

Channel Four Television Corporation

Digital and On Demand Advertising Terms and Conditions

Effective for Bookings made on or after 1st April 2019

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INTRODUCTION

The agreement between Channel Four Television Corporation ("Channel 4", "C4" or the "Corporation") and each Buyer relating to the display of digital and VOD advertising ("**Advertising**") on the Platforms and the development and display of Microsites is contained in these terms and conditions ("**Terms and Conditions**") together with any corresponding Deal Memorandum and Insertion Order ("**Agreement**").

These Terms and Conditions apply to all Advertising booked with Channel 4 on or after 1st April 2019.

The Buyer's confirmation (whether in writing, orally or by any other means) to Channel 4 of the Deal Memorandum and/or Insertion Order will constitute the Buyer's acceptance of, and agreement to be bound by, these Terms and Conditions, the Deal Memorandum and/or the Insertion Order irrespective of whether or not the Deal Memorandum and/or Insertion Order is signed and/or returned by the Buyer to Channel 4. Where any online booking system is used, Channel 4's confirmation (by online acceptance) of the Insertion Order will constitute the Parties' acceptance of, and agreement to be bound by, these Terms and Conditions, any corresponding Deal Memorandum and the Insertion Order. No amendment to the Agreement will be binding or effective unless agreed in writing by Channel 4 by way of a formal Variation Letter. Any inclusion within an Insertion Order of additional terms and conditions by the Buyer and/or reference within an Insertion Order to the Buyer's terms and conditions applying, shall be invalid.

For the avoidance of doubt, these Terms and Conditions apply in relation to the display of all Advertisements sold by Channel 4 for and/or on behalf of itself and all of its Media Partners on any Platform.

In the event of any conflict between these Terms and Conditions, the Deal Memorandum and the Insertion Order, the Deal Memorandum will prevail, then the Terms and Conditions and then the Insertion Order.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions: In these Terms and Conditions, the Deal Memorandum and the Insertion Order, words and expressions shall have their ordinary meaning unless otherwise defined therein. In addition, the following words and expressions shall have the meanings set against them, whether they are used in the Terms and Conditions or any Deal Memorandum or any Insertion Order:

ABD or Advance Booking Deadline means the date falling 5 (five) clear Working Days prior to the Launch Date unless otherwise agreed between the Parties in the Deal Memorandum;

Advertisement means the advertisement(s) or promotion(s) of the Brands and the Campaign(s) as specified in the Insertion Order;

Advertiser means a person, firm or company making a Booking (either as a Direct Advertiser or through an Agency) with Channel 4 under the Agreement;

Advertising has the meaning given to it in the first paragraph of these Terms and Conditions;

Advertising Expenditure means all Gross Expenditure with Channel 4 under the Agreement in respect of the Term (or such other period specified in the Deal Memorandum) together with all Gross Expenditure incurred by or on behalf of the Client and its Affiliates and its Agency Buying Group with other Sales Houses in respect of Advertising during the same period or as otherwise defined in the Deal Memorandum (for the avoidance of doubt this excludes Airtime and print advertising expenditure);

Affiliate means in respect of a company, a company which is its subsidiary or holding company or a company which is a subsidiary of that holding company, and the terms 'subsidiary' and 'holding company' shall have the meaning given to them by section 1159 and Schedule 6 of the Companies Act 2006;

Agency means an advertising agent, agency or Agency Buying Group buying Advertising with Channel 4 on behalf of one or more Clients;

Agency Buying Group means, in relation to any Agency, its Buying Agencies, Affiliates and trading divisions and 'part' of an Agency Buying Group shall be construed accordingly;

Agency Commission has the meaning given in clause 4.1;

Agreement has the meaning given to it in the first paragraph of these Terms and Conditions;

Agreement Period or **Term** means the specific term specified in any Deal Memorandum during which a Buyer Commitment is given;

Airtime means expenditure in relation to any Spot advertising capable of being received in the UK;

AOP means the UK Association of Online Publishers;

Applicable Laws includes all Legislation, regulations, requirements, rulings, restrictions, standards, directions, rules of common law, BCAP's UK Code of Broadcast Advertising ("**BCAP Code**"), the CAP Code, ASA adjudications, bulletins, codes, guidance notes, rules, the Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services, and OFCOM licence obligations, the OFCOM Broadcasting Code and Clearcast guidance in each case as amended, varied or replaced from time to time;

Approved Third Party Service Provider means a service provider acting for the Buyer who has been approved by Channel 4 in writing;

ASA means the Advertising Standards Authority and the Advertising Standards Authority for Ireland, including the Advertising Standards Authority (Broadcast) Limited and in each case includes any successor or replacement body;

Auditors has the meaning given in clause 21.2;

Audit Report has the meaning given in clause 21.2;

BACS means Bankers Automated Clearing Service;

Barter means any Advertising that is paid for in a form other than cash or Contra;

BCAP means the Broadcast Committee of Advertising Practice Limited and any successor or replacement body;

Booking means the Buyer's request by any means, including by an Insertion Order, to Channel 4 to book Advertising;

Brand means an Advertiser's product, service or brand;

Buyer means the person identified in the Deal Memorandum, being either an Agency or a Direct Advertiser. Where the person is not a distinct legal entity (for example, where the person named is a trading division) it shall be deemed to be the legal entity or entities which operates such person;

Buyer Commitment(s) means the minimum commitment(s) made by the Buyer to Channel 4 in relation to Volume Expenditure and/or share of Advertising Expenditure and/or other buyer commitment as set out in the Deal Memorandum;

Buying Agency means a trading division or Affiliate of an Agency Buying Group which buys Advertising on behalf of a Client Portfolio;

Campaign means all or part of the Advertising within a Booking which relates to a single burst of activity for a single Brand or service for a single promotional purpose;

Campaign Approval Vehicle means the web based campaign approval communications vehicle which is used by the advertising industry, or any such other vehicle, including but not limited to CARIA, iDesk, Adazzle and Mediagenie;

Campaign Dates means the preferred Campaign dates specified in the Insertion Order for the display of the Advertisement on a Platform;

CAP means the Committee of Advertising Practice and any successor body or replacement;

CAP Code means the British Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing enforced and administered by CAP;

Channel 4 Pricing Terms means the pricing terms available to a Buyer as set out in the Deal Memorandum;

CHAPS means Clearing House Automated Payments System;

Clearcast means the industry recognised copy clearance system of that name and any successor or replacement;

Client or **Clients** means the Advertisers and other clients, as appropriate, of an Agency;

Client Portfolio means all of the Clients on whose behalf the Buyer (or a Buying Agency) purchases Advertising from Sales Houses;

Competent Authority means any national court, the European courts, any governmental authority, any other person exercising powers pursuant to any Legislation or any other official person (including OFCOM, the ASA, CAP, BCAP and the ICO) and any relevant industry body (including without limitation the AOP and the IAB);

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 the display of Advertisements to which Channel 4 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; and

(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;

Contra means a Booking or Bookings exchanged by a Sales House for equivalent media value rather than cash (for example where Advertising is exchanged for another form of advertising such as press, radio or outdoor or for programming);

Copy means Advertisement material provided to Channel 4 for the purpose of display on a Platform whether finished or in preparation;

Copy Requirements means Channel 4's technical specification requirements for Copy from time to time in force and available upon request;

Copy Rotation Instruction means the instructions provided to Channel 4 regarding the Site Area, timing and geography of Advertisements as set out in the Insertion Order;

CPM means the cost per 1000 (one thousand) Impressions in respect of the relevant Advertisement as specified in the Insertion Order;

Credit Buyer means a Buyer which at the relevant time has been granted credit by Channel 4 and includes a Buyer in relation to which at the relevant time Channel 4 has been granted credit insurance subject to any limit or other conditions but only to the extent such credit insurance limit has not at the relevant time been exceeded or such conditions are at the relevant time satisfied;

