

MERCHANT MARKETING AGREEMENT

Ariba Contract Request Nr. CW



BETWEEN

MASTERCARD EUROPE SERVICES LIMITED, (Company Number **09210818**) having its registered office at 10 Upper Bank Street, London E14 5NP ("**MasterCard**")

AND

TRANSPORT FOR LONDON, having its registered office at Windsor House, 42-50 Victoria Street, London. SW1H 0TL ("**Merchant**")

Whereas,

- (A) MasterCard is launching a marketing campaign as defined in Exhibit B (the "Marketing Initiative") in the United Kingdom aimed at engaging its customers and raising awareness of MasterCard's sponsorship of the 2015 Rugby World Cup, which will be recognised as a contra-deal. It will cost an estimated £25,000 in assets and £40,000 in media creative development and production costs.
- (B) Merchant recognizes the interest of such Marketing Initiative for the purpose of increasing contactless payments on Merchant's network, and therefore is prepared to contribute to the Marketing Initiative, as set forth below.

NOW, THEREFORE, MasterCard and Merchant (the "Parties" or each individually a "Party") agree as follows:

- 1. MasterCard Contribution.** Subject to the conditions stated herein and compliance by Merchant with its obligations stated in paragraph 2 below, MasterCard will provide the support described in Exhibit A attached hereto (the "MasterCard Contribution") for use in the Marketing Initiative.
- 2. Merchant Contribution.** Subject to the conditions stated herein and compliance by MasterCard with its obligations stated in paragraph 1 above, Merchant will provide the support described in Exhibit B attached hereto (the "Merchant Contribution") for use in the Marketing Initiative.
- 3. Standard and Specific Terms and Conditions; Exhibits.** This Agreement shall be subject to the standard terms and conditions set forth in Exhibit C attached hereto. Each Exhibit attached hereto is incorporated herein by reference to this Agreement and is an integral part hereof.

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4. Freedom of Information and Transparency

4.1 "FOI Legislation" means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

4.2 "Information" means information recorded in any form held by the Merchant or by MasterCard on behalf of the Merchant pursuant to this Agreement; and

4.3 "Information Access Request" means a request for any Information under the FOI Legislation.

4.4 MasterCard acknowledges that the Merchant:

is subject to the FOI Legislation and agrees to assist and co-operate with the Merchant to enable the Merchant to comply with its obligations under the FOI Legislation; and

may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from MasterCard.

4.5 Without prejudice to the generality of Clause 8 of Annex C (Confidentiality), MasterCard shall:

transfer to the Contract Manager (or such other person as may be notified by the Merchant to MasterCard) each Information Access Request relevant to this Agreement that it receives as soon as practicable and in any event within two (2) Business Days of receiving such Information Access Request; and

in relation to Information held by MasterCard on behalf of the Merchant, provide the Merchant, with details about and copies of all such Information that the Merchant reasonably requests and such details and copies shall be provided within five (5) Business Days of a request from the Merchant (or such longer period as the Merchant may reasonably specify), and in such forms as the Merchant may reasonably specify.

4.6 The Merchant shall be responsible for determining whether Information is exempt from disclosure under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access Request in accordance with the FOI Legislation. MasterCard shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the Merchant or obliged to do so by law.

4.7 MasterCard acknowledges that the Merchant is subject to the Transparency Commitment as described at [<https://tfl.gov.uk/corporate/publications-and-reports/contracts>] and that this Agreement will be published by TfL. The Merchant may in its absolute discretion redact all or part of the Agreement prior to its publication, provided that this does not result in the Agreement as published not fairly representing the broad contents of the deal between the Parties. In so doing and in its absolute discretion the Authority may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation. The Merchant will consult with MasterCard regarding any redactions to the non-confidential elements of the Agreement to be published pursuant to this Clause 4.7, provided that the Merchant shall make the final decision regarding both publication and redaction of the Agreement.

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This Agreement is signed by the duly authorized representatives of the parties, who each acknowledge having received a duly executed copy.

ACCEPTED AND AGREED:

MASTERCARD EUROPE SERVICES LIMITED

TRANSPORT FOR LONDON

By: _____
Print name:
Print title:
Date:

By: _____
Print name
Print title:
Date:

By: _____
Print name:
Print title:
Date:

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EXHIBIT A

MasterCard Contribution

MasterCard shall contribute to the Marketing Initiative:

- 1) By providing to the Merchant 150 rugby balls, 1050 keyrings and 960 squeeze balls for use by Merchant for internal staff engagement promotions and campaigns, such items to be delivered to David Carr, Employee Communications & Engagement at Floor 5 B5, Palestra, 197 Blackfriars Road, London SE1 8NJ by Friday 4 September 2015 or such other date as agreed between the parties.
- 2) By providing 19 consumer prizes of tickets and/or trips to the winners of MasterCard's consumer promotion to encourage contactless payment use on Merchant's network, in accordance with the terms of such promotion.
- 3) By covering agreed creative development and print production costs at £40,000.
- By advertising through channels including digital, OOH, Telegraph and talkSPORT, all of which are outside of the Merchant's channels, to a value of approximately £185,000.

