Producer. In addition, even after such notice of final acceptance, any defect that is not immediately obvious under the said review of performance is found within ● year/ month after the receipt of the Digital Content or deliverable(s)], Agency may request Producer, at Agency's discretion and without limiting any other remedies available to Agency including but not limited to indemnification claim, (i) to repair or replace them at Producer's cost or (ii) to return them at Producer's cost. In the event of such return, Agency shall be entitled to a refund of all amounts paid. Defects are not waived by Agency's failure to notify Producer of such defects upon receipt of the Digital Content or deliverable(s).

5. Ownership: (a) Subject to subparagraph (b) and Section 5, full and unrestricted ownership of the Digital Content and all other results and proceeds of Producer's services, including without limitation any software, computer programming, code, designs, graphics, text, audio files, video files, know-how, ideas and information, modifications, inventions or improvements associated with the Digital Content shall vest and remain in Client at all times and for all purposes whatsoever, immediately upon creation, and without limiting the foregoing Agency and Client shall have the sole right to use, distribute, reproduce, alter, modify, exhibit, exploit and copyright same throughout the world without restriction. Producer will not mortgage, pledge, assign or otherwise encumber any of the above mentioned materials. Producer agrees that Digital Content is a "work made for hire" for Client under the Copyright Act of Japan and shall be owned by Client for all purposes in perpetuity. To the extent all or any portion of the Digital Content is not deemed to be a work made for hire, Producer hereby sells, assigns and transfers all of their right, title, ownership and interest therein (including the rights provided for in Articles 27 and 28 of the Copyright Act of Japan), presently known or hereafter ascertained, including, but not limited to, the right to secure any patent rights and the copyright therein (and all renewals thereof) throughout the world, without any restrictions as to use except as expressly set forth herein, to Client and its successors, assignees and/or licensees. For clarity, Client shall exclusively own all data generated through, by, or related to use of the Digital Content. Producer agrees to reasonably cooperate (at Agency's expense) in furthering the intent of this section and hereby appoints Agency as its attorney-in-fact for carrying out the intent of this section. Producer shall only use its employees to create the Digital Content, unless it receives Agency's prior written consent. In the event that Agency has authorized Producer to use non-employees to create Digital Content, then Producer shall first secure from each such individual an agreement in writing that assigns all intellectual property rights in such Digital Content to Client in the same manner as set forth in this section and present such agreement to Agency. (b) Producer shall retain all intellectual property rights with respect to any intellectual property owned by Producer prior to entering into this Agreement, including any code, designs, know-how, software applications, databases, computer programs and/or other materials that are of general applicability to Producer's business ("Producer Material"); provided, however, that Producer shall not incorporate any Producer Material into the Digital Content without Agency's prior written consent. In the event of Agency's consent thereto, Producer shall grant to Agency and Client a perpetual, irrevocable, fully paid-up, royalty free, transferable, sublicensable (through multiple levels of sublicensees), worldwide, non-exclusive right and license to use, reproduce, distribute, display and perform (whether publicly or otherwise), transmit, prepare derivative works of and otherwise modify, make, import, export and otherwise use and exploit (and have others exercise such rights on behalf of Agency and/or Client) all or any portion of the Producer Material incorporated into the Digital Content. Producer hereby agrees not to exercise, regarding any use of the Digital Content by the Client, its successors and assigns and/or licensees, any and all claims of "moral rights" and other rights of any kind or nature that it has related to the Digital Content and hereby conveys to Client any such rights of Supplier as may exist without reservation or limitation to the maximum extent permitted under the applicable law. Producer hereby confirms that the consideration for (i) any sale, transfer, assignment of all rights, title and interest, including the copyright in and to the Digital Content to Client, its successors, assignees and/or licensees and (ii) grant of right and license for the Producer Material under this section shall be included in the prices quoted and shown on this Order.