Credit Information means information about the Buyer's financial position to evidence its credit worthiness pursuant to clause 3.1;

Credit Insurers means any credit insurance company and any other entity to which Channel 4 may reasonably require Credit Information to be supplied for the purposes of granting credit pursuant to clause 3.1;

Data Protection Rules means the Data Protection Act 2018, the General Data Protection Regulation 2016/679 ("GDPR"), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended, varied or replaced from time to time;

Deal Memorandum means any agreement (other than these Terms and Conditions and the Insertion Order) entered into by a Buyer with Channel 4 for the display of Advertising on a Platform during the Term and as further described in clause 19;

Direct Advertiser means a person making a Booking with Channel 4 other than through an Agency;

End Date means the last Campaign Date;

Gross Expenditure means gross expenditure, whether in cash or otherwise, before any Agency Commission but net of VAT;

IAB means the UK Internet Advertising Bureau;

Impression means an Advertising spot file or combination of files containing an Advertisement sent to a User as a result of a bona fide request being received by the relevant Platform, with measurement of delivery of a Campaign being designated by the relevant Platform from time to time;

Insertion Order or **Advertising Order** means Channel 4's advertising, insertion or purchase order sent by Channel 4 to the Buyer, or where any online booking system is used, the Buyer's advertising, insertion, purchase or electronic order sent by the Buyer to Channel 4 (which has been accepted by Channel 4), in each case in respect of the display of Advertising on the Platforms and, if relevant, the development of a Microsite as further described in clause 19;

Launch Date means the intended date of first display of the Advertisement under this Agreement on a Platform specified in the Insertion Order;

Legislation means all laws, Acts of Parliament, all provisions of the Treaties constituting the European Community, the European Union and the European Economic Area, all Data Protection Rules and all orders, regulations, directives, conventions and subordinate legislation made pursuant to such an Act or Treaty or otherwise having the force of law, in each case as amended, varied or replaced from time to time;

Loss means all losses, claims, liabilities, costs, expenses and damages;

Market Rates means Channel 4's discretionary pricing and qualitative terms for Advertising in relation to Campaigns booked after the ABD;

Media Booking System means any Buyer media booking system including without limitation iDesk, Adazzle and Media Genie;

Media Partner means any third party publisher, other than Channel 4, on whose behalf Channel 4 sells Advertising;

Microsite means the page or multi-page advertisements or promotions developed by Channel 4 for the Buyer in accordance with clause 8;

OFCOM means the Office of Communications as defined in the Office of Communications Act 2002 and, to the extent applicable to television channels in Wales, the Welsh Authority (as defined in the Communications Act) and in each case includes any successor or replacement body;

OFCOM Broadcasting Code means OFCOM's code for television and privacy from time to time;

Parties means Channel 4 and the Buyer and **Party** means one of them;

Payment Date has the meaning given in clause 17;

Personal Data has the meaning set out in the GDPR;

Platforms means all relevant platforms set out in the Deal Memorandum and/or Insertion Order on which the Advertisement is intended to be displayed, which for example may include without limitation the Website, Apple's iOS operated devices, X Box devices and the Virgin Media cable network, but which shall not, for the avoidance of doubt, include Airtime or print advertising;

Principal means the Buyer identified as such in the Deal Memorandum;

Pro-Forma Buyer means a Buyer which at the relevant time has not been granted credit by Channel 4;

Records has the meaning given in clause 21;

Sales Houses means the sales houses which sell Advertising in the UK and include but are not limited to ITV, Channel 4 and Sky;

Site Area means the area of the Website specified in the Insertion Order as the Buyer's preferred area of the Website for the display of the Advertisement;

Spot means a slot for an advertisement (within an advertising break) on a channel operated by any person appearing on any platform but for the avoidance of doubt shall not include advertisements relating to VOD content;

Third Party Representative means any separate individual or company that is contracted by the Buyer or the Buyer's Clients to provide services and empowered to act on behalf of any part of a Buyer's Client Portfolio. For the avoidance of doubt this includes Barter companies;

Under Delivery means the Gross Expenditure money value calculated by the Auditors as being the amount by which the share of Advertising Expenditure, Volume Expenditure or other Buyer Commitment(s) actually delivered to Channel 4 is less than the share of Advertising Expenditure, Volume Expenditure or other Buyer Commitment(s) expressly set out in the Deal Memorandum;

Under Delivery Compensation has the meaning given in clause 20.1;

UK means the United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Bailiwicks of Jersey and Guernsey;

User means a person who accesses, or who is otherwise a user of any or all of the Platforms;

User Data means data relating to a User and/or its household defined from access to Platforms;

Variation Letter means the formal documentation produced and communicated to the Buyer as a result of an amendment to an existing Deal Memorandum or any other component of the Agreement entered into by a Buyer and Channel 4 for the purchase of Advertising for a specific term;

Viruses includes "trojans", "worms", "logic bombs", "cancelbots" or other malware or harmful code as the same may be generally understood within the computing industry from time to time;

VOD means video on demand and/or on-demand streamed broadcast content available on the Platforms;

Volume Expenditure means the volume of Gross Expenditure set out in the Deal Memorandum or Variation Letter and which the Buyer guarantees to Channel 4 will be the minimum Gross Expenditure under the Agreement;

Website means all or any of Channel 4's website at www.channel4.com or such other URL as Channel 4 may notify to the Buyer; and

Working Day means a day, except a Saturday or Sunday, which is not a public holiday or bank holiday in the UK.

- 1.2 **Interpretation:** In these Terms and Conditions, the Deal Memorandum and the Insertion Order, unless the context otherwise requires:
- 1.2.1 a reference to a clause is a reference to a clause of these Terms and Conditions unless in the context the reference is clearly to a clause of the Deal Memorandum or the Insertion Order;
 - 1.2.2 a reference to a person includes an individual, firm, partnership, business division, joint venture, agency, trust, association, body corporate, corporation, company, committee, organisation and any other entity whether or not having a separate legal personality;
 - 1.2.3 the headings are for convenience only and will not affect its interpretation;
 - 1.2.4 the terms "**include**", "**including**" and "**in particular**" are to be construed without limiting the generality of the words that precede them;
 - 1.2.5 for the purposes of calculating Impressions, Channel 4 shall use such measurement service or mechanism as it deems appropriate; and
 - 1.2.6 for the purposes of targeting Advertisements, Channel 4 shall use its standard audience segmentation categories from time to time, in order to target audiences on behalf of the Buyer.

2 STATUS OF THE BUYER

- 2.1 **Agency as Principal:** It is acknowledged that the Buyer may be an Agency or a Direct Advertiser. Where the Buyer is an Agency, it is deemed for all purposes of the Agreement to contract with Channel 4 as principal in all respects and not in any circumstances as agent on behalf of its Clients. Accordingly, in that event, all rights and responsibilities under the Agreement shall exist solely between Channel 4 and the Agency and the Agency will

be responsible for the payment of all amounts due to Channel 4 and the performance of all other obligations of the Buyer under the Agreement.

- 2.2 **Affiliates:** If any Affiliate of an Agency is entitled to the benefit of the Agreement under a relevant Deal Memorandum:
- 2.2.1 the Agency shall be responsible for the acts and/or omissions of its Affiliate in connection with the Agreement;
 - 2.2.2 the Agency will be liable to Channel 4 for the acts or omissions of the Affiliate as if they were acts or omissions of the Agency to the extent they breach the Agency's obligations under the Agreement or are otherwise stated in the Agreement to apply to such Affiliates;
 - 2.2.3 all claims arising out of or in connection with the Agreement from an Affiliate against Channel 4 in respect of a breach of contract, tort (including negligence), breach of statutory duty or otherwise however arising from the Agreement shall be brought, to the extent permissible in the law, by the Agency itself on behalf of the Affiliate; and
 - 2.2.4 where an Affiliate brings a claim against Channel 4 in breach of clause 2.2.3 the Agency will indemnify Channel 4 against all costs and expenses incurred by Channel 4 in defending such claim.
- 2.3 The Buyer shall not misrepresent to any Client the nature of the arrangements that the Buyer (or any part of its Agency Buying Group) has with Channel 4 and warrants that it shall not by: (i) entering into, or (ii) participating in the discharge of obligations under, or (iii) the receipt of any benefits conferred by the Agreement or otherwise (by either the Buyer or by any part of its Agency Buying Group), breach any contractual or legal obligations to its Clients.

