

ITV ONLINE AND MOBILE ADVERTISING AND MULTI-PLATFORM SOLUTIONS TERMS AND CONDITIONS

1. Parties, Structure and Interpretation

- 1.1 These terms and conditions (the **Terms**) are entered into between: (i) the Company, acting through its disclosed agent, ITV Commercial (a division of ITV Broadcasting Limited) (**ITV**) (as identified on the corresponding order confirmation, insertion order, “commercial-terms-confirmation” section of an online booking system, booking form incorporating online elements or booking documentation issued by, or on behalf of, the Company (the **Order**)); and (ii) the Buyer (as identified on the Order). These Terms and the Order together constitute the agreement made between the Company and the Buyer (the **Agreement**). If an Order does not specify which entity is the Company:
- (a) where it relates to www.itv.com or an App (as defined below), the Company is ITV Consumer Limited (Registered No. 02937518), The London Television Centre, Upper Ground, London SE1 9LT;
 - (b) where it relates to www.itv.com/goodmorningbritain or www.itv.com/Lorraine, the Company is ITV Breakfast Broadcasting Limited (Registered No. 02578005), The London Television Centre, Upper Ground, London SE1 9LT; and
 - (c) where it relates to the provision of Multi-Platform Solutions Services, the Company is ITV Online (a division of ITV Broadcasting Limited (Registered No. 00955957)), The London Television Centre, Upper Ground, London SE1 9LT.
- 1.2 In the event that more than one company is identified as the Company in the Order, a separate, severable Agreement shall be formed between the Buyer and each respective Company.
- 1.3 In this Agreement, words and expressions shall have their ordinary meaning unless otherwise defined herein and unless the context requires otherwise:
- (a) references to clauses are references to the clauses of these Terms;
 - (b) references to any statute or statutory provision or regulatory code of practice shall include reference to any statute or statutory provision or regulatory code of practice which amends, extends, consolidates or replaces the same and shall include any directions, orders, regulatory codes of practice, instruments or other subordinate legislation made under any relevant statute or statutory provision;
 - (c) references to a “person” shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
 - (d) references importing a particular gender include all genders and references importing the singular include the plural and vice versa;
 - (e) the words “include”, “including” and “in particular” shall not be interpreted as limiting the generality of any foregoing words;
 - (f) headings and sub-headings are inserted for convenience only and shall be ignored in construing this Agreement; and
 - (g) any reference to a “party” or “parties” shall mean a party or the parties to this Agreement.
- 1.4 For the purposes of this Agreement:
- (a) **Advertiser** has the meaning given in clause 19.1(b);
 - (b) **Advertising Delivery Date** means (i) for iVOD Advertising Creative, the date falling ten (10) Business Days prior to the campaign start date (as specified in the Order); or (ii) for all other Creative, the date falling five (5) Business Days prior to the campaign start date (as specified in the Order) unless otherwise agreed;

- (c) **Affected Party** has the meaning given in clause 23.2;
- (d) **App** means the ITV Hub mobile application and/or any other applications (whether for mobile or other platforms) owned and/or operated directly or indirectly by ITV plc (including without limitation through ITV Group companies);
- (e) **Applicable Laws** has the meaning given in clause 5.1(a);
- (f) **Approved Buyer** has the meaning given in clause 20.6;
- (g) **Assets** has the meaning given in clause 5.1(a);
- (h) **Business Day** means a day (other than a Saturday or Sunday) on which banks in the City of London are open for ordinary business;
- (i) **Creative** means VOD Advertising Creative and/or Display Advertising Creative;
- (j) **Digital Advertising** means VOD Advertising and Display Advertising on any Platform and any other digital advertising formats offered in relation to any Platform;
- (k) **Display Advertising** means the advertising formats commonly known as display advertising, including (without limitation) leaderboards and skyscrapers and including any other static (non-moving picture) advertising formats, including premium pushdowns, reveal advertising (a premium in-stream display below the fold advertising format), splash reveal advertising (a premium in-stream display above and below the fold advertising format) or second screen take overs;
- (l) **Display Advertising Creative** means creative relating to Display Advertising;
- (m) **Digital Specifications** means the technical and creative specifications relating to Digital Advertising (as may be updated from time to time) available at <http://www.itvmedia.co.uk> or on request;
- (n) **Fee** has the meaning given in clause 3;
- (o) **Force Majeure Event** has the meaning given in clause 23.3;
- (p) **ITV Group** means ITV plc and its direct and indirect subsidiaries worldwide;
- (q) **iVOD Advertising** means VOD Advertising with an interactive element;
- (r) **iVOD Advertising Creative** means creative relating to iVOD Advertising;
- (s) **Multi-Platform Solutions Services** means services (including, without limitation, undertaking the design of any creative assets relating to any advertising formats supported by the Company from time to time for and on behalf of the Buyer) provided by or on behalf of the Multi-Platform Solutions team (or any successor or replacement team);
- (t) **Platform** means:
 - (i) www.itv.com and/or any other website(s) owned and/or operated directly or indirectly by ITV plc (including without limitation through ITV Group companies);
 - (ii) any App; and
 - (iii) any other digital platform owned and/or operated directly or indirectly by ITV plc (including without limitation through ITV Group companies);

- (u) **Use** has the meaning given in clause 5.1(b);
- (v) **User Data** has the meaning given in clause 11.2;
- (w) **VOD Advertising** means moving picture advertising that can be placed (without limitation) immediately before, after or during video content on any Platform including iVOD Advertising; and
- (x) **VOD Advertising Creative** means creative relating to VOD Advertising including iVOD Advertising Creative.

