

## **CHANNEL TELEVISION LIMITED**

### **TRADING TERMS AND CONDITIONS**

#### **1. Definitions and Construction**

1.1. In these trading terms and conditions, including Schedules 1 to 3 (inclusive) (the “**Trading Terms and Conditions**”), words and expressions shall have their ordinary meaning unless otherwise defined in the Glossary set out in Schedule 3. Unless the context otherwise requires:

- (a) any reference to a “party” or “parties” shall unless otherwise stated mean a party or the parties to this Booking Agreement (as defined in clause 5.1 below);
- (b) references to clauses, schedules, paragraphs and sub-divisions of them, are references to the clauses of, schedules to, and paragraphs of these Trading Terms and Conditions and sub-divisions of them respectively;
- (c) references to paragraphs are references to paragraphs of the schedules to these Trading Terms and Conditions;
- (d) references to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended and any subordinate legislation made from time to time under it;
- (e) headings are inserted for convenience only and shall be ignored in construing these Trading Terms and Conditions;
- (f) references to a “person” includes any individual, company, corporation, firm partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
- (g) the words “include”, “including” and “in particular” shall not be interpreted as limiting the generality of any foregoing words; and
- (h) references importing the singular include the plural and vice versa.

#### **2. Airtime**

The provisions of Schedule 1 shall apply in addition to clauses 1, 2 and 5 to 15 below (inclusive) and Schedule 3 where Channel agrees in the Booking Form to provide Airtime and, where applicable, Commercial Production Services to the Buyer.

#### **3. Online Inventory**

The provisions of Schedule 2 shall apply in addition to clauses 1, 3 and 5 to 15 below (inclusive) and Schedule 3 where Channel agrees in the Booking Form to provide Online Inventory and, where applicable, Commercial Production Services to the Buyer.

#### **4. Commercial Production Services**

4.1. If Channel agrees to provide Commercial Production Services then without limiting any other terms and conditions which relate to the provision of Airtime or Online Inventory in accordance with the Booking Agreement (as defined in clause 5.1 below) and clauses 1 and 5 to 15 below (inclusive), this clause 4 shall apply.

4.2. The Buyer agrees that it has provided full information about its requirements and agrees and acknowledges that if its requirements change or if it has not provided full information about its requirements, then Channel may (in its sole discretion) increase the price for the Commercial Production Services.

4.3. The Buyer agrees to provide Channel with any information, materials or approvals which Channel reasonably requests as soon as possible and in any event within any timeline set by Channel including as set out in the Booking Agreement. Failure to provide such information, materials or approvals may result in delays to delivery and/or reduce the number of deliverables and/or impact the amount of Airtime or Online Inventory Channel can eventually serve. In such case, Channel will not be liable for such delay or reduction or failure to serve such Airtime or Online Inventory and shall be entitled to charge the Buyer the full price for the provision of such inventory.

- 4.4. The Buyer agrees that it will abide by any additional restrictions provided by Channel as part of the brief, the service description or at any time during the production process.
- 4.5. The Buyer hereby grants Channel a royalty-free, sub-licensable licence to use the Buyer Materials for the purpose of providing the Commercial Production Services including applying the same to, or otherwise incorporating the same into and producing any deliverables.
- 4.6. The Buyer warrants and undertakes that:
- a) the Buyer Materials will comply with all Applicable Laws;
  - b) it will obtain and maintain all necessary consents, licences, permissions, and clearances (including without limitation paying any payments, royalties and/or fees) to the Buyer Materials necessary for Channel to supply the Commercial Production Services and to perform and comply with its obligations hereunder and so that Channel and the Buyer may use and/or exploit the deliverables for the uses anticipated by this Booking Agreement; and
  - c) it has the full authority and is lawfully entitled to grant the rights granted to Channel (including use of any Buyer Materials) and the use of such materials as contemplated pursuant to this Booking Agreement will not violate, misappropriate or infringe the rights of any third parties including Intellectual Property Rights and the Buyer Materials do not contain any material which is in any way defamatory, obscene, pornographic, unlawful, harmful, offensive or inappropriate.
- 4.7. Subject to payment of the relevant production fee, Channel hereby grants the Buyer a licence to use the deliverables provided pursuant to the Commercial Production Services for advertising on platforms owned or operated by Channel or members of its group of companies only for the Campaign Period, unless expressly agreed otherwise by Channel in writing in advance. The Buyer agrees that it will not use the deliverables on any other platforms or for any other purposes other than those expressly agreed by Channel in writing in advance. Except for the Buyer Materials, all Intellectual Property Rights in the deliverables provided by Channel shall at all times be vested in and belong to or be under the control of Channel (or its licensors as the case may be).
- 4.8. Channel shall have the right at any time by giving notice in writing to the Buyer to withdraw the deliverables (or any element of them) produced pursuant to the Commercial Production Services if in its reasonable opinion the deliverables (or elements thereof) become unavailable for distribution due to (i) actual or threatened litigation relating to the deliverables; or (ii) any reason beyond its control. Channel will give notice of withdrawal as far in advance as reasonably possible and in any event on no less than two (2) Working Days' notice. As the Buyer's sole and exclusive remedy, Channel may (in its sole discretion) either provide replacement deliverables and/or refund part of the production fee on a pro-rata basis (based on the amount of deliverables withdrawn).
- 4.9. The Buyer will indemnify on demand and hold harmless Channel against all losses, actions, proceedings, costs, damages, expenses, penalties, claims, demands and liabilities suffered by Channel arising from any breach of the warranties set out in this clause 4 (whether foreseeable or unforeseeable) or in any manner whatsoever, including as a result of or arising out of the use, recording or broadcasting of any Buyer Materials. This indemnity shall apply to any claims brought by an Advertiser against Channel.