3 CREDIT

- 3.1 **Credit and Information:** Channel 4 may in its absolute discretion at any time grant credit (with or without conditions and/or limits) to the Buyer and withdraw credit previously granted to the Buyer and/or vary any conditions and/or limits applying to any credit. For the purposes of Channel 4 considering whether or not to grant credit the Buyer will provide to Channel 4 and/or the Credit Insurers such information as Channel 4 or the Credit Insurers may require promptly upon request. The Buyer will comply with the obligations contained in any agreement between it and Channel 4 or any such third party relating to the granting of credit by Channel 4 (including specific terms of any guarantee that may be required to secure credit) and the Buyer acknowledges that no information or report made by Channel 4 or any third party will in any way oblige Channel 4 to grant credit (on particular terms or otherwise) to the Buyer.
- 3.2 **Disclosure of Credit Information:** The Buyer agrees that Channel 4 may disclose to Credit Insurers and its Media Partners any information provided by the Buyer to Channel 4 (and will ensure that any third parties may disclose to Channel 4 information provided by the Buyer to such third parties) or relating to Channel 4's dealings with the Buyer. The Buyer represents and warrants that all information provided by the Buyer to Channel 4, its Media Partners and Credit Insurers shall be true, accurate and not misleading and the Buyer undertakes to notify the recipients of such information promptly of any material change in such information.

4 COMMISSION

- 4.1 **Agency Commission:** Channel 4 may in its sole and absolute discretion apply Agency commission in respect of the purchase of Advertising by that Agency and for the avoidance of doubt this will not exceed 15% of the Gross Expenditure payable to Channel 4. A copy of Channel 4's policy on applying commission is available upon request. Channel 4 requires Buyers to comply with its Agency recognition criteria (as set out in Channel 4's policy) before it can be considered eligible for Agency Commission.
- 4.2 **Application:** Agency Commission is only applied to the actual cost of the Advertising and is not applied to any other charges such as late payment surcharges, cancellation fees, late changes charges, alternative Copy surcharges or any deferment charges.

5 ADVERTISEMENT BOOKINGS

- 5.1 **Acceptance at Channel 4's Discretion:** Channel 4 shall have no obligation to accept any Bookings for Advertisements submitted by the Buyer. Accordingly, all such Bookings are subject to acceptance by Channel 4. If Channel 4 wishes to accept any Booking, Channel 4 may do so either in writing, by display of Advertisements or by the use of an electronic Media Booking System such as, but not limited to, CARIA.
- 5.2 **Late Booking:** Channel 4 reserves the right, at its sole discretion, to decline any Booking made after the Advance Booking Deadline or offer to accept any such Booking at Market Rates.

6 COPY REQUIREMENTS

- 6.1 **Compliance:** Copy will only be transmitted by Channel 4 if it is approved (typically via the Campaign Approval Vehicle) by Channel 4 in its absolute discretion, satisfies all of Channel 4's Copy Requirements, complies with all Applicable Laws, any relevant rules and guidelines of any Competent Authority, reflects the spirit and complies with the letter of the CAP Codes and where relevant the BCAP Codes, and is approved by Clearcast to Channel 4's satisfaction unless, in Channel 4's sole discretion, such approval is not required; and where relevant is delivered to Channel 4 accompanied with Copy Rotation Instructions. Furthermore, the Buyer shall ensure that the Copy provided to Channel 4 for transmission or display is the same Copy (and where relevant, with the same clock number) as the Copy approved by Clearcast. For the avoidance of doubt, any approval by Channel 4 of any Copy will not be deemed to constitute an acceptance by Channel 4 that such Copy is provided in accordance with this Agreement, nor will it constitute a waiver of Channel 4's rights hereunder.
- 6.2 **Copy Rotation Instructions and Timescale for Delivery of Copy:** Excluding PVX, Copy Rotation Instructions must be sent to Channel 4 via CARIA. Copy must be delivered to Channel 4 not less than 5 (five) clear Working Days before the relevant Launch Date. If Copy is delivered less than 5 (five) clear Working Days before the relevant Launch Date:

6.2.1 Channel 4 may decline to transmit or display such Copy and the Buyer shall, at the discretion of Channel 4, be liable to pay in full for all the Impressions (or other costs) referred to in the Insertion Order, whether or not the relevant Advertisement is displayed for the full Campaign period or at all, and the Buyer acknowledges and agrees that such payment is a genuine pre-estimate of Channel 4's Loss; and

6.2.2 notwithstanding this:

(a) the Launch Date will be delayed by one day for each Working Day that the Advertisement is delivered late (and for the avoidance of doubt the End Date will remain unchanged); and/or

(b) the number of Impressions which Channel 4 has agreed to provide and which is specified in the Insertion Order will be reduced on a pro rata basis to reflect the number of days by which the period of the Campaign is reduced by virtue of (a) above.

6.3 **Changes:** Application of Copy changes or changes in transmission instructions initiated by the Buyer and accepted less than 5 (five) clear Working Days before the relevant Launch Date shall be at the sole discretion of Channel 4.

6.4 **Unsuitable Content:** Subject to clause 6.6, if Channel 4 decides that an Advertisement is unsuitable, Channel 4 shall notify the Buyer accordingly, who must supply alternative Copy as soon as practicable and in any case not later than 2 (two) clear Working Days prior to the relevant Launch Date. Alternative Copy shall be accepted at shorter notice at the sole discretion of Channel 4. Should alternative Copy not be supplied, or not be accepted by Channel 4 acting reasonably, Channel 4 may decline to display such Copy shall be entitled to be paid by the Buyer in full for the Booking made, notwithstanding that no Advertisements may have been displayed and the Buyer acknowledges and agrees that such payment is a genuine pre-estimate of Channel 4's Loss.

6.5 **Regulation and Applicable Law:** Channel 4 shall not be liable for any addition to, changes in or deletions from any Copy required by OFCOM, Clearcast (or any other Competent Authority) or as a consequence of any Applicable Law.

6.6 **Reservation of C4 right to reject Copy:** Channel 4 reserves the right in its absolute discretion and without incurring any liability, to decline to display any Advertisement without giving any reason in writing for so declining but the Buyer shall not be liable to pay for any such Advertisement which Channel 4 so declines to display in accordance with this clause 6.6. For the avoidance of doubt, the Buyer shall be liable to pay for any Advertisements which Channel 4 declines to display in accordance with clauses 6.1, 6.2, 6.4 and/or 6.8.

6.7 **Repeats:** Channel 4 reserves the right to restrict or prevent any repeat display of any Campaign.

- 6.8 **Multiple Brands/Advertisers:** Channel 4 reserves the right at its discretion to refuse Copy advertising more than one Brand or Advertiser. If Copy advertises more than one Brand or Advertiser, Channel 4 will be entitled to charge the Buyer on the basis that it comprises separate Advertisements and therefore counts for more than one Impression.
- 6.9 **Copy Rotation Instructions:** Channel 4 will use reasonable endeavours to follow any Copy Rotation Instructions but shall not be liable for any failure to do so.
- 6.10 **Limit of liability:** For the avoidance of doubt, neither Channel 4 nor any of its Media Partners shall have any liability in respect of any Loss arising out of or in connection with the application of any of the provisions of this clause 6 including Channel 4's refusal to approve Copy for any reason.