1.5 For ease of reference, these Terms contain sections that are specifically relevant to: (i) Display Advertising; (ii) VOD Advertising and (iii) Multi-Platform Solutions Services. The Buyer shall refer to the relevant Order in order to determine which of these sections apply. Any sections and clauses of these Terms that do not relate specifically to Display Advertising, VOD Advertising or Multi-Platform Solutions Services will apply to all elements that comprise the Order.

2. **Effective Date**

These Terms apply with effect from 1 January 2017 to:

- (a) all Digital Advertising displayed on a Platform; and
- (b) all Multi-Platform Solutions Services provided by the Company.

3. **Fee**

In consideration for the Company displaying the Digital Advertising and/or providing the Multi-Platform Solutions Services, as specified in the Order, the Buyer shall pay the fee(s) set out in the Order (the **Fee**).

4. **Booking Deadline and Dates of Display of Digital Advertising**

4.1 The Buyer shall book Digital Advertising in advance of any applicable booking deadline(s) set by the Company (or ITV on its behalf) and notified to the Buyer (which may include publication of such deadline(s) on the website at www.itvmedia.co.uk). The Company reserves the right, in its sole discretion, to apply a late booking fee of such sum as the Company may at its reasonable discretion determine or as may have otherwise been agreed by the parties if a booking of Digital Advertising is made after an applicable booking deadline and accepted by the Company.

4.2 Subject to Buyer's compliance with clause 4.1 (where applicable) and the terms of this Agreement, the Company shall use its reasonable endeavours to display the Digital Advertising on the dates specified in the Order.

4.3 If Digital Advertising is not displayed at all or such display only takes place in part on the dates specified in the Order, in each case through no fault of the Buyer, the Company shall use its reasonable endeavours to agree with the Buyer another display date of reasonably equivalent value.

5. **Warranties**

5.1 The Buyer represents and warrants to the Company that:

- (a) all Digital Advertising and any and all content, designs, briefs, materials, information and/or assets provided and/or approved by or on behalf of the Buyer in relation to the Multi-Platform Solutions Services (the **Assets**) comply with all relevant statutes, regulations, directives, codes of practice (whether or not the same have force of law and including those issued by the Advertising Standards Authority (or any successor or replacement authority) and common law in force from time to time (the **Applicable Laws**);
- (b) the Buyer holds the necessary rights (including, without limitation, intellectual property rights) to permit the use, reproduction, display, transmission and distribution (the **Use**) of the Digital Advertising and the Assets and all content therein by the Company for the purpose of this Agreement;
- (c) the Use will not cause the Company to breach:

- (i) any Applicable Laws, in particular (but without limitation) the Digital Advertising does not constitute a financial promotion within the meaning of the UK Financial Services and Markets Act 2000 (“**FSMA**”) (as amended) or, if it does, it is permitted under section 21 of FSMA or any criminal laws;
 - (ii) any rights of any third parties (including, without limitation, any intellectual property or other rights);
- (d) the Digital Advertising will not constitute false or misleading advertising, constitute unfair competition, be defamatory or an invasion of privacy or invasion of similar rights or be a violation of any anti-discrimination laws or regulations or otherwise breach any other right of any person or entity;
- (e) the Digital Advertising, the Assets and/or other material submitted by the Buyer will not contain viruses, bugs, worms, trojan horses, harmful codes or any other form of defect or contaminant which could cause temporary or permanent damage to or will otherwise impair or harm or cause the malfunction of the Platform and/or software or hardware, computer systems or devices of any of the ITV Group or any third party (including without limitation users of the Platform);
- (f) the Buyer shall not acquire any rights (including, without limitation, intellectual property rights) in or associated with the Platform as a result of this Agreement;
- (g) the Buyer shall be entitled to set (or allow to be set on its behalf) cookies (and for the purposes of this Agreement the term "cookies" will include cookies, web beacons and any similar devices or technologies now known or developed in the future) within the Platform always provided that:
 - (i) the Buyer shall be responsible for obtaining ‘consent’ for the use of cookies within the Platform as required by the Privacy and Electronic Communications Regulations 2003;
 - (ii) the Buyer shall ensure that the use of such cookies adheres to any permissions, preferences or consents set or indicated by the end user of the Platform;
 - (iii) the Buyer shall ensure that the use of such cookies complies with any policy or other restrictions from time to time adopted by the Company and which relates to the use of cookies (either by the Company or third parties) on the Platform;
 - (iv) the Buyer shall provide the Company with detailed information on such cookies in advance of setting them, including (without limitation) the name of each cookie, its purpose, whether it is used for targeted advertising, what data the cookie holds, whether the cookie is linked to other data held about the user, the type of cookie, the cookie expiry date, whether it is a first or third party cookie, how to disable the relevant cookie and such other information as may be requested by the Company from time to time;
 - (v) the purpose of such cookies shall not be any form of measurement or analysis except measurement to verify the delivery of the number of impressions stated in the Order;
 - (vi) the Buyer shall ensure that such cookies expire no later than 30 days after the end of the term of this Agreement;
 - (vii) the Buyer shall not capture nor transmit any personal data (as defined in the Data Protection Act 1998) via any cookies that it sets;
 - (viii) the Company may at any time and for any reason, by providing notice to the Buyer, withdraw permission for the Buyer to set cookies; and
- (h) the Buyer will: (i) comply with all applicable laws and/or regulations relating to anti-bribery and anti-corruption, including (but not limited to) the Bribery Act 2010; and (ii) immediately notify the Company in writing if the Buyer or its employees, agents or other persons who perform or have performed services for or on behalf of

the Buyer is investigated by any law enforcement agency or customer in relation to corrupt practices and any breach of anti-bribery and anti-corruption laws.