## 5. Agreement and Booking

- 5.1. These Trading Terms and Conditions are legally binding and together with the Booking Form constitute the entire agreement between the parties relating to the Booking accepted by Channel in accordance with clause 5.3 below (the "**Booking Agreement**"). The Booking Agreement supersedes all previous statements (whether oral or written) made by either party and all previous agreements, understandings and arrangements in respect of the relevant Booking.
- 5.2. The Buyer hereby contracts with Channel as principal in all respects and as such the Buyer shall be liable for the payment of all sums due and owing in accordance with the Booking Agreement.
- 5.3. A Booking is subject to acceptance by Channel and may be accepted by Channel either in writing (including by electronic acceptance methods) or by the provision of actual Airtime, Online Inventory or Commercial Production Services to the Buyer.
- 5.4. A Booking shall become irrevocable once booked in accordance with the terms of the Booking Agreement.

## **6. Invoicing and Payment**

6.1. Channel shall invoice the Buyer:

- (a) for the provision of Airtime or Online Inventory (as applicable) on or before the last Working Day of the month following the month of transmission of the Airtime or the Online Inventory; and
- (b) the provision of the Commercial Production Services (where applicable) prior to the proposed date for delivery of the deliverables.

The Buyer shall pay Channel the amount invoiced not later than the 25<sup>th</sup> day following receipt of the invoice (the "**Payment Due Date**"). In months where the 25<sup>th</sup> day falls on a Sunday or a public or bank holiday, the next Working Day shall be regarded as the Payment Due Date.

6.2. Without prejudice to Channel's other rights and remedies under the Booking Agreement or otherwise at law, any amount not paid by the Buyer by the Payment Due Date will be subject to a surcharge of 1.5% of such amount payable (including GST, where applicable) immediately and a further surcharge of an additional 1% in respect of the principal amount which is still outstanding after the 10<sup>th</sup> day of any subsequent months. Payment shall be deemed to have been made and no surcharge will be payable if Channel has received either written confirmation from the Buyer that it has arranged full payment by BACS or such similar method of electronic payment as identified by Channel, or if the Broadcaster has received a cheque for the full amount, by 12.30pm on the Payment Due Date.

6.3. If the Buyer does not pay Channel in accordance with the provisions of this clause 6, Channel shall, without prejudice to its other rights and remedies under the Booking Agreement or otherwise at law, be entitled to refuse to accept further Bookings from the Buyer without incurring any liability to the Buyer.

6.4. The existence of a query on an element of an invoice will only affect the Payment Due Date of that element and will not affect the Payment Due Date of all other elements of such invoice. The Buyer shall notify Channel of any such query, including the reason for the query, no later than seven days after the date of receipt of the invoice. Invoices may not be queried after this time. The Buyer may only withhold money due under any invoice to the extent it reasonably believes such amount is not payable, in which case the Buyer and Channel shall attempt to resolve the matter by immediate discussion. Any amounts withheld will be subject to the surcharge provisions referred to in clause 6.2 above. In the event that the query is resolved in favour of the Buyer, Channel will cancel any surcharge imposed in respect of the money withheld. However, if the query is not upheld, any such surcharge imposed in respect of the money withheld will be subject to the conditions set out in clause 6.2 above and must be paid forthwith in addition to the charges set out in the Booking Form.

6.5. All payment of Channel's invoices shall be made in full (subject to clause 6.4 above) and the Buyer shall not be entitled to claim any rights of set-off in respect thereof.

6.6. Payments due to Channel from a Jersey-based Buyer will be subject to GST at the appropriate rate applicable at the start of the Airtime Campaign Period or Online Campaign Period or the start of the provision of Commercial Production Services (whichever is earliest).

6.7. All sums due under the Booking Agreement are payable in pounds sterling only and, where appropriate, rounded up to the nearest pound.

## **7. Warranties**

7.1. The Buyer warrants and undertakes to Channel that it will:

- (a) 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
- (b) immediately notify Channel 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.

7.2. The Buyer will indemnify on demand and hold harmless Channel against all losses, actions, proceedings, costs, damages, expenses, penalties, claims, demands and liabilities suffered by Channel arising from any breach of the warranties set out in clause 7.1 above (whether foreseeable or unforeseeable).

## **8. Social Media**

- 8.1. The Buyer shall ensure that any social media communications or other promotions made in relation to a Booking shall be as agreed with Channel. The Buyer shall be responsible for and shall ensure that social media communications made in relation to the Booking shall 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 ITV or any third party. All social media communications must comply with all Applicable Laws and any third party terms and policies that govern the relevant social media platform. Notwithstanding the foregoing, in the event that Channel and/or the social media platform objects to any social media communications made by the Buyer for any reason, the Buyer shall immediately remove or amend (as directed by Channel) such communications from all such social media.
- 8.2. Any social media activity that Channel commits to do in connection with the Buyer's association with a Booking shall be subject to all Applicable Laws and to any third party terms and policies that govern the relevant social media platform. Channel shall have full editorial control over any such social media activity. If the social media platform requires the removal of or amendment to any social media activity and content, ITV shall be entitled to remove or amend the content and shall not be in breach of this Agreement and shall have no liability in relation to any such removal or amendment.