7 DISPLAY OF ADVERTISEMENTS

- 7.1 Channel 4 will use its reasonable endeavours to display the Advertisement on the Campaign Dates but the Buyer acknowledges and agrees that no commitment is given by Channel 4 that the Advertisement will be displayed on such dates. The Buyer also acknowledges and agrees that Channel 4 may change the date, time, Site Area or geography (or any other aspect of the display of the Advertisement) of any display as it sees fit in order to deal with any change in Applicable Laws or any other change in circumstances and that the positioning of any Advertisement within the Website or Platform is always at the sole discretion of Channel 4. Channel 4 will not be held responsible in any way for the content, nature or subject matter of any other advertising displayed on the Platforms and the effect or otherwise that any of the same may have on the effectiveness or otherwise of any Advertising displayed by Channel 4 on the Platforms on behalf of the Buyer.
- 7.2 If the display of an Advertisement does not take place at all or such display only takes place in part, in each case through no fault of the Buyer, subject to the Parties' rights and obligations set out in clause 6, Channel 4 will use its reasonable endeavours to agree with the Buyer other Campaign Dates. Save as provided in this clause 7.2 and clause 7.3, Channel 4 will have no liability for any Loss arising out of or in connection with any failure to display an Advertisement in whole or in part at any date or time or at all.
- 7.3 If the display of an Advertisement does not take place or such display only takes place in part, in each case through no fault of the Buyer and as a result of circumstances beyond the reasonable control of Channel 4 and Channel 4 is unable to display the Advertisement on alternative Campaign Dates, the Buyer will have no obligation to pay any charges in respect of the same and Channel 4 will have no liability for any Loss arising out of or in connection with any failure to display the same.

- 7.4 If an Advertisement is displayed but is displayed incorrectly through no fault of the Buyer such failure shall not constitute a breach of this Agreement and without prejudice to this, Channel 4 and the Buyer will use their reasonable endeavours to agree how to compensate the Buyer.
- 7.5 Channel 4 retains the right to change or amend the content or format or any other aspect of the Platforms at any time in its absolute discretion and without the need to give any notice to the Buyer.

8. MICROSITES

If Channel 4 agrees to supply a Microsite, then the following terms shall also apply:

- 8.1 in consideration of payment of the agreed charges for the Microsite and subject to the Buyer supplying the content in the format and time period requested by Channel 4, Channel 4 shall use its reasonable endeavours to develop the Microsite in accordance with the specification agreed between it and the Buyer;
- 8.2 the Buyer shall accept the Microsite within two (2) Working Days of delivery of the Microsite to it for approval. The Buyer shall only be entitled to reject the Microsite if the Microsite does not materially comply with the agreed specification (and such non-compliance is due to Channel 4) and it provides Channel 4 with a reasonable opportunity to rectify such non-compliance. If the Buyer does not accept the Microsite it shall provide Channel 4 with written details of the reasons of objection (in sufficient detail to enable Channel 4 to identify and rectify such non-compliance) within two (2) Working Days of delivery and shall provide Channel 4 with all necessary assistance to investigate and rectify the non-compliance. Upon receipt of such notice, Channel 4 shall investigate and shall use reasonable endeavours to rectify the fault and/or modify the Microsite to materially comply with the agreed specification and shall re-submit to the Buyer the Microsite for approval in accordance with this clause. In the event Channel 4 is unable to rectify the non-compliance to bring the Microsite into material compliance with the agreed specification by the Launch Date and provided Channel 4 is given reasonable opportunity (including the Buyer providing sufficient details to identify the fault) to rectify the failing and such failing is solely the fault of Channel 4 (and not for the avoidance of doubt due to the content), the Buyer shall be entitled to a refund of any advance charges it has paid for the development of the Microsite. Such refund shall be the Buyer's sole and exclusive remedy for rejection of the Microsite. If notice of rejection is not received within two (2) Working Days of delivery, the Buyer is deemed to accept the Microsite;
- 8.3 the Buyer acknowledges and agrees that the Microsite shall be developed by Channel 4 solely for use on the Platforms (as specified in the Insertion Order) and the Buyer may not use nor have any rights to the Microsite for any other purpose and for the avoidance of doubt, Channel 4 retains all rights and ownership in the Microsite (save for the content provided by the Buyer); and

8.4 Channel 4 may sub contract any of its obligations in connection with the supply or development of the Microsite.

9 MATERIALS AND PROPERTY LIABILITY

9.1 Reasonable care will be taken by Channel 4 in respect of any materials or content provided by or on behalf of the Buyer to Channel 4 whilst in the possession of Channel 4, but subject thereto, Channel 4 cannot accept liability for any Loss arising out of or in connection with any damage, loss, deletion or otherwise of the same (whether or not the same are in the possession of Channel 4 or any third party engaged by Channel 4) and Channel 4 will be under no obligation to return any of the same to the Buyer or any other third party. The Buyer will be responsible for ensuring that it retains back up copies of all materials and content that are provided by it to Channel 4 and that these are insured for full value (and for the avoidance of any doubt, Channel 4 will have no obligation to put in place any insurance policy in respect of the same).

9.2 Channel 4 may destroy or delete any materials or content provided by or on behalf of the Buyer if not displayed for a period of three months after the later of the date of receipt or last display of it by Channel 4 without further reference to the Buyer.

9.3 The Buyer grants Channel 4 and its Affiliates and Media Partners a worldwide, royalty free, non-exclusive, freely assignable licence:

9.3.1 to use any materials and content provided by the Buyer for the purpose of enabling Channel 4 (and its Affiliates and Media Partners and its and their sub-contractors) to perform its obligations under this Agreement;

9.3.2 to market, display, perform, transmit and promote the Advertisement on all Platforms; and

9.3.3 for Users of the Platforms to have the right to access and use the Advertisement and any other content provided by the Buyer.

10 IMPRESSIONS

10.1 The number of Impressions stated in each Booking is an estimate of the number of Impressions to be delivered over the relevant Campaign Dates. The number of Impressions delivered will vary across the relevant Campaign Dates and could be higher or lower than the value of the Impressions booked. Channel 4 provides no guarantee that the number of Impressions booked will be delivered.

10.2 Channel 4 shall, or shall procure that a third party provider shall, measure the number of Impressions actually achieved in relation to any Campaign. Channel 4 shall use reasonable endeavours to provide to the Buyer within 10 Working Days of the relevant End Date, the Impressions measurement for the relevant Campaign.

- 10.3 Within 10 Working Days of the relevant End Date, the Buyer shall have the right to provide to Channel 4 a separate measurement of Impressions (from an Approved Third Party Service Provider) in relation to the relevant Campaign (the “**Third Party Measurement**”). Where the Third Party Measurement is more than 5% (five per cent.) less than that supplied by Channel 4, Channel 4 agrees to investigate the difference (including the basis on which the Third Party Measurement was undertaken). Subject to: (a) the Buyer providing all information which Channel 4 reasonably requests in relation to such investigation; (b) Channel 4 agreeing (in its sole discretion) that the basis on which the Third Party Measurement was undertaken is appropriate for the purposes of accurately measuring the relevant Campaign Impressions; and (c) the Buyer having paid Channel 4 in full all amounts due according to the number of Impressions stated in the relevant Booking, Channel 4 shall consider in good faith whether to account for such difference in measurements when dealing with any shortfall as set out in clause 10.4 below. The Parties note that where any such difference is included by Channel 4 in any shortfall, this shall not constitute any admission as to the inaccuracy of Channel 4’s own measurement data.
- 10.4 In the event that the Impressions delivered for a Campaign are less than those estimated, both Channel 4 and the Buyer will agree shortfalls. Any shortfall will be delivered against one or more other Campaigns during the Term, or where this is not possible, Channel 4 shall decide in its sole discretion how to compensate the Buyer which may include carrying over the shortfall into the next deal term.
- 10.5 Channel 4 and the Buyer will reconcile all completed Campaigns on a quarterly basis to determine future liability. Channel 4 will invoice the Buyer for the booked number of Impressions at the end of each calendar month. Multi month Campaigns will be invoiced on pro-rata basis and billed at the end of each calendar month. Pro-rata charges will be calculated by the total booking price divided by the number of days in the total Campaign multiplied by the days of the Campaign month to be invoiced. The invoicing issued may not reflect the actual Impressions delivered in relation to a particular Campaign. The Buyer will pay all invoices based on the value of the Impressions booked and will not withhold payment or re-claim payment for under-delivery of those Impressions.
- 10.6 Where fast-forwarding is enabled on a VOD Platform, Channel 4 agrees that an Impression will only be counted where the relevant Platform includes fast-forwarding in its measurement methodology.