5.2 The Buyer shall indemnify and keep indemnified the Company and ITV and ITV Group companies and shall hold the Company and ITV and ITV Group companies harmless, on demand, from any and all liability, loss, damages, claims or causes of action (whether foreseeable or unforeseeable), including (without limitation) reasonable legal fees and expenses, that may be incurred by the Company and/or ITV and/or ITV Group companies arising out of or related to the Buyer's breach of any of the terms of this Agreement, including (without limitation) the representations and warranties, or otherwise howsoever arising out of or in connection with the display of the Digital Advertising or the provision of the Multi-Platform Solutions Services by the Company.

6. Delivery of Advertising Creative

6.1 The Company reserves the right to appoint a third party to approve Creative on its behalf. If directed by the Company, it is the Buyer's responsibility to procure the approval of such third party and to comply with the requirements or guidelines of such third party.

6.2 Unless otherwise agreed with the Company, all VOD Advertising Creative must be submitted by the Buyer to Clearcast to be approved and clocked before being submitted to the Company. Approval by Clearcast of VOD Advertising Creative shall not in any way prejudice the Company's right to reject the same in accordance with this Agreement.

6.3 Following approval in accordance with clause 6.1 and/or 6.2 above (if required), the Buyer shall send the Creative together with the copy instructions, the proposed campaign start and end dates and (for VOD Advertising Creative) the clock number to interactivetraffic@itv.com (with the sales contact at the Company copied on such email). The Creative and all accompanying information must be received by the Company on or before the relevant Advertising Delivery Date.

6.4 All Creative must adhere to the Digital Specifications and be supplied in the format specified by the Company (or ITV on its behalf). Unless iVOD Advertising Creative is being built by and/or on behalf of the Company as part of any Multi-Platform Solutions Service or unless otherwise specified, all iVOD Advertising Creative must be supplied in either FLA or BTN format and all other VOD Advertising Creative must be supplied in IMX 50 format.

6.5 Without prejudice to clause 5.1(g) and subject to the following restrictions, the Buyer may use multiple click tracking within the Display Advertising Creative and iVOD Advertising Creative. The Buyer may only include one impression pixel within VOD Advertising Creative or a dynamic click tag within the Creative (save that dynamic click tags cannot be placed within iVOD Advertising Creative) to allow the Buyer to track impressions (including via a third party) and no other form of tracking is permitted without the Company's prior written consent. The Buyer must submit any Creative containing tracking to the Company (or ITV on its behalf) for validation by the relevant Advertising Delivery Date. The Buyer consents to ITV or the Company tagging the Creative for tracking and reporting purposes (which may include tags for third party measurement).

6.6 The Buyer accepts full responsibility for ensuring that the correct Creative is sent to the Company. In the event that the Buyer sends the wrong Creative to the Company resulting in the Company serving incorrect Creative, the Buyer's obligation to pay the Fee in full shall remain in force.

6.7 The Buyer agrees to only request changes to the Creative on an advertising campaign a maximum of once per week, unless otherwise agreed between the parties. The Company agrees to make any such changes which it, in its sole discretion, considers possible and subject to notification of such changes being received by the Company at least five (5) Business Days prior to the desired change date unless otherwise agreed between the parties.

6.8 Subject to clause 22.3, where the Company provides the Buyer with tools or resources (by way of example only, access to and use of a third party studio to create iVOD Advertising Creative or resources such as specifications,

guidelines and checklists on the website at www.itvmedia.co.uk), the Company shall not be liable, whether in tort, contract or otherwise, for any breach of this Agreement which is caused by use of any such tools or by any third party involved in the production of the Creative.

7. iVOD Advertising Creative

7.1 The Buyer agrees and acknowledges that the minimum order level for iVOD Advertising is to achieve 200,000 impressions. The Company may (at its sole discretion) reject a booking request for iVOD Advertising and/or charge the Buyer on the basis of an Order of at least 200,000 impressions if the request is below this level.

7.2 Subject to receipt by the Company of the iVOD Advertising Creative in accordance with clause 6 above, the Company shall endeavour to review the iVOD Advertising Creative and either approve or reject the iVOD Advertising Creative at least five (5) Business Days prior to the campaign start date (as specified in the Order). In the event of rejection of iVOD Advertising Creative and/or the Buyer cancelling its iVOD Advertising campaign, the Buyer may choose to run standard VOD Advertising in the place of iVOD Advertising. The Buyer shall notify the Company of its decision to use standard VOD Advertising in accordance with this clause 7.2 not less than two (2) Business Days prior to the campaign start date (as specified in the Order). The standard VOD Advertising will be charged at the original Fee payable for the iVOD Advertising and shall begin on the campaign start date (as specified in the Order).

Late Delivery of Creative

7.3 Where Creative is received by the Company later than midday on the day following the relevant Advertising Delivery Date, the number of impressions to be delivered will be reduced on a pro-rata basis for each day or part day that the Creative is late but the Buyer shall remain obliged to pay the full Fee without any reduction.

7.4 Where Creative is not received by the Company before the intended campaign start date, the Company shall be under no obligation to display the Digital Advertising and the Company reserves the right to charge the Buyer the Fee in full.

8. Licence

8.1 The Buyer hereby grants the Company a worldwide, non-exclusive, royalty-free licence to use and to authorise the use of the Digital Advertising and the Assets for the purpose of performing its obligations under this Agreement.

9. Multi-Platform Solutions - Approval of Designs

9.1 Where Multi-platform Solutions Services are being provided to the Buyer, the Company shall deliver to the Buyer for the Buyer's approval any designs created by and/or on behalf of the Company as part of any Multi-Platform Solutions Services at such stages as determined by the Company in its sole discretion.