## **9. Cancellation**

Channel in its absolute discretion may consider requests in writing from the Buyer to cancel a Campaign subject to the following terms:

- (a) the Buyer will pay 50% of the total value of any Campaign (or any part of a Campaign) which the Buyer cancels not less than four weeks prior to the start of the Airtime Campaign Period or the Online Campaign Period (as applicable);
- (b) the Buyer will pay 60% of the total value of any Campaign (or any part of a Campaign) which the Buyer cancels not more than four weeks but not less than two weeks prior to the start of the Airtime Campaign Period or the Online Campaign Period (as applicable);
- (c) the Buyer will pay 75% of the total value of any Campaign (or any part of a Campaign) which the Buyer cancels not more than two weeks but not less than one week prior to start of the Airtime Campaign Period or the Online Campaign Period (as applicable); and
- (d) the Buyer will pay 100% of the total value of any Campaign (or any part of a Campaign) which the Buyer cancels during the week prior to the start of the Airtime Campaign Period or the Online Campaign Period (as applicable).

## **10. Termination**

- 10.1. Without prejudice to its other rights and remedies, either party may terminate the Booking Agreement forthwith at any time by giving notice in writing to the other party if:
- 10.1.1. the other party commits a material breach of any provision of the Booking Agreement (including, without limitation, failure to pay any amount due under the Booking Agreement) and, provided that such breach is capable of remedy, fails to remedy the same within 10 Working Days after receipt of a written notice from the other party giving full particulars of the breach and requiring it to be remedied;
  - 10.1.2. 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 the other party or if the other party stops payment or ceases or threatens to cease to carry on its business or is or shall become unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 10.1.3. the other party 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), if a receiver is appointed over the other party or its assets or any part thereof or a resolution is passed for such appointment or if an administration order is made in relation to the other party; or
  - 10.1.4. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1.1 to clause 10.1.3 above (inclusive).
- 10.2. Termination or expiry of the Booking Agreement shall not affect any rights of either party in respect of any antecedent breach of the Booking Agreement by the other party nor shall it affect any accrued rights or liabilities (or the coming into force of any accrued rights or liabilities) of either party.

## **11. Liability**

- 11.1. Subject to clause 11.3 below, neither party shall be liable to the other, whether in tort, contract or otherwise, for any anticipated or actual loss of profit, loss of opportunity, loss of goodwill and/or any loss which is indirect, consequential or economic or which, whether or not in practice arises as a direct and natural result of a breach of the Booking Agreement, was not at the time the Booking Agreement was made a reasonably foreseeable result of such a breach. For the avoidance of doubt, nothing in this clause shall exclude or limit the Buyer's liability to make payments contractually due to Channel under the Booking Agreement or otherwise.
- 11.2. Subject to clause 11.3 below:
- 11.2.1. Channel's maximum aggregate liability for any loss or damage in respect of any claims arising out of the Airtime provisions set out in the Booking Agreement whether in contract, tort or otherwise shall not exceed the amount stated in the Booking Form for the Airtime provided under the Booking Agreement; and
- 11.2.2. Channel's maximum aggregate liability for any loss or damage in respect of any claims arising out of the Online Inventory provisions set out in the Booking Agreement whether in contract, tort or otherwise shall not exceed the amount stated in the Booking Form for the Online Inventory provided under the Booking Agreement;
- 11.2.3. Channel's maximum aggregate liability for any loss or damage in respect of any claims arising out of the provision of the Commercial Production Services whether in contract, tort or otherwise shall not exceed the fee for the Commercial Production Services stated in the Booking Form.
- 11.3. Nothing in the Booking 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 the Booking Agreement in respect of any fraud.
- 11.4. Except as expressly set out in the Booking Agreement, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the obligations of the parties under the Booking Agreement are excluded insofar as it is possible to do in law. Without limiting the generality of this clause, Channel makes no warranty regarding:
- 11.4.1. the number of persons who will access and/or view the Airtime and/or the Online Inventory; and
- 11.4.2. any benefit the Buyer might obtain or be seeking to obtain from requesting Channel to display or transmit the Airtime and/or the Online Inventory.

## **12. Confidentiality**

Neither party shall, either during or after the expiry of the Booking Agreement, duplicate or disclose, or permit the duplication or disclosure of, any Confidential Information nor use the same in any way other than to perform its obligations under the Booking Agreement, unless such duplication, use or disclosure is specifically authorised by the other party in writing or it is requested to disclose such information by law (including but not limited to the obligations set out in the Undertakings).

## **13. Amendments**

No amendment or variation of the Booking Agreement shall be effective unless it is agreed between the parties.

## **14. Force Majeure**

- 14.1. 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 the Booking Agreement caused by any Force Majeure event.
- 14.2. If a party (the "**Affected Party**") is unable to perform any of its material obligations under this Booking Agreement as a result of a Force Majeure event for more than 30 Working Days, the other party may terminate the Booking Agreement at any time and without further liability upon giving written notice to the Affected Party.

## **15. Notices**

Unless otherwise stated, any notice or other communication to be given under the Booking Agreement shall be in writing, shall be deemed to have been duly served on, given to or made in relation to a party if it is left at the registered address of that party, posted by pre-paid first class post addressed to that party at such address and:

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

provided that where, in the case of delivery by hand, delivery occurs after 6.00pm on a Working Day or on a day which is not a Working Day, receipt shall be deemed to occur at 9.00am on the next Working Day. Channel's address for notices is Le Capelain House, Castle Quay, Jersey, JE2 3EH.