6. License and Releases: Producer agrees to supply to Agency prior to delivery to Agency of the Digital Content: (a) signed Licenses, in a form acceptable to Agency, obtained from the persons, firms or corporations who own or control any literary, dramatic and/or musical works furnished by Producer for Digital Content, if any, granting to Agency, Client and their licensees a license to use such works, and warranting that such persons, firms or corporations have the right to grant such licenses; and (b) original copies of signed releases from persons supplied by the Producer who appear in the Digital Content granting Agency, Client and their licensees the irrevocable permission and consent of persons to use their names, likenesses, performance and biographical material concerning them in any way, for advertising, marketing, promotional purposes and purposes of trade, in connection with the Digital Content and the uses thereof contemplated hereunder and in connection with the product(s) advertised herein. (c) If Producer is supplying special props/costumes/photographs/artwork ("Special Materials"), Producer represents and warrants to Agency and Client that it has full ownership rights to such Special Materials, and the right to grant unrestricted ownership rights in the Special Materials to Client, and the granting of any such rights shall not violate the rights of any third party. Producer hereby transfers and assigns to Client all rights to the Special Materials, including without limitation, any copyrights or trademarks related thereto. (d) Without limiting any other provision herein, to the extent Producer desires to incorporate any third party's software applications, databases, computer programs (including source code and object code for any such programming), executable code or computer hardware, including without limitation free and open source software (collectively, "Third Party Software/Hardware") into the Digital Content or are otherwise provided hereunder, Producer agrees to identify any Third Party Software/Hardware in writing in advance and will not incorporate such Third Party Software/Hardware in the Digital Content without Agency's prior written consent. In the event of Agency's consent thereto, Producer agrees that unless otherwise specified in the Order, Producer grants to Agency and Client a perpetual, irrevocable, fully paid-up, royalty free, transferable, sublicensable (through multiple levels of sublicensees), worldwide, non-exclusive right and license to use, reproduce, distribute, display and perform (whether publicly or otherwise), transmit, prepare derivative works of and otherwise modify, make, import, export and otherwise use and exploit (and have others exercise such rights on behalf of Agency and/or Client) all or any portion of the Third Party Software/Hardware incorporated into the Digital Content.

7. Termination of Production: (a) If for any reason beyond Producer's control, such as strikes, war, acts of God, labor troubles, riots, delay of commercial carrier or restraint of public authority, Producer shall be unable to produce and/or deliver the Digital Content as provided herein, or in the event that Agency should desire to cancel the production of the Digital Content or to terminate this Agreement for any reason, Agency may terminate this Agreement: provided, however, that, except as set forth in subparagraph b below, Agency shall pay Producer all out-of-pocket costs and expenses therefor incurred by Producer in the normal routine of producing said Digital Content. Upon such payment, Producer shall deliver to Agency forthwith and Client shall become the sole owner of all exposed negatives and other material produced by Producer prior to the termination, and Agency shall be under no obligation to make any further payments to Producer with regard to said Digital Content. (b) If Agency cancels this Agreement due to Producer's breach of any of its duties or obligations hereunder, or due to Producer's fault, then Agency shall have the option (i) to pay Producer all of its out-of-pocket costs and expenses therefor incurred by Producer in the normal routine of producing said Digital Content in which event Producer shall deliver to Agency forthwith and Client shall become the sole owner of all exposed negatives and other material produced by Producer prior to the termination, and Agency shall be under no obligation to make any further payments to Producer with regard to said Digital Content or (ii) Agency may elect to make no payment to Producer in which event Producer may retain all films and materials produced by it, but may not use or permit the use: A) of any portions of such materials which show or refer in any manner to Client, its product or service: B) copyrighted music or other literary property owned or licensed by Client or by any third parties: C) talent engaged for the production of Client's Digital Content or D) any property which, if displayed or exhibited in any manner, could violate the rights of any third parties. (c) If at any time prior to delivery of all materials to Agency: (i) a petition for bankruptcy, corporate reorganization, civil rehabilitation, or special liquidation is filed against or on behalf of the Producer, or (ii) Producer shall make an assignment for the benefit of creditors, or (iii) Producer in any manner subjects the elements and materials to a lien in favor of any third party; or (iv) Producer becomes insolvent or its financial stability becomes so impaired as to endanger its ability to produce and deliver the Digital Content free and clear of all liens, claims or encumbrances, then; Agency shall have the option to terminate this Agreement and complete ownership of all elements and materials shall immediately vest in Client, and producer shall promptly deliver such materials as directed by Agency. In such event Agency shall reimburse Producer for its out-of-pocket costs and expenses therefor incurred by Producer in the normal routine of producing said Digital Content.

8. Insurance: Producer agrees that it will at all times maintain insurance policy(ies) from an insurance carrier acceptable to Agency sufficient to cover Producer's obligations under this Agreement. Producer shall provide Agency and Client with certificates naming Client and Agency as additional insureds on all such policy(ies).

9. Independent Contractor: It is understood that Producer's status hereunder is that of an Independent Contractor and that all persons employed by Producer in performing its obligation hereunder shall not be deemed employees of Agency or Client, and Producer shall make whatever payments may be due such persons and Producer will comply with all governmental regulations and indemnity and hold harmless Agency and Client against any claims and demands resulting from Producer's failure to comply with the provisions of this paragraph.

10. Delinquency in Producers Payment: Agency reserves the right in case of delinquency in Producer's making payments to any of Producer's suppliers, performing work on or furnishing material for the Digital Content to be produced hereunder, to (a) pay such suppliers directly, irrespective to any set-offs or counter-claims Producer may have against suppliers, an amount claimed to be equal to the money owed such supplier by Producer for work the supplier has performed or material it has furnished with respect to said Digital Content, and such payment shall be deemed payment to Producer and shall reduce the contract price hereunder, and, at Agency's election, have such supplier deliver such Digital Content and all materials relating thereto directly to Agency (and Producer hereby expressly authorizes such delivery) or (b) terminate this Agreement without any further obligation to Producer and Producer shall immediately deliver to Agency the Digital Content and all materials relating thereto.