9.2 Subject to clause 9.3, following delivery of any such designs, the Buyer shall promptly notify the Company of any reasonable amendments it proposes to any such designs and the Company shall make any such amendments if reasonably practicable and shall re-deliver such designs for the Buyer's approval.

9.3 The submission and amendment process set out in clause 9.2 may be repeated but the Buyer acknowledges and agrees that the Company shall be under no obligation to amend and re-deliver any designs after they have been submitted for the third time following such process.

9.4 The Buyer shall provide such Assets, materials, resource, assistance and information (including (where applicable) approvals and/or feedback to the Company as the Company may reasonably request in accordance with such timelines as set by the Company in its sole discretion) in order to enable the Company to provide the Multi-Platform Solutions Services and shall have due consideration for any proposed launch date. In the event that the Buyer delays any materials, information, resource or assistance requested by the Company or fails to meet timelines set by or on behalf of the Company then the Buyer agrees and acknowledges that the Company may delay the launch date and charge the full Fee and/or increase the Fee on a pro rata basis.

10. Multi-Platform Solutions Services - Interactivity

Any interactivity desired by the Buyer in relation to the Multi-Platform Solutions Services (including, without limitation, prize competitions and/or free prize draws) and the terms and conditions on which they are offered shall be subject to the Company's prior approval and the Buyer shall comply with such guidelines as notified by the Company from time to time in respect of any interactivity.

11. Data Capture

11.1 The Company may capture and transfer to the Buyer end-user data (including personal data) in data fields and in line with consent wording as agreed between the parties to the extent necessary to perform the Multi-Platform Solutions Services and subject always to compliance with applicable data protection and privacy legislation, regulations, guidance and codes of practice. For the avoidance of doubt, nothing in this Agreement shall restrict the Company's ability to use such data for its own purposes unless expressly agreed otherwise and the Company shall act as the data controller of such data for those purposes.

11.2 For the avoidance of doubt, the Buyer shall act as the data controller in respect of the Buyer's use of any end-user data (including personal data) (**User Data**) transferred to it by or on behalf of the Company pursuant to the Multi-Platform Solutions Services and/or captured by Buyer in connection with the Digital Advertising. The Buyer warrants that:

- (a) it shall only process User Data in accordance with all applicable data protection and privacy legislation, regulations, guidance and codes of practice;
- (b) it has and shall have at all material times all appropriate technical and organisational measures in place against unauthorised or unlawful processing of User Data and against accidental loss or destruction of, or damage to, User Data and that it has taken, and shall take at all material times all reasonable steps to ensure the reliability of any staff which may have access to User Data;
- (c) it will obtain user consent to any marketing in accordance with the relevant guidance and the Buyer shall not process the User Data beyond the scope of any "opt-in" or consent wording at the point of data capture. The Buyer will also ensure that it has in place an unsubscribe or opt-out mechanic which is easily accessible for users and will promptly remove any user from its marketing lists and those of third parties promptly on request by the Company or end users; and
- (d) it shall not transfer any User Data to: (i) any country or territory outside the European Economic Area; or (ii) any third party (including any data processor or other contractor) other than, in each case, with the prior consent of the data subject (including without limitation by the opt-in) and/or unless permitted under the Applicable Laws.

11.3 Each party shall assist the other party to enable it to comply with such obligations as are imposed on it by data protection and privacy laws and regulations in respect of User Data including without limitation providing reasonable assistance in complying with any subject information request.

11.4 In this Agreement, the terms **processing**, **data controller**, **data processor**, **data subject** and **personal data** shall bear the meanings ascribed to them in the Data Protection Act 1998.

12. Multi-Platform Solutions Services - Availability

Any and all Multi-Platform Solutions Services shall be provided on an 'as-is' and 'as available' basis. The Company does not guarantee that the Multi-Platform Solutions Services will be free from errors or omissions nor that they will be available uninterrupted and in a fully operating condition nor that any information obtained by the Buyer as a result of using the Multi-Platform Solutions Services will be accurate or reliable. The Multi-Platform Solutions Services may be suspended temporarily and without notice in the case of system failure, maintenance or repair or for reasons reasonably beyond the Company's control. Notwithstanding the preceding sentence, the Company shall endeavour to provide notice where reasonably practical in the event the Multi-Platform Solutions Services are temporarily suspended

for reasons beyond the Company's control for 24 hours or more. No conditions, warranties or other terms (including any implied terms as to satisfactory quality, fitness for purpose or conformance with description) apply to the Multi-Platform Solutions Services except to the extent that they are expressly set out in this Agreement.

13. Multi-Platform Solutions Services - Case Studies and Post Campaign Analysis

The Buyer agrees that the Company may compile one or more case studies based upon the Multi-Platform Solutions Service provided pursuant to this Agreement and the results of the same. The Company may also undertake post campaign analysis to measure the effectiveness of a campaign. The Buyer agrees that ITV and/or the Company may use the case studies and/or post campaign analysis on any platform and in any manner, provided that ITV and/or the Company shows the results to the Buyer in advance of publishing the case studies and/or the results and/or post campaign analysis externally.

14. Placement of Creative on Third Party Platforms

If an Order includes an obligation for the Company to place Creative on an App or other Platform distributed via a third party distribution platform, such obligation shall be subject to: (i) the distribution platform's approval (including the content of the Platform and the placement of the Creative on the Platform); and (ii) the application distribution platform's distribution of the Platform to consumers. For the avoidance of doubt, in the event that the distribution platform does not approve and/or distribute the Platform and the Company is therefore unable to place the Creative on the Platform, the Company's liability to the Buyer shall be limited in accordance with clause 22 below.