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EXHIBIT B

Marketing Initiative and Merchant Contribution

Marketing Initiative:

MasterCard is conducting a consumer facing campaign using the RWC 2015 to leverage and promote MasterCard contactless usage across the Merchant's public transport network.

The messaging will be focused on driving MasterCard contactless payments in place of other payment methods i.e. Oyster PAYG, paper tickets and/or cash, in order to form habits with existing customers and reach new contactless customers.

The objective of the campaign is to increase contactless usage.

MasterCard have created a global Rugby World Cup 'Turning the World Oval - 44 Days of Crazy' marketing campaign. They have bought significant out of home media to help promote this campaign including promotion at key stations e.g. Waterloo and Twickenham. The Merchant's logo features in this campaign.

In addition as part of the global campaign, MasterCard have also selected three UK contactless partners: the Merchant (Transport for London), Harrods and Pizza Express. Each partner has its own version of a 'Turning the World Oval' poster highlighting the partner's key message, the Merchant's being the encouragement of the use of contactless payments.

MasterCard have funded the creative development of a contactless travel poster for use across the Merchant's advertising channels and channels other than the Merchant's advertising channels as procured by MasterCard.

1.1 **Effective Date:** 20th July 2015

1.2 **Preparation Period:** 20th July 2015 and 1st September 2015

1.3 **Marketing Initiative Period:** 04:30 on 1st September 2015 to 04:29 On 9th October 2015

1.4 **Total Marketing Initiative Value:**

1.4.1 Value of MasterCard Contribution - £250,00

1.4.2 Value of Merchant Contribution - £227,052

1.5 **Merchant investment:** No monetary investment will be required by the Merchant. Only activation and implementation of TfL assets as set out as the Merchant Contribution below.

Merchant Contribution

The Merchant shall contribute free of charge the following Merchant – owned advertising space to the Marketing Initiative in locations agreed between the Parties:

London Underground 426 Double Royal posters (Circuit 3 - w/c 4 Sept – w/c 2 Oct)
960 Car end panel posters (Circuit 2 - fortnights commencing 7 Sept and 21 Sept)

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DLR	450 Car card posters (Circuit 2 – w/c 31 Aug – w/c 5 Oct)
London Overground	220 Double Royal posters (Campaign 1 – w/c 7 Sept – w/c 28 Sept) 200 Car card posters (Campaign 2 – fortnight commencing 7 Sept)