## **16. Miscellaneous**

- 16.1. The relationship between the parties is that of independent contractors.
- 16.2. The Buyer shall not assign or sub-contract any of its rights or obligations under this Booking Agreement without the prior written consent of Channel (such consent not to be unreasonably withheld or delayed).
- 16.3. The provisions of those clauses intended to have continuing effect shall continue in full force and effect following the termination or expiry of this Booking Agreement.
- 16.4. If the whole or any part of any provision of this Booking Agreement is or becomes invalid, void or unenforceable for any reason, the same shall be severed from this Booking Agreement to the extent required and rendered ineffective so far as is possible without modifying the remaining provisions of this Booking Agreement and shall in no way affect the validity or enforceability of any other provisions.
- 16.5. No waiver by Channel of any breach of the Buyer's obligations shall constitute a waiver of any other prior or subsequent breach and Channel shall not be affected by any delay, failure or omission to enforce or express forbearance granted in respect of any obligation of the Buyer.
- 16.6. No person other than a party to this Booking Agreement may enforce this Booking Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 16.7. In the event of any conflict between any provision in the Booking Form and any provision in these Trading Terms and Conditions, these Trading Terms and Conditions shall prevail.
- 16.8. This Booking Agreement may be executed in counterpart but the counterparts shall together constitute one and the same instrument.
- 16.9. This Booking Agreement and any dispute or claim 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.

## SCHEDULE 1

### AIRTIME

#### 1. Acceptance of Airtime Advertising Creative

- 1.1. Paragraph 1 applies where: (i) the Buyer provides the Airtime Advertising Creative to Channel; or (ii) Channel agrees in the Booking Form to produce the Airtime Advertising Creative.
- 1.2. Airtime Advertising Creative will only be transmitted by Channel if it: (i) is approved by Channel and/or Clearcast; (ii) satisfies Channel's reasonable technical requirements in accordance with current industry standards; and (iii) complies with the Act, the UK Code of Broadcast Advertising and any accompanying notes of guidance published from time to time by Ofcom or the ASA (or any successor bodies) and any replacement or amendment of the same in force at the time of transmission.
- 1.3. Channel shall not be liable for any addition to, changes in, deletions from or non-transmission of any Airtime Advertising Creative required by Ofcom or the ASA or for the withholding or withdrawal of approval of any Airtime Advertising Creative by Clearcast or for any costs, loss, damage, expenses or claims resulting from any such action.
- 1.4. Channel reserves the right, in its absolute discretion, to do any act or thing in respect of the transmission of any Airtime Advertising Creative or part thereof (including the fading, editing or cutting thereof) which, in its reasonable opinion, fails to comply with the provisions of paragraph 1.2 above and Channel shall not incur any liability whatsoever to the Buyer in respect thereof.
- 1.5. The Buyer may only include the product or service set out in the Booking Form in the Airtime Advertising Creative. Channel shall be entitled, at its absolute discretion, to refuse Airtime Advertising Creative which advertises more than one product or service.
- 1.6. Where requested by the Buyer, Channel shall use reasonable endeavours to apply Copy Rotation in accordance with the Buyer's transmission instructions.
- 1.7. If, in Channel's opinion, Airtime Advertising Creative depicts the goods or services of more than one brand or Advertiser through the editing of two or more Time-Lengths, Channel shall be entitled to charge the Buyer in respect of such Airtime Advertising Creative for the original Time-Lengths.
- 1.8. Airtime Advertising Creative which is not a Standard Time-length will only be accepted by Channel if it can be transmitted within the same break as other Airtime Advertising Creative for the same Buyer and the total length bought is a Standard Time-length. Rates for non-Standard Time-lengths are available from Channel on request.
- 1.9. The Buyer shall ensure that, subject to paragraph 1.8 above, all Airtime Advertising Creative is of Standard Time-lengths.
- 1.10. Channel shall not be liable for the delay in delivery or loss or damage in transit of any Airtime Advertising Creative or Advertisement Material. Unless otherwise instructed by or on behalf of the Buyer, any Airtime Advertising Creative and/or Advertisement Material may be destroyed by Channel without further reference to the Buyer if not transmitted during a period of six weeks from the date of receipt or, if later, after the end of the Airtime Campaign Period. Alternatively, Airtime Advertising Creative and/or Advertisement Material that has not been destroyed may be archived by Channel at any time following its transmission.

#### 2. Airtime Advertising Creative provided by the Buyer to Channel

- 2.1. Paragraph 2 applies where the Buyer provides the Airtime Advertising Creative to Channel.
- 2.2. The Airtime Advertising Creative must be submitted by the Buyer to Clearcast or Channel (as directed by Channel) for approval before the date of intended transmission. Approval by Clearcast or Channel of the Airtime Advertising Creative shall not in any way prejudice Channel's right to reject the Airtime Advertising Creative in accordance with the provisions of the Booking Agreement.
- 2.3. Final Airtime Advertising Creative must be delivered to Channel once cleared in accordance with paragraph 2.2 above not less than two clear Working Days prior to the proposed start of the Airtime Campaign Period (the "**Airtime Advertising Creative Due Date**"). Delivery of the Airtime Advertising Creative shall be deemed to have been made only when Channel's technical requirements have been met and the relevant transmission instructions have been received by Channel from the Buyer.