15. Rejection of Creative

15.1 Without in any way limiting the Buyer's obligation to pay the Fee, the Company reserves the right (at its sole discretion) to reject and refuse to display or require amendments to any Creative or Assets:

- (a) which, in the Company's sole opinion, is/are in breach of the provisions of clause 5.1 or any other term of this Agreement;
- (b) if any law enforcement agency or regulatory body requires the removal of any Digital Advertising or the Assets;
- (c) which, in the Company's sole opinion, is/are of a nature where an external data source can manipulate the Creative and/or elements of the Creative can be updated dynamically without the author, user or publisher's involvement;
- (d) which, in the Company's sole opinion, fails to satisfy the relevant functional user testing matrix (setting out requirements for acceptable functionality of Creative within the Platform to ensure that the quality of user experience is maintained) and/or non-functional technical testing matrix requirements for acceptable non-functional standards Creative within the Platform to ensure technical compatibility; or
- (e) in circumstances where the Company, acting reasonably, considers that there is a conflict of commercial interest between ITV and/or the Company and the Advertiser (defined below).

15.2 In addition to clause 15.1, the Company shall have the right, at any time, to remove any Digital Advertising or the Assets once live (whether under the Order or otherwise) if the Company determines, in its sole reasonable discretion, that the Creative or the Assets or any portion thereof breaches Applicable Laws and/or the Company's then applicable editorial or technical policy or otherwise breaches the terms of this Agreement. In the event of such removal the Company may, at its sole discretion, refund to the Buyer a pro rata portion of the Fee which the Buyer has paid to, and which has been received by the Company. The Buyer agrees and acknowledges that the Company is unlikely to exercise such discretion if it considers that the Creative or Assets is/are in breach of clause 5.1 of this Agreement. Subject to clause 22.3, the Company shall not have any liability to the Buyer in respect of any loss arising out of or in connection with such removal.

16. **Serving, Reporting and Under-Delivery of Digital Advertising**

- 16.1 Digital Advertising performance reports relating to the campaign will be generated by the Company's preferred advertising delivery system and shall be provided to the Buyer once a week during the campaign period. The figures in such reports shall be the official definitive measure of the Company's performance in respect of the delivery of Digital Advertising.
- 16.2 No reach or frequency capping shall be applied to particular Digital Advertising within a campaign unless otherwise agreed between the Buyer and the Company at the time of booking, and set out in the relevant Order. The campaign shall be delivered on an even-handed basis when compared to the delivery of all Digital Advertising across the relevant Platform.
- 16.3 If the Buyer provides ad tags to the Company in order for the Company to be able to serve Digital Advertising from a third party's server and the ad tags are not implemented correctly or the wrong Digital Advertising is served, and the same is not as a result of an error of the Company, such event shall not constitute a breach of this Agreement and the impressions that are consequently served shall count towards the number of impressions set out in the Order.
- 16.4 If a campaign is set up so that the Digital Advertising clicks through to another website and that website is not correctly configured for the Platform on which it is being accessed and, consequently, cannot be reached, the Company shall have the right to disable the click through facility and the same shall not constitute a breach of this Agreement by the Company. For the avoidance of doubt, impressions served shall count towards the number of impressions set out in the Order regardless of whether the consumer is able to click through to the intended website.
- 16.5 The Buyer acknowledges and agrees that the number of impressions stated in the Order is an estimate of the number of impressions to be delivered over the campaign period or, if the campaign period is longer than one month, on a monthly basis. If, during the term of a campaign, the Company discovers that there will be an under-delivery of the agreed number of impressions (as set out in the Order) and the same is not as a result of any error or omission by or on behalf of the Buyer, the Company shall attempt to reallocate the relevant impressions in like-for-like placements across the relevant Platform or, if agreed with the Buyer, the Company shall extend the end date of the campaign.
- 16.6 If, at the end of a campaign, the number of impressions actually delivered by the Company is less than the number of impressions stated in the Order, such that there has been an under-delivery of impressions, due to a default by the Company of its obligations under this Agreement (and the same is not as a result of any error or omission by or on behalf of the Buyer), the Company shall grant the Buyer a credit to the value of the proportion of the Fee as corresponds pro-rata with the extent of the under-delivery (the **Credit**). The Credit may only be used to purchase Digital Advertising or Multi-Platform Solutions Services as determined by the Company. The period over which the Credit may be used by the Buyer shall start from the end date of the campaign and shall be extinguished at the end of the then current calendar year, unless otherwise agreed between the parties. Once the Credit has been extinguished, no party shall have any further liability to the other in respect of the same.

17. **Social Media**

- 17.1 In relation to any social media communications made pursuant to the Order and/or made by the Buyer in connection with any Digital Advertising and/or Multiplatform Services, the Buyer shall be responsible for and shall ensure that any such social media communications shall be as agreed with the Company and shall:
- (a) not be obscene, offensive, blasphemous, pornographic, unlawful or defamatory and shall not cause injury to, invade the privacy of or otherwise infringe or violate the rights of Company, ITV or any third party; and
 - (b) comply with all applicable laws, regulations and codes of practice; and
 - (c) comply with any and all third party terms and conditions and policies that govern the social media platform.

17.2 In the event that the Company and/or the social media platform objects to any social media communications made by the Buyer in connection with the Order for any reason, the Buyer shall immediately remove or amend (as directed by the Company) such communications from all such social media.