11. Publicity Guidelines: Producer agrees not to use the name of Agency, Client or the Product(s) or service(s) advertised in the Digital Content, or any part thereof, to any person other than employees of the Producer, Agency or Client, without Agency's prior consent.

12. Agent for Client: In the making, execution and performance of this Agreement, Agency is acting solely as an agent for Client. All rights, benefits, privileges and properties vested in Agency are for the benefit of Client and may be exercised either by Agency or Client.

13. Compliance: Producer shall comply with all laws, regulations and ordinances applicable to the performance of the Producer's obligation hereunder.

14. Warranties: Producer hereby warrants and represents that (a) it is free and has full right to enter into this Agreement and to perform all its obligations hereunder and will comply with all its obligations hereunder and will comply with all applicable laws, ordinances and regulations; (b) Producer is insured in the manner required in Exhibit A attached hereto; (c), the Digital Content may be used as hereinabove provided without violating any laws and without violating or infringing any rights of any third parties, including personnel and suppliers of the Producer, and the Digital Content and all materials, services and rights which will become the property of Client hereunder shall be free and clear of all liens, encumbrances and claims of any nature; (d) the Digital Content and any other deliverables shall not contain any virus, Trojan horse, worm or other similar harmful or malicious code; (e) Producer shall comply with the terms and conditions of all applicable third party websites and (f) it will use reasonable physical and electronic security measures in association with the performance of the services and in handling any Agency or Client information appropriate to the nature of such information disclosed to or accessible by Producer in order to protect such information from unauthorized access, destruction, use, modification or disclosure, and it shall promptly notify Agency in writing in the event any unauthorized access to information is suspected and permit Agency to control any public notifications, with the reasonable assistance of Producer.

15. Indemnity: (a) Producer shall indemnify and hold harmless Agency, Client and their respective officers, employees and agents ("Indemnities") from and against all claim, damages, losses and expenses, including attorney's fees and disbursements, arising out of, resulting from or relating to the production of the Digital Content to be produced hereunder, including but not limited to (i) the breach by Producer of any of its representations, warranties, duties or covenants contained herein, (ii) violation by Producer of the rights of any third party, (iii) personal injury, including bodily injury, sickness, disease or death, suffered in the course of production, (iv) injury to or destruction of tangible property, including the loss of use resulting therefrom; which claim, damage, loss and expense results in whole or in part from any act or omission of Producer, or any of its Subcontractors or employees. (b) In any and all claims against the Indemnities, by any employee of the Producer, any Subcontractor of Producer or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this indemnification provision shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits, payable to them by or for the Producer or any Subcontractor under applicable laws.

16. Limit of Damages: All liability arising under this Agreement, whether under theory of contract, tort (including negligence), or otherwise, shall be limited to direct damages. Neither party nor their suppliers shall have any liability to the other party or to any third party, for any incidental, punitive, indirect, special or consequential damages, including but not limited to lost profits, loss of data, cost of recreating lost data, interruption of business, or costs of procurement of substitute goods or services, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise. The aggregate liability of Producer and its suppliers under this Agreement shall not exceed the total Fees paid by Agency to Producer hereunder with respect to the Statement of Work at issue. Any action by either party must be brought within one (1) year after the cause of action arose.

17. Assignment of Contract: This Agreement may not be assigned by either party without the written consent of the other except that Client at any time will have the right to designate any advertising agency or firm in the place and stead of Agency, and upon such designation being made, the contract will be read and construed as if the name of the advertising agency or firm so designated by Client were substituted for "Agency", wheresoever the same shall appear in this contract.

18. Disputes and Applicable Law: Any controversy or claim arising out of or relating to this agreement, or any breach thereof, shall be subject to the exclusive jurisdiction of the Tokyo District Court. This agreement and all matters or issues collateral thereto shall be governed by the laws of Japan.

19. Tax Liability: Producer agrees that prices quoted and shown on this Order include any and all applicable taxes.

20. Confidentiality: Producer agrees to hold the terms, elements and material, including Digital Content, produced under this Agreement in strict confidence and shall not use outside of this Agreement or disclose the terms, elements and materials, including Digital Content, to any third party without Agency's prior written consent. Producer further agrees to hold in strict confidence all information and materials supplied by the Agency or the Client to Producer hereunder.

21. Agreement: This contract constitutes the entire agreement between the parties and may not be changed orally except by a writing signed by both parties. Any failure by Agency or Client to exercise any rights granted herein upon the occurrence of any of the contingencies set forth in this Agreement will not constitute a waiver of any such rights upon the recurrence of any such contingency.