- 2.4. Any Airtime Advertising Creative supplied by the Buyer after the Airtime Advertising Creative Due Date and accepted by Channel will be subject to a Late Surcharge of £100 payable within 30 days of the date of an invoice for the same. If the Airtime Advertising Creative is not supplied or not accepted by Channel, the Buyer shall pay Channel in full for the Spots booked under the Booking Agreement whether or not the Airtime Advertising Creative is transmitted and Channel at its reasonable discretion may repeat a previously transmitted Airtime Advertising Creative to fulfil its regulatory obligations or cancel the transmission of the Airtime Advertising Creative.
- 2.5. The Buyer warrants and undertakes to Channel that it will:
- (a) procure that all necessary licences and consents for the copying and/or transmission of any performance or copyright material contained in the Airtime Advertising Creative will be obtained and paid for;
  - (b) ensure that the copying and/or transmission of the Airtime Advertising Creative will not infringe the copyright or other Intellectual Property Rights or other rights of or be defamatory of any third party or Channel; and
  - (c) ensure that no Airtime Advertising Creative will be in breach of or contrary to any common law, statute, regulation or code of practice, including in particular that no Airtime Advertising Creative will be: (i) defamatory, racist or sexist, threatening or menacing to any person or group of people; (ii) contain any obscene elements; or (iii) be likely to cause annoyance or distress to any person.
- 2.6. The Buyer will indemnify on demand and hold harmless Channel against all losses, actions, proceedings, costs, damages, expenses, penalties, claims, demands and liabilities suffered by Channel arising from any breach of the warranties set out in paragraph 2.5 above (whether foreseeable or unforeseeable) or in any manner whatsoever, including as a result of or arising out of the use, recording or broadcasting of any Airtime Advertising Creative supplied by or transmitted on behalf of the Buyer. This indemnity shall apply to any claims brought by an Advertiser against Channel.

### **3. Airtime Advertising Creative produced by Channel**

- 3.1. Without prejudice to clause 4 of the Trading Terms and Conditions, this paragraph 3 applies where Channel agrees in the Booking Form to provide the Commercial Production Services in relation to Airtime.
- 3.2. Any Airtime Material must be delivered by the Buyer to Channel not less than 10 clear Working Days prior to the proposed start of the Airtime Campaign Period (the "**Airtime Material Due Date**"). Airtime Material supplied by the Buyer after the Airtime Material Due Date and accepted by Channel will be subject to a Late Surcharge of £100 payable within 30 days of the date of an invoice for the same. If Airtime Material is not supplied or not accepted by Channel, the Buyer shall pay Channel in full for the Spots booked under the Booking Agreement whether or not any Airtime is transmitted and Channel at its reasonable discretion may repeat previously transmitted Airtime Advertising Copy in Airtime to fulfil its regulatory obligations or cancel the transmission of the relevant Airtime.
- 3.3. Channel hereby grants the Buyer an exclusive, royalty-free, fully paid licence to use the Airtime Advertising Copy solely for broadcast on the Channel Television Channel 3 network on the dates and at the times of transmission specified in the Booking Form.
- 3.4. Except in relation to Airtime Material, Channel warrants and undertakes to the Buyer that it will:
- (a) procure that all necessary licences and consents for the copying and/or transmission of any performance or copyright material contained in the Airtime Advertising Creative will be obtained and paid for;
  - (b) ensure that the copying and/or transmission of the Airtime Advertising Creative will not infringe the copyright or other Intellectual Property Rights or other rights of or be defamatory to any third party or Channel; and
  - (c) ensure that no Airtime Advertising Creative will be in breach of or contrary to any common law, statute, regulation or code of practice, including in particular that no Airtime Advertising Creative will be: (i) defamatory, racist or sexist, threatening or menacing to any person or group of people; (ii) contain any obscene elements; or (iii) be likely to cause annoyance or distress to any person.

### **4. Dates and Times of Transmission**



- 4.1. Following acceptance of a Booking by Channel in accordance with paragraph 1 above, Channel will, subject to paragraph 4.2 below, agree with the Buyer prior to the proposed start of the Airtime Campaign Period a final schedule of the proposed Airtime.
- 4.2. Channel will use reasonable endeavours to ensure that the final date and time of a Spot agreed with the Buyer before transmission will be met. If a Spot is not transmitted on such date and at such time for whatever reason (including Channel's negligence) other than the Buyer's non-compliance with paragraphs 1.2, 1.3, 1.4, 2.2 and/or 2.3 and/or the Broadcaster exercising its rights under paragraphs 1.3, 1.4, 1.5 and/or 1.8 of this Schedule, Channel will provide to the Buyer a transmission date and time of an equivalent value in consultation with the Buyer.
- 4.3. The Buyer shall not without the prior consent of Channel publish any dates or times of any scheduled Airtime.

## **5. Postponement**

- 5.1. A written request by the Buyer for the postponement of Airtime booked under this Booking Agreement ("**Postponed Airtime**") will incur an additional charge equal in amount to 30% of the total value of the Postponed Airtime. Any Postponed Airtime must be pre-paid and re-booked at the time of Postponement to a date not more than three calendar months after the date of the Postponement and in any event within the same Calendar Year and must relate to the same product or service failing which the Postponement will be deemed a Cancellation and subject to the provisions of clause 8 of the Trading Terms and Conditions.
- 5.2. The final date for re-booking Postponed Airtime in a particular month shall be the Advanced Booking Deadline for that month, and in any event shall be within the same Calendar Year as the completion of this Booking Agreement. If the Buyer fails to recommit the Postponed Airtime within the same Calendar Year the postponement shall be deemed a Cancellation and subject to the provisions of clause 8 of the Trading Terms and Conditions.

## **6. Dispute Resolution**

Any dispute between the parties arising out of the interpretation or exercise of the rights given to or obligations upon the Buyer in relation to contracts for the sale of Airtime only pursuant to the Undertakings, including any dispute relating to the interpretation, termination or enforcement of such contracts to the extent referable to the Undertakings, the interpretation of any provision of the CRRRA Rules, the CRRRA Scheme, or the Adjudicator's jurisdiction to determine the dispute, the Buyer may refer the dispute to the Adjudicator for determination in accordance with the CRRRA Rules and the CRRRA Scheme annexed to the Undertakings and as amended from time to time.