17.3 Company shall have editorial control over any social media activity which it has committed to arrange (whether via social media pages administered by it, other ITV Group companies or third parties) or permitted in connection with the Order. If the social media platform requires the removal of or amendment to any social media activity and content made in relation to the Order (a **Third Party Platform Request**), the Company shall not be in breach of this Agreement and shall not have any liability in relation to compliance with such Third Party Platform Request.

18. Term and Renewal

18.1 The term of this Agreement shall commence:

- (a) when ITV is in possession of an Order signed by the Company (or by ITV on its behalf) and the Buyer (and any signatures which are sent and/or received by email shall be treated as originals); or
- (b) where any online booking system is used, when both the Buyer and the Company (or ITV on its behalf) have expressly agreed via that booking system that the terms set out therein reflect their agreed position.

18.2 This Agreement shall remain in force until the end date set out in the Order (or such date as may be agreed pursuant to clause 16.5) unless terminated earlier in accordance with clause 19 or clause 23.2.

18.3 Except as expressly set out in the Order, any renewal of the Order or acceptance of any additional orders, and pricing for such renewal or additional orders, shall be at the Company's sole discretion and subject to agreement between the parties in writing.

19. Termination and Effect of Termination

19.1 Without prejudice to its other rights and remedies, either party may terminate this Agreement in whole or in part forthwith at any time by giving notice in writing to the other party if:

- (a) the other party commits a breach of any term of this Agreement (including, in the case of the Buyer, the obligation to pay the Fee when due) and: (i) such breach is incapable of remedy; (ii) or such breach is capable of remedy and the other party fails to remedy it within ten (10) Business Days after receipt of a written notice from the party terminating this Agreement giving full particulars of the breach and requiring it to be remedied;
- (b) a petition is presented, or a meeting convened for the purpose of considering a resolution for the making of an administration order, the winding-up, bankruptcy or dissolution of: (i) the other party; (ii) or, where the other party is the Buyer and the Buyer is a media buying agency acting on behalf of an advertiser (the **Advertiser**), the Advertiser;
- (c) the other party (or the Advertiser) ceases or threatens to cease to carry on its business;
- (d) the other party (or the Advertiser) is or shall become unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) (i) the other party (or the Advertiser) compounds with or enters into a scheme of arrangement for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986); (ii) a receiver is appointed over the other party (or the Advertiser) or its assets or any part thereof or a resolution is passed for such appointment; or (iii) an administration order is made in relation to other party (or the Advertiser), an application is made to court for the appointment of an administrator over the other party or if a notice of intention to appoint an administrator is given over the other party.

- 19.2 Termination or expiry of this Agreement in whole or in part shall not affect any rights of any party in respect of any antecedent breach of this Agreement by any other party, nor shall it affect any accrued rights or liabilities (or the coming into force of any accrued rights or liabilities) of any party.
- 19.3 During the term of this Agreement, the Buyer cannot terminate this Agreement for any reason other than those set out in these Terms unless expressly provided for in the Order or unless agreed in writing by the Company at its discretion. The Buyer understands that there shall be no refunds or suspension of payments if the Buyer wishes to discontinue display of the Digital Advertising or provision of the Multi-Platform Solutions Services prior to expiration or termination of this Agreement, unless the Company agrees otherwise at its sole discretion.
- 19.4 Upon termination of this Agreement for any reason:
- (a) the Buyer shall remain liable for any amount due under an Order for Digital Advertising displayed by the Company and such an obligation to pay shall survive termination of this Agreement; and
 - (b) at the request of either party, the other party shall immediately return to the requesting party, or permit the requesting party to collect, all items in its possession which are the property of the requesting party and immediately cease to use the intellectual property rights of the requesting party.
- 19.5 The provisions of those clauses intended to have continuing effect (including, but not limited to, clauses 3, 5, 11, 15, 16, and clauses 19 to 28 (inclusive)) shall continue in full force and effect following the termination for any reason or expiry of this Agreement.

20. Payment and Late Payment / Delivery Charges

- 20.1 If the Buyer is an Approved Buyer, the Buyer shall be invoiced by or on behalf of the Company for the booked number of impressions at the end of the campaign period or, if the campaign period is longer than one month and the Company elects (in its sole discretion) to invoice on a monthly basis, on a monthly basis. The Buyer shall pay the relevant invoice within 30 days of the date of the invoice, failing which the Buyer shall on written notice from or on behalf of the Company pay any further amounts in accordance with clause 20.2 as if they were a Non-approved Buyer notwithstanding that the Buyer remains an Approved Buyer. If the Buyer ceases to be an Approved Buyer, ITV or the Company may at its absolute discretion revoke the Buyer's entitlement to credit and clause 20.2 will apply.
- 20.2 If the Buyer is a Non-approved Buyer, the Buyer shall be invoiced by or on behalf of the Company, and the Buyer shall pay, for the booked number of impressions prior to the start of the campaign period. If the Buyer fails to pay prior to the start of the campaign period, the Company shall, without prejudice to its other rights and remedies under this Agreement or otherwise at law, be entitled to refuse to display the Digital Advertising and/or provide Multi-Platform Solutions Services without incurring any liability to the Buyer.
- 20.3 If the Buyer fails to make any payment when due, the Buyer shall be liable for any interest on any sum outstanding from the date of the invoice until settlement at a rate of 3% over Barclays Bank plc standard variable interest rate from time to time to run from day to day (both before and after any judgment) from the due date until payment is received and for all expenses (including any administrative and/or legal fees) incurred by ITV and/or the Company in collecting such amount.
- 20.4 If the Buyer has a query or dispute on its invoice, it must bring the same to the Company's attention within 90 days of the date of the invoice or it shall lose its right to make such query or raise such dispute.
- 20.5 ITV and the Company each reserve the right to withhold the sale of further Digital Advertising and/or provision of further Multi-Platform Solutions Services to the Buyer if the Buyer has outstanding invoices in respect of any Platform and these are not being validly disputed.