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Exhibit C

Standard Terms and Conditions

1. **Definitions.** Capitalized terms used in the Agreement and not otherwise defined therein shall have the meanings set forth below:
 - “**MasterCard Card**” means a Card bearing the MasterCard name, logotype, hologram of MasterCard International or any of its group companies with the functionalities associated with this brand.
 - “**Confidential Information**” means all information in any medium or form (whether marked “confidential” or not) that a Party receives from the other Party, either directly or from the Party’s affiliates, and which concerns the business, operations or customers of the other Party, or any of its affiliates, and shall include all the terms and conditions of this Agreement;
 - “**Effective Date**” means the date stipulated in Exhibit B, or if there is no such date, the Signature Date.
 - “**Force Majeure Event**” means any event or circumstance that is (i) unforeseeable and (ii) beyond the control of a Party, including, without limitation, fire, flood, earthquake, elements of nature, acts or regulations of government bodies, court orders, acts of war, terrorism, riots, civil disorders, rebellions or revolutions and renders it impossible for a Party to timely perform its contractual obligations
 - “**Licence**” means the licence granted by the Merchant to MasterCard in Exhibit D.
 - “**Merchant Image**” means the Merchant’s Image as set out in Exhibit D.
 - “**Signature Date**” means the date on which the last party has signed the Agreement.
2. **Liability.** Unless otherwise agreed, either Party’s commitments and liability under this Agreement shall only relate to and be limited to the amount of the Party’s contribution, being for the avoidance of doubt £250,00 in the case of MasterCard, and £228,000 in the case of Merchant. Each party shall comply with all relevant provisions of any applicable legislation related to the areas for which they are responsible under this Agreement (including, but not limited to, provisions regarding (un)fair competition, data protection and privacy, consumer protection, taxation, requirements of prior filings with or authorizations from any regulatory authority) and shall not, as far as is practicable, knowingly do anything, or permit anything to be done, which might lead to a breach of any such legislation.
3. **Licence.** The Merchant hereby grants to MasterCard a licence to use the Merchant’s Image as set out in Exhibit D.
4. **Approvals.** Merchant and MasterCard shall mutually agree as to each Party’s brand presence in any materials. Each Party undertakes to respect the other’s branding and communication guidelines. Merchant acknowledges and agrees that all materials created relating to the Marketing initiative, must be submitted to MasterCard for approval by MasterCard and World Rugby Cup 2015. MasterCard acknowledges and agrees that all materials created relating to the Marketing Initiative, must be submitted to Merchant for approval. MasterCard may use an appointed agency to manage the RWC 2015 approvals process. **For the avoidance of any doubt: each party agrees to withhold all materials until approval is confirmed.**
5. **Reporting.** In order to assist MasterCard in assessing the results of the Marketing Initiative, Merchant shall provide a weekly report to MasterCard for each week of the Agreement, and the week immediately prior thereto, showing the number of MasterCard contactless payments, the value of MasterCard contactless payments, the number of journeys made using MasterCard and a percentage of MasterCard payments of all contactless payments on Merchant’s system.
6. **VAT.** All amounts, consideration and services arising out or in connection with this Agreement shall be deemed exclusive of all VAT and free of any other applicable taxes. In the event that any such VAT or tax is levied by Merchant, the amount of such VAT or tax shall be deemed to be included in the amount due (retrospectively if necessary) and shall be due and payable in the same manner and at the same time as the amount due so that the amount received by Merchant shall be including such VAT or tax, whereby no additional amount is owing to Merchant from MasterCard as a result of the levy of such VAT or tax. Nothing in this clause shall be construed as obligating the Parties to breach any applicable laws.
7. **Term and Termination.** The Agreement shall commence on the Effective Date and shall remain in effect until both Parties have fulfilled their respective obligations. Either party shall be entitled forthwith to terminate this Agreement by written notice to the other if:
 - That other party commits any breach of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within 5 working days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.
 - That other party (a) becomes insolvent; (b) is declared bankrupt; (c) makes an assignment for the benefit of creditors; or (d) commences any proceedings for the winding up of its business, dissolution or liquidation.
8. **Confidentiality**

Save to the extent that information is disclosed under the provisions of clause 4 of this Agreement (Freedom of Information and Transparency) each Party shall:

 - Treat all Confidential Information as confidential and shall not disclose the same to any third party, except that Group Companies shall not be considered as a third party if they have agreed to comply with the confidentiality obligations comprised in this clause 10; and
 - Ensure that all Confidential Information shall only be disclosed to officers, employees and contractors, legal advisers and accountants on a need to know basis; and
 - Not use Confidential Information other than is necessary for the purpose of performing its

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commitments or exercising its rights under this Agreement.

Such confidentiality obligation shall apply until the Confidential Information:

- falls into the public domain or is publicly available or becomes publicly available otherwise than through a breach of this Agreement;
- is subsequently lawfully obtained by the receiving Party from a third party;
- was known to the receiving Party prior to such disclosure or is independently developed by a member of the receiving Party's staff to whom no Confidential Information was disclosed or communicated;
- is required to be disclosed by applicable law, regulation or court order in which event the receiving Party shall promptly notify the disclosing Party of the requirement for such disclosure and co-operate through all reasonable and legal means, at the disclosing Party's expense, in any attempts by the disclosing Party to prevent or otherwise restrict disclosure of such Confidential Information.

The Parties acknowledge that, in the event of a breach of this clause 10, any non-breaching Party will likely suffer irreparable damage that cannot be fully remedied by monetary damages. Therefore, in addition to any remedy which a non-breaching Party may possess pursuant to applicable law, such non-breaching Party retains the right to seek and obtain injunctive relief against any such breach in any court of competent jurisdiction. In the event any such breach results in a claim by any third party, the breaching Party shall indemnify, defend and hold harmless the non-breaching Parties from any claims, damages, interest, attorney's fees, penalties, costs and expenses arising out of such third-party claim(s). Neither Party shall issue any public announcements or make any published statements regarding this Agreement or the subject matter thereof without the prior written consent of the other Party, and any such agreed announcements or statements shall be reviewed and approved by both Parties prior to its issuance or publication.