11 PRICE

- 11.1 **Prices:** Channel 4’s prices will be as agreed from time to time between Channel 4 and the Buyer. The Buyer agrees that its confirmation (whether in writing, orally or by any other reason) to Channel 4 of the Deal Memorandum and/or the Insertion Order irrespective as to whether or not the Deal Memorandum and/or Insertion Order is signed and/or returned by the Buyer to Channel 4 constitutes acceptance of all relevant terms including the price. Where Channel 4 pricing is agreed in the Deal Memorandum, unless otherwise agreed in writing, these will be subject to Campaigns being booked by the Buyer in advance of the Advance

Booking Deadline and where Campaigns are booked after the Advance Booking Deadline, Channel 4 reserves the right to charge these Campaigns at Market Rates.

12 WARRANTIES AND INDEMNITIES

12.1 The Buyer represents, warrants and undertakes to Channel 4, Channel 4's Affiliates and its Media Partners (as appropriate) that:

12.1.1 it has obtained, maintained and paid for all necessary permits, licenses, authorisations and any other consents (whether statutory or otherwise) required under the Agreement, including in respect of the display of any Advertisement or copyright material contained in, or the appearances of any person in, the Copy including any sound recordings, music rights, or performing rights in relation to all Platforms;

12.1.2 all Copy or use, recording, broadcasting, transmission, distribution or communication to the public thereof on any Platform does not breach the copyright or other rights (including intellectual property rights) of, or is not defamatory to, any third party;

12.1.3 all Copy is Clearcast approved (unless deemed unnecessary by Channel 4 and prior written agreement has been given by Channel 4 that it is not required) and complies with any relevant Competent Authority rules and guidelines;

12.1.4 Copy is not in any way misleading, false, defamatory, obscene, indecent or otherwise offensive;

12.1.5 Copy does not contain any Viruses;

12.1.6 the Buyer will, and will procure that its Clients and Approved Third Party Service Provider(s) will, comply with all Legislation (including in particular the Data Protection Rules) in relation to User Data and shall enter into a data processing agreement, where applicable, in accordance with clause 24.1;

12.1.7 Copy does not constitute a financial promotion within the meaning of the Financial Services and Markets Act 2000 or other Applicable Law;

12.1.8 all Copy complies with all Applicable Laws;

12.1.9 the Buyer will not, and will procure that its Clients will not, seek, whether themselves or via a third party service provider to overlay or otherwise replace the Copy or any other copy while it is being broadcast or transmitted via any means, with any replacement copy or any other replacement visual or sound element, without the prior written consent of Channel 4; and

- 12.1.9 the Copy shall at all times perform without any material error or defect, shall be of satisfactory quality, shall not cause any harm or damage to any software or hardware of Channel 4 or any third party and shall comply with any technical requirements communicated to the Buyer by Channel 4 .
- 12.2 **Buyer Indemnity:** Notwithstanding anything to the contrary contained herein, the Buyer will indemnify and hold harmless and keep Channel 4, Channel 4's Affiliates and its Media Partners indemnified against all Loss arising from any breach or threatened or purported breach of the above warranties or any of its obligations contained herein.
- 12.3 **Co-operation with Competent Authority:** In the event of any issues raised by OFCOM or any other relevant Competent Authority in connection with Channel 4's compliance with any Applicable Laws, the Buyer shall co-operate fully with Channel 4, Channel 4's Affiliates and its Media Partners and provide such assistance as may reasonably be required by any of the same in connection with such issue.

13 PUBLICITY AND INFORMATION CONCERNING ADVERTISEMENTS

No Buyer shall, without the prior written consent of Channel 4, publish any information in connection with any Copy, Advertisement or Campaign which has been displayed or is scheduled for display on any of the Platforms. The Buyer shall treat any information, not already in the public domain, about Channel 4, its Affiliates or its Media Partners (including, for the avoidance of doubt, in respect of programmes or other content and Campaigns) as Confidential Information. Channel 4 shall be entitled to refer to the Buyer's association with Channel 4 and the Advertisement booked hereunder to promote Channel 4's business generally.

14 CANCELLATION AND POSTPONEMENT

- 14.1 **Campaign Booking Cancellation before the ABD:** A Campaign Booking may be cancelled by the Buyer prior to the applicable Advance Booking Deadline by giving written notice to Channel 4 and no charges will be due to Channel 4 in relation to such cancelled Booking. If a Campaign Booking is cancelled by the Buyer other than in accordance with this clause, the Buyer will remain liable to pay Channel 4's charges in full whether or not the Advertisements in relation to such Campaign Booking are displayed. A Booking for any Advertisement or a Campaign Booking may be cancelled by Channel 4 at any time prior to the applicable Advance Booking Deadline without any liability whatsoever on the part of Channel 4. Nothing in this clause 14.1 shall affect Channel 4's right to reject any Bookings made after the relevant ABD.
- 14.2 **Campaign Booking Cancellation after the ABD:** The Buyer shall be liable to pay the full amount of Channel 4's charges in relation to a Booking where such Booking is cancelled after the Advance Booking Deadline.
- 14.3 **Deferment of Campaigns after ABD:** Channel 4 may, in its absolute discretion, agree to allow a Buyer to defer a Campaign Booking after ABD subject to: (a) the payment of a deferment fee of 15% of the relevant agreed and approved Gross Expenditure for such Booking and (b) confirmation of a deferment date for the Campaign

commencement which must be not more than three months (or as otherwise agreed between the Parties) after the first intended Launch Date.

- 14.4 **Deferment at Channel 4's Discretion:** For the avoidance of doubt, the arrangement set out in clause 14.3 will be agreed by Channel 4 in its absolute discretion and Channel 4 shall not be obliged to give reasons for accepting or declining to accept an application for deferment made by the Buyer. The Buyer acknowledges and agrees that the fees referred to in clauses 14.2 and 14.3 are a genuine pre-estimate of Channel 4's Loss.

15 SUSPENSION OR TERMINATION

- 15.1 The Agreement will continue throughout the Term unless terminated earlier in accordance with the provisions in this clause.

- 15.2 **Suspension or Termination by Channel 4:** Channel 4 may, by notice in writing to the Buyer, suspend or terminate any accepted Campaign, Booking or this Agreement (as applicable) at any time if any of the following takes place:

- 15.2.1 without prejudice to Channel 4's rights as set out in clauses 6 and 7, if the Buyer commits any material breach of any provision of the Agreement (and in the case of a remediable breach, fails to remedy such breach within 10 (ten) Working Days' from receipt of written notice from Channel 4 specifying the breach); or

- 15.2.2 any changes in any Applicable Laws or Channel 4's status as an OFCOM-regulated entity prevent it from continuing or, in Channel 4's reasonable opinion, make it more onerous for Channel 4 to display the Advertisement or otherwise fulfill its obligations under the Agreement; or

- 15.2.3 the activities or conduct of the Buyer or activities relating to its business are such that Channel 4 reasonably considers them to be detrimental to the reputation and/or goodwill and/or brands of Channel 4, or any of its Affiliates, or any of its Media Partners or any of the platform operators in relation to the Platforms; or

- 15.2.4 if the Buyer ceases to carry on business, becomes insolvent, has a receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up; or

- 15.2.5 if there is a material change in the ownership of or a change of control of the Buyer or if the Buyer disposes of all or a substantial part of its assets or undertaking; or

- 15.2.6 in accordance with the provisions of clause 25 (Force Majeure).