20.6 For the purposes of this Agreement, an **Approved Buyer** means a Buyer approved for credit by ITV (subject to any conditions which may be imposed by ITV) and **Non-approved Buyer** shall be interpreted accordingly.

20.7 Commitments and/or payments made by or on behalf of the Buyer (or any Advertiser) pursuant to this Agreement shall not count towards any commitments by the Buyer (or any Advertiser) in relation to the purchase of broadcast airtime unless expressly agreed otherwise in writing by the Company and the relevant ITV Group broadcasting entities (or ITV on their behalf).

21. Cancellation and Cancellation Charges

21.1 The Company, in its absolute discretion, may consider requests in writing from the Buyer to cancel a booked campaign of Digital Advertising. If the Buyer cancels a campaign less than three weeks before the intended start date of the campaign (as specified in the Order), the Company reserves the right to charge (and, if applicable, Buyer shall pay) a cancellation fee as follows:

- (a) the Buyer shall pay 50% of the total value of any campaign which the Buyer cancels between two and three calendar weeks prior to the intended start date of the campaign;
- (b) the Buyer shall pay 75% of the total value of any campaign which the Buyer cancels between one and two calendar weeks prior to the intended start date of the campaign; and
- (c) the Buyer shall pay 100% of the total value of any campaign which the Buyer cancels less than one calendar week prior to the intended start date of the campaign.

21.2 In addition to the cancellation charges set out above, in the event that the Buyer cancels the iVOD Advertising for reasons related to its inability to comply with the terms of this Agreement and/or the Company's instructions, the Company reserves the right to charge (and, if applicable, Buyer shall pay) for any and all costs incurred by or on behalf of the Company to build the iVOD Advertising Creative.

22. Limitation of Liability

22.1 Subject to clause 22.3, neither party shall be liable to the other, whether in tort, contract or otherwise, for any loss of profit (whether direct or indirect), loss of revenue, loss of opportunity, loss of anticipated profit or revenue, loss of goodwill, loss of reputation, loss of data and/or any loss which is indirect, consequential or economic or which, whether or not in practice it arises as a direct and natural result of a breach of this Agreement, was not at the time this Agreement was made, a reasonably foreseeable result of such breach. For the avoidance of doubt, nothing in this clause 22 shall exclude or limit the Buyer's liability to make payments contractually due to ITV or the Company under this Agreement or otherwise.

22.2 Subject to clause 22.3, the Company's maximum aggregate liability for any loss or damage in respect of any claims arising out of this Agreement whether in contract, tort or otherwise shall not exceed the total amount paid to and received in clear funds by the Company under this Agreement (less any applicable VAT). In addition, the Buyer acknowledges and accepts that ITV (in its capacity as agent) shall have no liability to the Buyer under or in connection with this Booking Agreement.

22.3 Nothing in this Agreement shall exclude or restrict either party's liability for death or personal injury resulting from the negligence of that party or of its employees while acting in the course of their employment or shall exclude or restrict a party's rights, remedies or liability under the law governing this Agreement in respect of any fraud.

22.4 Except as expressly set out in this Agreement, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the obligations of the parties under this Agreement are excluded insofar as it is possible to do in law. In particular, the Company makes no representations, and expressly disclaim all warranties, terms and/or conditions regarding the Company's services or any portion thereof, including any implied warranty of

satisfactory quality or fitness for a particular purpose and implied warranties arising from course of dealing or performance. Without limiting the generality of this clause, the Company specifically disclaims any warranty regarding:

- (a) the number of persons who will access and/or view the Digital Advertising and/or Multi-Platform Solutions; and
- (b) any benefit the Buyer might obtain or be seeking to obtain from requesting the Company to display and/or to arrange the display of the Digital Advertising and/or provision of the Multi-Platform Solutions.

23. Force Majeure

- 23.1 Neither party shall be liable in any way for any losses arising directly or indirectly from any failure or delay in performing any of its obligations under this Agreement caused by any Force Majeure Event (as defined below), provided that such Force Majeure Event is notified promptly to the other party.
- 23.2 If either party (the **Affected Party**) is/are unable to perform any of its/their obligations under this Agreement as a result of the Force Majeure Event for more than thirty (30) Business Days, the other party may terminate this Agreement at any time upon giving written notice to the Affected Party. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination and the Buyer shall pay to the Company a proportion of the Fee as corresponds with the number of impressions delivered prior to termination.
- 23.3 For the purposes of this Agreement, a **Force Majeure Event** means an event, inability or delay which is caused by circumstances beyond the Affected Party's reasonable control and which cannot be cured by measures which might reasonably be taken in the course of that relevant party's business, including, without limitation, war or other action of military forces, terrorism, riot, civil commotion, sabotage, vandalism, accident, breakdown or damage to machinery or equipment or technology, fire, flood, acts of God, regulatory, legislative or administrative interference, ruling or decision, provided that no circumstance or cause shall be considered to be beyond the control of the Affected Party if it arises as a result of that party's failure to take reasonable care. The occurrence of an event associated with economic and monetary union in the European Community will not be treated as a Force Majeure Event for the purposes of this Agreement. For the avoidance of doubt, where the Buyer is a media buying agency, the loss of a client (including, without limitation, by virtue of insolvency or by virtue of a win by a third party agency) will not be deemed to be a Force Majeure Event.