## SCHEDULE 2

### ONLINE INVENTORY

#### 1. Dates of Display of Online Inventory

- 1.1. Channel shall use its reasonable endeavours to display the Online Inventory on the dates specified in the Booking Form.
- 1.2. If Online Inventory is not displayed at all or such display only takes place in part, in each case through no fault of the Buyer, subject to paragraph 1.1 above, Channel shall agree with the Buyer another display date of reasonably equivalent value.

#### 2. Online Advertising Creative provided by the Buyer to Channel

- 2.1. Paragraph 2 applies where the Buyer provides the Online Advertising Creative to Channel.
- 2.2. Online Advertising Creative shall be sent to [interactivetraffic@itv.com](mailto:interactivetraffic@itv.com) (with the sales contact at Channel and [gillian.mabbett@itv.com](mailto:gillian.mabbett@itv.com) copied on such email). Online Advertising Creative must be received by Channel on or before the relevant "**Online Advertising Creative Due Date**" which shall be:
  - (a) for Display Advertising, at least two (2) Working Days prior to the start of the Online Campaign Period; and
  - (b) for all other Online Advertising Creative (including relating to VOD Advertising), at least five (5) Working Days prior to the start of the Online Campaign Period.
- 2.3. Where Online Advertising Creative is not received by Channel by the Online Advertising Creative Due Date, Channel shall be under no obligation to display the Online Advertising Creative and Channel reserves the right to charge the Buyer the charges set out in the Booking Form in full.
- 2.4. The Buyer accepts full responsibility for ensuring that the correct Online Advertising Creative is sent to Channel. In the event that the Buyer sends the wrong Online Advertising Creative to Channel resulting in Channel serving incorrect Online Advertising Creative, the Buyer's obligation to pay the charges set out in the Booking Agreement shall remain in force.
- 2.5. Channel reserves the right to appoint a third party to approve Online Advertising Creative on its behalf. If directed by Channel, it is the responsibility of the Buyer to procure the approval of such third party and to procure that all Online Advertising Creative complies with the requirements and guidelines of such third party by the Online Advertising Creative Due Date.
- 2.6. The Buyer hereby grants Channel a worldwide, non-exclusive, royalty-free licence to use and to authorise the use of the Online Advertising Creative for the purpose of performing its obligations under the Booking Agreement.
- 2.7. The Buyer represents and warrants to Channel that:
  - 2.7.1. the Online Advertising Creative complies with all Applicable Laws;
  - 2.7.2. 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 Online Advertising Creative by Channel for the purpose of this Booking Agreement;
  - 2.7.3. the Use will not cause Channel to breach:
    - a) any Applicable Laws, in particular (but without limitation), the Online Advertising Creative does not constitute a financial promotion within the meaning of the UK Financial Services and Markets Act 2000 (the Act) (as amended)); and
    - b) any rights of any third parties (including, without limitation, any Intellectual Property Rights or other rights);
  - 2.7.4. the Online Advertising Creative 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 software or hardware of Channel's websites, apps, computer systems or any third party's computer systems, websites or apps;

- 2.7.5. it shall not acquire any rights (including, without limitation, Intellectual Property Rights) in or associated with any websites, apps or other services which carry the Online Inventory as a result of the Booking Agreement; and
- 2.7.6. 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 any websites, apps or other services which carry the Online Inventory always provided that:
- a) the Buyer shall be responsible for obtaining 'consent' for the use of such cookies as required by Data Protection Laws;
  - b) 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 relevant website, app or other service;
  - c) the Buyer shall ensure that the use of such cookies complies with any policy from time to time adopted by Channel (or third parties operating the relevant websites, app or services) and which relates to the use of cookies (either by Channel or third parties);
  - d) the Buyer shall provide Channel 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 Channel from time to time;
  - e) 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 on the Booking Form and always provided that the Buyer must submit any Online Inventory containing tracking to Channel for validation prior to the Online Advertising Creative Due Date;
  - f) the Buyer shall ensure that such cookies expire no later than 30 days after the end of the term of this Agreement;
  - g) the Buyer shall not capture nor transmit any personal data (as defined in the Data Protection Act until and including 24 May 2018 and as defined in the GDPR from and including 25 May 2018) via any cookies that it sets; and
  - h) Channel may at any time and for any reason, by providing notice to the Buyer, withdraw permission for the Buyer to set cookies.

2.8. The Buyer will indemnify on demand and hold harmless Channel against all losses, actions, proceedings, costs, damages, expenses, penalties, claims, demands and liabilities suffered by Channel arising from any breach of the warranties set out in paragraph 2.7 above (whether foreseeable or unforeseeable) or in any manner whatsoever, including as a result of or arising out of the use of any Online Advertising Creative. This indemnity shall apply to any claims brought by an Advertiser against Channel.

### **3. Online Advertising Creative produced by Channel**

3.1. Without limiting clause 4 of the Trading Terms and Conditions, paragraph 3 applies where Channel agrees in the Booking Form to provide the Commercial Production Services in relation to the Online Inventory.

3.2. All Online Material required from the Buyer for the Online Advertising Creative to be produced by Channel shall be sent by the Buyer to [interactivetraffic@itv.com](mailto:interactivetraffic@itv.com) (with the sales contact at Channel and [gillian.mabbett@itv.com](mailto:gillian.mabbett@itv.com) copied on such email) and must be received by Channel at least 10 Working Days prior to the start of the Online Campaign Period (the "**Online Material Due Date**").

3.3. Channel agrees, where possible and where specifically instructed by the Buyer, to change Online Advertising Creative produced by Channel a maximum of once per week, subject to notification of changes being received by Channel at least five Working Days prior to the desired change date.

3.4. Where Online Material is not received by Channel by the Online Material Due Date, Channel shall be under no obligation to produce or display the Online Advertising Creative and Channel reserves the right to charge the Buyer the charges set out in the Booking Form in full.