- 15.3 **Termination by Channel 4:** If Channel 4 terminates any accepted Booking in accordance with clause 15.2 at any time after ABD, then the Gross Expenditure for all the Advertising booked in relation to the Campaign(s) shall become payable immediately on such termination.

- 15.4 **Termination by the Buyer:** The Buyer may, by notice in writing to Channel 4, suspend or terminate any accepted Campaign, Booking or the Agreement (as applicable) at any time if any of the following takes place:
- 15.4.1 if Channel 4 commits any material breach of any provision of the Agreement (and in the case of a remediable breach, fails to remedy such breach within 10 (ten) Working Days' from receipt of written notice from the Buyer specifying the breach); or
 - 15.4.2 any changes in any Applicable Laws or Channel 4's status as an OFCOM-regulated entity prevent it from continuing to fulfill its obligations under the Agreement; or
 - 15.4.3 if Channel 4 ceases to carry on business, becomes insolvent, has a receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up; or
 - 15.4.4 in accordance with the provisions of clause 25 (Force Majeure).
- 15.5 **Consequences of Termination:** Upon termination, the rights and obligations of the Parties under these Terms and Conditions shall terminate and be of no future effect, except that:
- 15.5.1 any rights or obligations to which either of the Parties may be entitled (including Channel 4's right to be paid any Gross Expenditure due and owing by the Buyer) or be subject before such termination shall remain in full force and effect; and
 - 15.5.2 clauses 1, 2, 9, 12, 13, 16, 22, 24, 32 and 34 shall remain in full force and effect.

16 LIABILITY

- 16.1 **Channel 4's Liability Excluded:** In no event will Channel 4 be liable for:
- 16.1.1 any indirect or consequential loss, claim or damage; nor
 - 16.1.2 any direct or indirect loss of profits, loss of reputation, data, business or opportunity, or other economic loss, in each case whether such claim is based on breach of contract, tort (including negligence) or otherwise, and whether or not the Buyer has been advised of the possibility of such damage.
 - 16.1.3 To the fullest extent permitted by law, all warranties, conditions, terms or other provisions, express or implied and whether imposed by statute or otherwise are excluded.
- 16.2 **Maximum Liability:** Subject to clause 16.1 above the maximum liability that Channel 4 shall have towards the Buyer in respect of any Loss arising out of or in connection with the Agreement in the event that Channel 4 is

held liable for damages or losses suffered by the Buyer shall not exceed the amount paid by the Buyer (less applicable VAT) to Channel 4 in respect of the relevant Campaign in connection with which the liability arises.

- 16.3 Nothing in the Agreement shall operate to exclude or limit the following: a) any Party's liability for death or personal injury caused by its negligence; or b) any Party's liability for any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or c) any Party's liability for fraud; or d) any Party's liability for any other liability which cannot be excluded or limited under Applicable Laws.

17 FINANCE

- 17.1 **Credit Buyer Charges:** Charges payable by a Credit Buyer will be paid not later than the 30th (or 28th in the case of February) day of the month following each respective calendar month in which the Campaign is displayed (the '**Payment Date**'). If a Credit Buyer fails to comply with the provisions of this clause, without prejudice to its other rights and remedies, Channel 4 may at any time thereafter, without any liability to the Buyer, withdraw any credit granted to the Buyer and refuse to display any Advertisement on behalf of the Buyer.
- 17.2 **Pro-Forma Buyer Charges:** Charges payable by a Pro-Forma Buyer will be paid not later than 10 Working Days before the Launch Date of the relevant Campaign. If the Pro-Forma Buyer fails to comply with the provisions of this clause, without prejudice to its other rights and remedies, Channel 4 may at any time thereafter, without any liability to the Buyer, refuse to display any Advertisement for such Buyer.
- 17.3 **Late Payment by Credit Buyer:** Any charges not paid by a Credit Buyer on or before the Payment Date will be subject to an immediate surcharge of 2% of such amount payable immediately. A further surcharge of 1% payable immediately will apply in respect of the principal amount which is still outstanding on the 10th day of each subsequent month.
- 17.4 **Date of Payment:** For the purposes of this clause 17, payment will be deemed to have been made on or before the Payment Date if Channel 4 has received the full amount by BACS, CHAPS or e-payment, in each case prior to 12.30p.m. on the Payment Date (provided that where the 30th (or 28th in the case of February) day of the relevant month falls on a day which is not a Working Day, the next Working Day will be regarded as the Payment Date) or such other date as Channel 4 may notify in writing to the Buyer. Payment by cheque will only be accepted with prior consent of Channel 4 and must be received by 12:30 p.m. on the Payment Date.
- 17.5 **Currency:** All payments to Channel 4 must be made in pounds Sterling unless otherwise agreed by the Parties in advance.

- 17.6 **Invoicing and Frequency:** Invoices will normally be rendered by way of monthly e-invoice by Channel 4, the e-invoices for a month being despatched in normal circumstances not later than 5 (five) Working Days from the end of that month. Failure by Channel 4 to render or dispatch e-invoices at the times referred to above will not affect the obligation of the Buyer to make payment as required in accordance with these Terms and Conditions.
- 17.8 **Invoice Queries:** The Buyer shall notify Channel 4 of any queries in relation to any invoice no later than the relevant Payment Date for that invoice. No invoice may be queried after this date. Notwithstanding any such query, the Credit Buyer will remain liable to pay the full amount of any invoice and all invoiced amounts will remain subject to the provisions of clause 17.1, 17.2 and/or 17.3, as relevant, pending final resolution of the query. If the query is resolved in favour of the Buyer, Channel 4 will cancel any surcharge levied on the relevant amount, cancel any invoice and re-issue an invoice for the revised amount.
- 17.9 **Set Off:** All payments of accounts for the display of one or more Advertisements on any Platform shall be made in full and the Buyer shall have no right to claim any set off or to make any counterclaim in any proceedings brought by Channel 4 in respect of any such payment. Channel 4 is entitled to set off any monies due to it by the Buyer, against any monies due by Channel 4 to the Buyer (or any of such Buyer's Affiliates).
- 17.10 **VAT:** All payments are subject to VAT at the applicable rate.

18 CALCULATION OF BUYER COMMITMENTS

- 18.1 **Gross Expenditure:** The Buyer undertakes to Channel 4 that the amount of Gross Expenditure with Channel 4 in respect of Advertising during the Term is not less than either:
- 18.1.1 the Volume Expenditure set out in the Deal Memorandum; or
 - 18.1.2 the percentage share of Advertising Expenditure (and if agreed, any minimum Gross Expenditure volume guarantee) set out in the Deal Memorandum; or
 - 18.1.3 any other Buyer Commitment(s) set out in the Deal Memorandum.
- 18.2 **Calculation of Buyer Commitment:** In circumstances where a relevant Buyer Commitment has been agreed in the Deal Memorandum, (in particular where this relates to a share of Advertising Expenditure), for the purposes of establishing the Buyer's Gross Expenditure with Channel 4 and the Buyer's total Advertising Expenditure the Parties agree that:
- 18.2.1 the amount of Gross Expenditure with Channel 4 under the Agreement in respect of the Term will only include Gross Expenditure in respect of Campaigns actually delivered by Channel 4 during the Term;
 - 18.2.2 **Declined Gross Expenditure:** the amount of Gross Expenditure with Channel 4 under the Agreement in respect of the Term will not include any Gross Expenditure reasonably declined by Channel 4;