24. Entire Agreement

- 24.1 These Terms and the Order to which they relate (together with any overarching volume commitment agreements and/or any other documents referred to herein) contain the entire agreement and understanding of the parties in relation to its subject matter and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of the Order.
- 24.2 Each of the parties acknowledges and agrees that:
- (a) it does not enter into this Agreement on the basis of, and does not rely, and has not relied, upon any statement, representation, warranty, forecast or other information (in any case whether oral, written, express or implied) made, given or agreed to by any person (whether negligently or innocently and whether or not made by a party to this Agreement) which is not expressly contained or referred to in this Agreement (a **Representation**);
 - (b) it shall have no remedy (including any rights to damages or rescission in an action for misrepresentation) for any Representation which was, is, or becomes false or misleading; and
 - (c) save as set out in this Agreement, the only rights or remedies available in respect of any statement, representation, warranty, forecast or other information (in any case whether oral, written, express or implied) made, given or agreed to by any person (whether negligently or innocently and whether or not made by a party to this Agreement) which is expressly contained or referred to in this Agreement shall be the rights and remedies for breach of contract under this Agreement.

25. Notices

For the purposes of this clause, the authorised addresses of the parties shall be as set out in the Order or such other address (and details) as each party may notify to the others in writing from time to time in accordance with the requirements of this clause. Any notice or other communication to be given under this Agreement shall be in writing and shall be deemed to have been duly served on, given to or made in relation to a party if it is left at the authorised address of that party or posted by pre-paid first class post addressed to that party at such address and shall:

- (a) if personally delivered, be deemed to have been received at the time of delivery; or
- (b) if posted to an inland address in the United Kingdom, be deemed to have been received on the second Business Day after the date of posting,

provided in either case that where, in the case of delivery by hand, delivery occurs after 5.00pm on a Business Day or on a day which is not a Business Day, receipt shall be deemed to occur at 9.30am on the next Business Day. If for the Company, any notice must also be sent to Director of Legal Affairs, Commercial and Online, 200 Gray's Inn Road, London WC1X 8HF.

26. Confidentiality

No party shall, either during or after the expiry of this Agreement, duplicate or disclose, or permit the duplication or disclosure of any terms of: (i) this Agreement (including, without limitation, any of the Company's statistics that have been provided to the Buyer under clause 16); or (ii) the display of Digital Advertising or the provision of the Multi-Platform Solutions Services generally, unless such duplication, use or disclosure is specifically authorised by the other party in writing or required by law, save that the parties may disclose, or permit the disclosure of, such information to any company within their respective corporate groups, subject to procuring that this clause is complied with by any person within their respective corporate groups to whom disclosure is made.

27. Miscellaneous provisions

- 27.1 Each party to this Agreement is duly authorised to enter into and to perform its obligations under this Agreement.
- 27.2 In the event of any inconsistency between an Order and these Terms, these Terms shall prevail (except where a particular provision of these Terms expressly allows for control by the Order).
- 27.3 The Company reserves the right to refuse to carry links to sites that disable the "Back" facility.
- 27.4 No variation, supplement, deletion or replacement of or from this Agreement or any of its terms shall be effective unless made in writing and signed by or on behalf of each party with the intention to vary, supplement, delete or replace being clearly expressed.
- 27.5 No waiver by either party of any breach of the other party's obligations shall constitute a waiver of any other prior or subsequent breach and neither party shall be affected by any delay, failure or omission to enforce or express forbearance granted in respect of any obligation of the other party.
- 27.6 If the whole or any part of any provision of this Agreement is or becomes invalid, void or unenforceable for any reason, the same shall to the extent required be severed from this Agreement and rendered ineffective so far as is possible without modifying the remaining provisions of this Agreement and shall in no way affect the validity or enforceability of any other provisions.
- 27.7 Nothing in this Agreement shall constitute a partnership or joint venture between the parties or constitute either the Company or the Buyer as agent of the other for any purpose whatsoever and neither shall have authority or power to bind the other or to contract in the name of the other or create liability against the other in any way or for any purpose save as expressly authorised in writing by the other from time to time. The relationship between the parties is that of independent contractors.

- 27.8 No party may assign or sub-contract any of its rights or obligations under this Agreement without the prior written consent of the other parties, except that the Company shall, without notice to the Buyer, be entitled to (i) sub-contract, assign or otherwise transfer this Agreement (including any benefit or obligation under it) to any other company within the ITV Group and (ii) sub-contract some or all of its obligations in relation to Multi-Platform Solutions Services.
- 27.9 Except for ITV and/or the ITV Group's ability to enforce the indemnity set out in clause 5.2, no person other than a party to this Agreement may enforce this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 save that the Buyer acknowledges that ITV may enforce the rights of the Company under this Agreement. Notwithstanding the foregoing, the parties may rescind or vary this Agreement (and any documents entered into pursuant to or in connection with it) without the consent of that person.
- 27.10 All sums payable under this Agreement are exclusive of any value added tax that may be payable by either party. Invoices will include value added tax at the relevant rate on the date of invoicing.
- 27.11 This Agreement may be executed in counterpart but the counterparts shall together constitute one and the same instrument.
- 27.12 The parties acknowledge and agree that the execution of this Agreement by either party by way of an electronic representation of an authorised signatory's signature shall be a valid execution of this Agreement.
- 27.13 Each party shall be responsible for paying its own costs and expenses incurred in the negotiation, preparation and execution of this Agreement.
- 27.14 Rights and remedies of any party under this Agreement are independent, cumulative and without prejudice to its rights under the law.

28. Governing Law and Jurisdiction

This Agreement and any disputes, claims and obligations arising out of or in connection with it or its subject matter or formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.