- 3.5. The Buyer accepts full responsibility for ensuring that the correct Online Material is sent to Channel. In the event that the Buyer sends the wrong Online Material to Channel resulting in Channel producing and serving incorrect Online Advertising Creative, the Buyer's obligation to pay the charges set out in the Booking Agreement shall remain in force.
- 3.6. Channel hereby grants the Buyer an exclusive, royalty-free, fully paid licence to use the Online Advertising Creative solely for use to perform its obligations pursuant to the Booking Agreement.
- 3.7. Subject to paragraph 3.6 above, all Intellectual Property Rights in the Online Advertising Creative shall at all times be vested in and belong to or be under the control of Channel (or its licensors as the case may be).
- 3.8. Except in relation to the Online Material, Channel represents and warrants to the Buyer that:
- 3.8.1. the Online Advertising Creative complies with all Applicable Laws to which Channel is subject relating to its display pursuant to this Booking Agreement;
  - 3.8.2. Channel has procured the necessary rights (including, without limitation, Intellectual Property Rights) to permit the Use of the Online Advertising Creative by Channel for the purpose of this Booking Agreement.
- 3.9. In relation to the Online Material, the Buyer represents and warrants to Channel that:
- 3.9.1. all Online Material complies with all Applicable Laws to which Channel is subject relating to its display pursuant to this Booking Agreement;
  - 3.9.2. the Buyer holds the necessary rights (including, without limitation, Intellectual Property Rights) to permit the Use of the Online Material by Channel for the purpose of this Booking Agreement;
  - 3.9.3. it shall not acquire any rights (including, without limitation, Intellectual Property Rights) in or any website, apps or other services operated by or on behalf of Channel or any of member of the same group of companies as a result of the Booking Agreement; and
  - 3.9.4. it shall not collect, retain or use any data, in the form of cookies or otherwise, in relation to visitors to any website, apps or other services operated by or on behalf of Channel or any of member of the same group of companies, whether that data identifies the relevant consumer or not.
- 3.10. The Buyer will indemnify on demand and hold harmless Channel against all losses, actions, proceedings, costs, damages, expenses, penalties, claims, demands and liabilities suffered by Channel arising from any breach of the warranties set out in paragraph 3.9 above (whether foreseeable or unforeseeable) or in any manner whatsoever, including as a result of or arising out of the use of any Online Material.

#### **4. Rejection of Online Advertising Creative or Online Material**

- 4.1. Without in any way limiting the Buyer's obligation to pay the charges set out in Booking Form, Channel reserves the right to reject or (at Channel's sole discretion) request/require amendments to any Online Advertising Creative or Online Material which, in Channel's sole opinion, is in breach of the provisions of paragraph 2 or 3 above or any law enforcement agency requires the removal of any Online Advertising Creative.
- 4.2. Without prejudice to paragraph 4.1 above, Channel shall have the right, at any time, to remove any Online Advertising Creative once live if Channel determines, in its sole reasonable discretion, that the Online Advertising Creative breaches Channel's then applicable editorial policy, in which event Channel shall refund to the Buyer a pro rata portion of the costs which the Buyer has paid to, and which have been received by, Channel for display of the Online Advertising Creative (based on the amount of Online Inventory delivered at the point such Online Advertising Creative is removed).

#### **5. Click Through Facility**

If a campaign is set up so that the Online Advertising Creative 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, Channel shall have the right to disable the click through facility and the same shall not constitute a breach of the Booking Agreement by Channel. For the avoidance of doubt, the Buyer shall pay in full the charges set out in the Booking Form for Online Inventory regardless of whether the consumer is able to click through to the intended website.

## SCHEDULE 3

### GLOSSARY

**Act:** means the Broadcasting Acts 1990 and 1996, the Communications Act 2003 and any amendments thereto or any superseding legislation;

**Adjudicator:** means the adjudicator appointed pursuant to the Undertakings;

**Advertising:** shall have the same meaning as it has for the purposes of the codes and regulations from time to time of Ofcom;

**Agency:** means an advertising agent or agency, being a person, firm or company carrying on business involving the selection and purchase of Airtime for an advertiser;

**Airtime:** means Advertising airtime on the Channel Television Channel 3 network (excluding any interactive element and sponsorship element);

**Airtime Advertisement:** means any item of Advertising incorporating Airtime Advertising Creative intended for broadcast in respect of which Airtime has been sold and which has been accepted for transmission in accordance with these Trading Terms and Conditions;

**Airtime Advertising Creative:** means any material incorporated into an Airtime Advertisement;

**Airtime Campaign Period:** means the period between the first date on which the Advertisement is transmitted by Channel up to and including the final date on which the Advertisement is transmitted by Channel;

**Airtime Material:** means any Buyer Materials provided by or on behalf of the Buyer for incorporation into the Airtime Advertising Creative;

**Applicable Laws:** means all relevant statutes, regulations, directives, codes of practice (whether or not the same have force of law and including the UK Code of Non-Broadcast Advertising and Direct and Promotional Marketing (CAP Code) and other codes under the supervision of the Advertising Standards Authority (or any successor or replacement authority)) and common law in force from time to time;

**Booking:** means an offer from a Buyer set out in a Booking Form for the purchase of Airtime or Online Inventory from Channel;

**Booking Agreement:** shall have the meaning set out in clause 5.1 of these Trading Terms and Conditions;

**Booking Form:** means the applicable standard form to be used to make a Booking;

**Buyer:** means the person (which expression includes the firm or company) identified in section 1 of the Booking Form;

**Buyer Materials:** means any materials (including but not limited to video materials, logos, trade marks and stills) provided by the Buyer or on its behalf for our use in the course of providing the Commercial Production Services;