- 18.2.3 any Advertising Expenditure calculation for the Buyer will include Gross Expenditure incurred by or on behalf of the Buyer and all of its Affiliates and its Buying Agencies during the Term save to the extent agreed otherwise in the Deal Memorandum. In this regard, and by way of non-exhaustive examples only, the Parties note that (a) the Buyer may be an Agency Buying Group and the Buyer Commitment may only relate to one of its Buying Agency's Advertising Expenditure (in relation to such Buying Agency's Client Portfolio) or (b) the Buyer may be an Agency Buying Group and the Buyer Commitment relates to the aggregate Gross Expenditure of a number of named Buying Agencies within such Agency Buying Group in relation to all such Buying Agency's Client Portfolio. Where either of these is the case, it will be clearly stipulated in the Deal Memorandum;
- 18.2.4 any Advertising Expenditure calculation for the Buyer will include Gross Expenditure incurred for or on behalf of the Buyer's Client Portfolio during the Term and in relation to all such Clients' Brands. Save where the Deal Memorandum states otherwise, the Buyer agrees that where any of the Buyer's Clients trade directly and as principal with any Sales House in relation to Advertising displayed during the Term (regardless as to whether or not the Agency has assisted the Client in placing a Booking with a Sales House) the Gross Expenditure in relation to such direct trading shall be included within the calculation of the Buyer's Advertising Expenditure;
- 18.2.5 **Non cash and part cash transactions:** the Advertising Expenditure calculation for the Buyer will include all non cash and part cash transactions including Barter and Contra transactions for or on behalf of the Buyer, its Affiliates or any of the Buyer's Clients (whether transacted through the Buyer or a Third Party Representative) and all Gross Expenditure with all Sales Houses in this regard will be valued at the full arm's length market value of the display of the relevant Advertisements on the relevant Platforms;
- 18.2.6 for the avoidance of doubt no Gross Expenditure which would otherwise constitute Advertising Expenditure shall be excluded without the prior written agreement of Channel 4; and
- 18.2.7 **Material Undervalue:** if Channel 4 and/or the Auditors reasonably believe that any Advertising has been purchased by a Buyer from any other Sales House for any of its Clients at a material undervalue (in relation to the CPM if applicable), the Buyer's Advertising Expenditure shall be deemed to include the full arms' length market value of such relevant Advertising (always considering any relevant discounts which may reasonably apply in relation to the value of such Advertising).
- 18.3 **Valuation:** In the event that Channel 4 and the Buyer fail to agree the full arm's length market value of any Advertisements (or any part thereof) for the purposes of clause 18.2 within 21 days of the date of either or both Parties first commencing to seek such an agreement, Channel 4 may request the Auditors to determine such value whose determination will be final and binding upon the Parties.
- 18.4 For the avoidance of doubt, the Buyer Commitment set out in the Deal Memorandum is agreed on the basis of the status quo of the Agency Buying Group (where relevant) and the Clients of the Buyer which exist at the beginning of the Term. To the extent that during the course of the Term the Buyer and/or Agency Buying Group

of which the Buyer is part acquires other Affiliates which results in new Clients, Channel 4 shall have the right but not the obligation to increase the Buyer Commitment proportionately.

18.5 Where the Buyer and Channel 4 agree to a percentage share of Advertising Expenditure commitment:

18.5.1 the Buyer (a) shall supply to Channel 4 (and, if requested by Channel 4, shall supply the same to the Auditors), a full Client Portfolio list on or before the Term commencement date and (b) during the Term, shall notify Channel 4 (and if requested by Channel 4, shall notify the Auditors), promptly of any new Clients which should be added to the Client Portfolio list or Clients which should be removed from such list; and

18.5.2 there shall be no exclusions from the calculation of Advertising Expenditure unless agreed by the Parties in the Deal Memorandum; and

18.5.3 **Exclusions:** if any Exclusions are to be effective they must be specifically detailed and individually listed in the Deal Memorandum.

19 DEAL MEMORANDUM and INSERTION ORDER

19.1 The Deal Memorandum:

19.1.1 will set out specific terms agreed between Channel 4 and the Buyer to be applied during the course of the Term in relation to all Campaign Bookings including, for example, in relation to the Channel 4 Pricing Terms, any relevant qualitative terms and the Buyer Commitment; and

19.1.2 may be split into part A and part B. Where this is the case, part A will set out a number of material terms between the Parties. Part B shall contain a number of specific terms which shall, for the avoidance of any doubt, also be binding on the Parties. For the avoidance of doubt, both part A and part B shall be binding on the Parties and shall be capable of being audited by the Auditors (pursuant to clause 21).

19.2 The Insertion Order will set out specific terms in relation to a Campaign such as in relation to the Platforms, Site Area, Campaign Dates, Launch Dates, End Dates, CPM, Microsites, Copy Rotation Instructions, the size, format and types of Advertising to be displayed.

20 TREATMENT OF VALUE UNDER DELIVERY

20.1 **Under Delivery:** In the event that the Buyer fails to comply with its Buyer Commitment obligations and such failure is evidenced in the Audit Report, Channel 4 reserves its right to require the Buyer to pay to Channel 4 forthwith (together with any applicable VAT) the amount of any Under Delivery (as identified in the Audit Report) (the “**Under Delivery Compensation**”).

- 20.2 In its sole discretion, and without any obligations in this regard, Channel 4 may agree with the Buyer an enhanced Buyer Commitment in a subsequent Term (for example without limitation an increased share of Advertising Expenditure commitment or an agreement to guarantee a level of volume of Gross Expenditure to Channel 4 over and above its share of Advertising Expenditure commitment) in lieu of requiring payment of any Under Delivery as stipulated in clause 20.1 above. For the avoidance of doubt, if the Parties fail to reach agreement on any enhanced Buyer Commitment (for a subsequent Term) within 90 days of the filing of the Audit Report, Channel 4 reserves the right to require payment of the Under Delivery Compensation in accordance with clause 20.1.
- 20.3 **Costs:** Where Under Delivery Compensation is due in accordance with clause 20.1 the Buyer shall also be liable to pay to Channel 4 forthwith the cost of the Audit Report.

21 AUDITING AND REPORTING

- 21.1 **Records:** The Buyer will, and will procure that all of its Buying Agencies, relevant Affiliates, Third Party Representatives (to include Barter/Contra companies), other relevant third parties (including outdoor companies, production companies and other content rights holders) and Clients will, on its behalf, maintain accurate financial, accounting and media records of all Advertising Expenditure and any other expenditure to the extent such expenditure will assist in establishing whether or not the Buyer has complied or will comply with any Buyer Commitment (and any obligation in relation to Under Delivery Compensation) ("**Records**"). For the avoidance of doubt, such accurate financial, accounting and media records include:
- 21.1.1 all information (including all media codes and media streams) contained within the Media Booking System of the Buyer, its Buying Agencies, Affiliates, Third Party Representatives and any other relevant third parties (including outdoor companies, production companies and other content rights holders); and
- 21.1.2 all information, without any limitation, held within the financial, accounts or media departments of the Buyer, its trading divisions, Affiliates, Third Party Representatives, its Clients and any other relevant third parties.
- 21.2 **Audit Rights:** Channel 4 has the right to appoint a firm of auditors (the "**Auditors**") to audit the Records and produce a report (the "**Audit Report**") in order to establish whether or not the Buyer has complied or will comply with the Agreement and, in particular, the Buyer Commitment (and any obligation in relation to Under Delivery Compensation) at any time during the course of the Agreement and after the Agreement has expired. The Buyer will and will procure that the Auditors will have unrestricted access to (a) all Records and (b) all other information which the Auditors consider (in their sole discretion) to be relevant to establishing whether or not the Buyer has complied or will comply with any Buyer Commitment (and any obligation in relation to Under Delivery Compensation) and ensure that (a) and (b) are provided promptly so as to enable the Auditors to audit

the Records and endeavour to produce the Audit Report within 6 months of the end of the Agreement Period (without prejudice to Channel 4's right to have the Auditors carry out an audit at any time during the course of the Agreement and after the Agreement has expired).