9. **Anti-Bribery and Corruption Laws and Compliance**

The Parties recognize that MasterCard and any person or entity acting on its behalf must comply with international laws related to anti-bribery and corruption. Merchant shall comply, and shall ensure that each of its subcontractors (if so approved or permitted) and personnel complies, with all applicable anti-bribery and corruption laws including, but not limited to, the U. S. Foreign Corrupt Practices Act, the UK Bribery Act and all comparable local anti-bribery and corruption laws applicable to business dealings, including with government officials (as defined below), and any implementing regulations in respect of any such laws. "Government official" is defined as any employee or officer of a government of a country, state or region, including any federal, regional or local government or department, agency, enterprise owned or controlled by the such government, any official of a

political party, any official or employee of a public international organization, any person acting in an official capacity for, or on behalf of, such entities, and any candidate for political office.

It is the intent of the Parties that no payments or transfers of value or other advantage shall be made or undertaken or any attempt thereat which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business for any person. Merchant warrants, represents and covenants to MasterCard that Merchant (and each of its employees, subcontractors and personnel) has not and shall not, in connection with the activities contemplated by this Agreement, [the broader project of which this Agreement is a part, or] in connection with any other business activities involving MasterCard, make, promise or offer to make any payment or transfer of anything of value or any other advantage directly or indirectly through a representative, intermediary agent or otherwise : (i) to any government official; (ii) to any political party; or (iii) to any other person for the purpose of improperly influencing any act, omission to act or decision of such official, political party or individual or securing an improper advantage to assist the Parties in obtaining or retaining business. Merchant also warrants, represents and covenants to MasterCard that Merchant and each of its employees, subcontractors and personnel shall not, in connection with any business activities involving MasterCard, accept anything of value from any third party seeking to influence any act or decision of Merchant or in order to secure an improper advantage to that third party. Merchant shall notify MasterCard as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.

Failure by Merchant to comply with the terms of this clause will constitute a material breach of this Agreement and will give the right to MasterCard to recover any and all losses associated with this breach. Any clause limiting Merchant's liability in this Agreement does not apply to this clause.

10. **Assignment.** Merchant shall not have the right to assign or transfer this Agreement and/or any of its rights and/or obligations under this Agreement without the prior written consent of MasterCard. MasterCard shall not have the right to assign or transfer this Agreement and/or any of its rights and/or obligations under this Agreement without the prior written consent of Merchant, except to its Group Companies.
11. **Miscellaneous.** MasterCard shall not have the right to assign or transfer this Agreement and/or any of its rights and/or obligations under this Agreement without the prior written consent of Merchant, except to its Group Companies. A failure or delay of either party to enforce any provision of or exercise any right under this Agreement shall not be construed to be a waiver. No waiver by a party shall be effective unless expressly made in writing. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or invalid in any respect, such

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unenforceability or invalidity shall not affect any other provision of this Agreement, and this Agreement shall then be construed as if such unenforceable or invalid provisions had never been a part of this Agreement. Any provisions that, by their terms, should survive termination of this agreement shall survive the termination hereof. This Agreement evidences the entire agreement and understanding between MasterCard and Merchant with respect to the

transactions contemplated by this Agreement and supersedes all prior agreements between the parties in respect thereof. This Agreement and the respective rights and obligations of the parties hereto shall be governed by and construed in accordance with English Law and is subject to the exclusive jurisdiction of the English courts. *The present document is only valid and enforceable if it signed and executed in two originals by both Parties.*

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Exhibit D **Merchants License**

- 1.1 The Merchant hereby grants to MasterCard the rights to reproduce the Merchant Image in relation to the Marketing Initiative.
- 1.2 MasterCard shall not make any representation or do any act which may be taken to indicate that it has any right, title, or interest in or to the ownership of the Merchant Image or the goodwill generated therein and acknowledges that the rights granted by Clause 1.1 are by way of licence only and do not confer upon MasterCard any right or interest in the Image other than as set out in this Licence.
- 2.3 This Licence is personal to MasterCard who shall not assign transfer or otherwise dispose of the rights granted by this Licence nor shall MasterCard sub-license or authorise any other person to exercise the rights hereby given unless the Merchant has given prior written consent.
- 2.4 This Licence does not confer upon MasterCard sole and exclusive rights.
- 2.5 MasterCard agrees that it shall not use or incorporate any the Merchant Image in a company name or a trading name or use in any way that suggests a connection with the Merchant other than as set out in the Marketing Initiative.

MERCHANT IMAGE:

Working in partnership with



**TRANSPORT
FOR LONDON**