**Calendar Year:** means any period of 12 months commencing on 1<sup>st</sup> January;

**Campaign:** means all or part of the Airtime and/or Online Inventory within a Booking;

**Centre Break:** means an Advertising break within a TV programme;

**Clearcast:** means Clearcast Limited (Co. Reg. No. 06290241) or any superseding body;

**Commercial Production Services:** means the commercial production services provided to the Buyer by Channel as set out in the Booking Form;

**Confidential Information:** means any information marked as such and any other information which might reasonably be assumed to be confidential in any form emanating from either party at any time and shall include any compilation of otherwise public information in a form not publicly known and the existence and contents of any agreement in respect of Airtime to which Channel is a party and any information, materials or data in any form produced by, for or on behalf of either party during the term of or pursuant to such an agreement but shall not include:

- a) information which at the time of disclosure is publicly known or information which after disclosure becomes publicly known other than as a result of any breach of such agreement;
- b) information which can be shown to be known to the other party, other than under a subsisting obligation of confidentiality, or restricted use, prior to the disclosure; or
- c) information made available to the other party by a third party having a right to do so and who has not imposed on that party any subsisting obligation of confidentiality or restricted use in respect thereof;

**Copy Rotation:** means where an Airtime Campaign consists of two or more separate Advertisements (or variations of the same) the agreed order for transmission and any changes thereto;

**CRRA Rules:** means the Contracts Rights Renewal Adjudication Rules as referred to in the Undertakings;

**CRRA Scheme:** means the Contracts Rights Renewal Adjudication Scheme as referred to in the Undertakings;

**Day Parts:** means the segment times as specified from time to time by Channel or as set out in the Booking Form;

**Data Protection Act** means the Data Protection Act 1998, as amended, repealed, replaced or supplemented from time to time, in the UK;

**Data Protection Laws:** means all laws relating to data protection, data privacy and/or information security as applicable, including the Data Protection Act, the GDPR and the Privacy and Electronic Communications (EC Directive) Regulations 2003;

**Daytime:** means 09:25 to 17:59 inclusive;

**Display Advertising:** means the advertising formats commonly known as display advertising, including (without limitation) leaderboards and skyscrapers;

**Early Peak:** means 18:00 to 18:59 inclusive;

**End Break:** means an Advertising break between two distinct TV programmes;

**Excluded Brands:** means any excluded brands of the Buyer which are identified as such in the Booking Form;

**Excluded Business:** means any excluded type of business of the Buyer which is identified as such in the Booking Form;

**First in Break / FIB / 1<sup>st</sup> in Break, Second in Break / 2<sup>nd</sup> in Break and Last in Break / LIB:** mean respectively the first, second and last Advertisement in an Advertising break;

**Force Majeure:** means an event, inability or delay which is caused by circumstances beyond the relevant 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 a party if it arises as a result of that party's failure to take reasonable care. For the avoidance of doubt, the loss of a client or a client's brand (including, without limitation, by virtue of insolvency or by virtue of a win by a third party Agency) by an Agency will not be deemed to be an event of Force Majeure;

**GDPR:** means the General Data Protection Regulation (Regulation (EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended, repealed, replaced or supplemented from time to time, in the UK;

**Intellectual Property Rights:** means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

**Kick Off Spot:** means the first Spot in a Campaign;

**Late Surcharge:** means the cost payable by the Buyer for late delivery of an Advertisement or Advertisement Material as set out in paragraphs 2.4 and 3.2 of Schedule 1 (Airtime) of these Trading Terms and Conditions;

**Late Night:** means 23:31 to 00:30 inclusive;

**Late Peak:** means 19:00 to 23:30 inclusive;

**Non-pre-emptible:** means guaranteed to be shown at the agreed time and not capable of being transferred to any other time except by agreement with the Buyer and **Pre-emptible** shall be interpreted accordingly;

**Ofcom:** means the Office of Communications or its successor;

**Online Advertising Creative:** means any material incorporated into Online Inventory;

**Online Campaign Period:** means the period between the first date on which the Online Inventory is displayed by Channel up to and including the final date on which the Online Inventory is displayed by Channel;

**Online Inventory:** means digital advertising including without limitation VOD and/or Display Advertising;

**Online Material:** means any Buyer Materials provided by or on behalf of the Buyer for incorporation into the Online Advertising Creative, including (but not limited to) the Buyer's logo;

**Position in Break:** means any specific position within an Advertising break;

**Postponement:** means a postponement of Airtime booked under a Booking Agreement following a request for the same by the Buyer;

**Programme Select, Pick Your Own, or PYO:** means the Day Part for which Channel shall procure Spots in or around such programmes as the Buyer may select in the Booking Form;

**Protected Contract:** shall have the meaning set out in the Undertakings;

**Spot(s):** means one specific portion of Airtime identified as available for purchase by Channel for Advertising;

**Standard Day Parts:** means Daytime, Early Peak, Late Peak and Late Night;

**Standard Time-lengths:** means 10 seconds or a multiple of 10 seconds;

**Tagged:** means the situation where two or more Advertisements are joined back-to-back as if they were one Advertisement;

**Time-Length:** means the duration of a Spot;

**Undertakings:** means the undertakings given by Carlton Communications Plc and Granada Plc to the Secretary of State for Trade and Industry dated 14 November 2003;

**VOD Advertising:** means audio visual advertising that can be placed (without limitation) immediately before, after or during audio visual content; and

**Working Day:** means any day other than a Saturday or Sunday or any other day which is a public or bank holiday in the Channel Islands.