- 21.3 **The Buyer to supply the Auditors with information requested:** In addition to procuring unrestricted access to the Records and all other information that the Auditors consider (in their sole discretion) to be relevant for the purpose of this clause 21, the Buyer will provide all such assistance to the Auditors as required by the Auditors including but not limited to supplying the Auditors with any information to support the information extrapolated from the Media Booking Systems or to support any calculations provided by the Buyer as being an accurate representation of the position in respect of its compliance with the Buyer Commitment. Furthermore, the Buyer shall obtain all relevant consents (as required) from all Clients in respect of whom Bookings are made by that Buyer, to ensure that Channel 4 has access to all relevant details about and Records of any such Client for the purposes of an audit carried out pursuant to this clause 21. At Channel 4's reasonable request, the Buyer will provide written confirmation to Channel 4 that such consents have been obtained together with any supporting evidence reasonably required by Channel 4.
- 21.4 **Period of Records subject to Audit:** The Auditors shall have access to all Records only in respect of the Agreement Period, but also for a reasonable period (a) prior to the start of; and (b) following the expiry of such Agreement Period. The Auditors shall establish whether any Gross Expenditure has been appropriately allocated across any Campaign period (where part of but not all of any Campaign period falls within the Agreement Period). In the event that the Auditors determine that there has been a misallocation of Gross Expenditure across any Campaign period (for example, on the basis that there is an artificial reduction in the amount of Gross Expenditure relevant to the Agreement Period), the Auditors will establish any amounts of Gross Expenditure which, had these been appropriately allocated across a Campaign, would have led to the inclusion of additional Gross Expenditure in respect of the Agreement Period over and above that indicated in the Buyer's Records and certified by the Buyer. Any such additional amounts of Gross Expenditure established by the Auditors shall then be included within the calculation of Advertising Expenditure.
- 21.5 **Remedies:** In the event that the terms of the Agreement have not been complied with Channel 4 will be compensated in accordance with clause 20 of these Terms and Conditions and Channel 4 shall have the right to require the Buyer to pay immediately on demand to Channel 4 the whole or any part of the fees and expenses (including VAT) of the Auditors including in connection with any requirement for the Auditors to value Advertising in accordance with clause 18.3. For the avoidance of doubt, the Buyer acknowledges and agrees that Channel 4 is entitled to see all the results of any audit carried out pursuant to this clause 21, including but not limited to: (i) the Auditors' assessment of the Advertising Expenditure, (ii) the Auditors' assessment of the amount of Gross Expenditure with Channel 4 in respect of Advertising during the Term, (iii) Channel 4's actual percentage share of Advertising Expenditure as calculated by the Auditors, (iv) the pass/fail result of the audit and (v) the monetary amount by which the Buyer passed or failed the audit as calculated by the Auditors against the target figure, together with any comments by the Auditors that are required to explain the result.

21.6 **Letter of Representation:** The Buyer shall procure that, within one month of an audit taking place pursuant to this clause 21, the Buyer's most qualified accountant shall provide to Channel 4 a signed representation statement confirming that: (i) Channel 4 and/or the Auditors have been given full and complete access to all relevant information and documentation including but not limited to all information and documentation relating to Advertising Expenditure; and (ii) the figures provided by the Buyer during the audit are a complete and accurate statement of the Buyer's Advertising Expenditure for the relevant period. The Parties agree that failure to sign and return the representation statement is a material breach of this Agreement for the purposes of clause 15.2.1 of these Terms and Conditions.

22. CONFIDENTIALITY

22.1 **Confidential Obligations:** Each Party shall keep confidential all Confidential Information relating to the other Party, its Affiliates and/or any third party (including any Confidential Information of any Media Partner) which is obtained by it as a result of it entering into or performing its obligations under the Agreement. Each Party will only disclose Confidential Information to those of its employees, officers, professional advisors, approved sub-contractors and agents who:

22.1.1 need to know it for the purpose of exercising or performing its rights and obligations under the Agreement;

22.1.2 are informed of the confidential nature of the information divulged; and

22.1.3 agree to act in compliance with the Agreement.

23 CHANGES TO TERMS AND CONDITIONS

Channel 4 reserves the right to change these Terms and Conditions on not less than 4 weeks' notice, and in the event of such change, the terms and conditions applicable shall be those in force at the time of transmission, provided that the Buyer shall (by serving written notice on Channel 4 within two weeks of receiving such notice of change) be entitled to cancel any Booking for any Advertising affected by such change.

24 DATA PROTECTION

24.1 The Buyer warrants, undertakes and represents that it will comply with all applicable Data Protection Rules and will procure that any third party to whom the Buyer discloses Personal Data collected pursuant to the Agreement (or to which it directs Channel 4 to disclose such Personal Data) shall so comply.

24.1 Where the Buyer requests that Channel 4 disclose Personal Data to an Approved Third Party Service Provider for the purpose of validating the number of Impressions (for example by the use of IP addresses to validate geographic location) and fraud prevention (the "**Purpose**"), and Channel 4 consents to such disclosure for the Purpose, the Buyer shall:

- 24.2.1 Enter into a data processing agreement with the Approved Third Party Service Provider which shall:
- (a) specify the Purpose;
 - (b) limit the Approved Third Party Service Provider's processing of such Personal Data to the Purpose;
 - (c) specify that the Personal Data must not be used for any other purpose (such as user profiling);
 - (d) require that the Personal Data be deleted by the Approved Third Party Service Provider within a specified time period once no longer reasonably needed for the Purpose; and
 - (e) comply in all other respects with the requirements of Article 28(3) of GDPR.24.2

24.2 All User Data will be the exclusive property of Channel 4.

24.3 Where an Advertiser wishes to use cookies, web beacons, tracking pixels and/or any other similar technologies for the purpose of collecting data from Users ("**the Data Collection Technology**") in connection with an Advertisement, the Buyer shall notify Channel 4 in advance of booking an Advertisement and provide all information requested by Channel 4 regarding such Data Collection Technology (which may include, for example, completion of a questionnaire or similar document produced by Channel 4).

24.4 If Channel 4 approves the Advertiser's proposed use of such Data Collection Technology in relation to an Advertisement, this shall be explicitly recorded within the Insertion Order and the Buyer agrees to use such Data Collection Technology and all data collected from it solely in the manner disclosed to Channel 4.

24.5 All data collected by the Advertiser through such Data Collection Technology will be Confidential Information owned by Channel 4 and will not be disclosed by the Advertiser or the Buyer (if relevant) to any third party without Channel 4's prior written consent. The Advertiser will not use the Data Collection Technology or any data collected through it for the purpose of tracking or targeting Users when they leave the relevant Platforms or combine such data with information collected from other sources without Channel 4's prior written consent.

24.6 The Buyer represents, warrants and undertakes that it will (i) ensure that it complies with Channel 4's privacy policy in force at the time and/or any other Channel 4 policies relating to the use of Data Collection Technology, and (ii) at all times comply with any applicable legal and regulatory requirements including, without limitation, the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (and/or any superseding or amending legislation) in respect of the use of Data Collection Technology or any data collected through it and, for the avoidance of doubt, will not use so-called "flash cookies" or similar that act as an alternative to browser cookies and are unaffected by browser privacy settings.

25 FORCE MAJEURE

- 25.1 **Termination for Force Majeure:** Notwithstanding the provisions of clause 25.2, if Channel 4's Advertisement activities are restricted, curtailed or prevented by any law, act, matter or thing beyond its reasonable control ("**Force Majeure Event**"), Channel 4 may, notwithstanding any other provision of the Agreement terminate any agreement between Channel 4 and the Buyer without prejudice to Channel 4's right to be paid by the Buyer any monies due and owing by the Buyer to Channel 4 at the time of such termination.
- 25.2 **Notification and Relief:** Without affecting the scope or effect of clause 25.1, if either Party (the "**Affected Party**") is prevented or delayed in whole or in part from complying with its obligations under the Agreement by reason of a Force Majeure Event, it will notify the other Party, giving details thereof. The Affected Party will be relieved of its obligations under these Terms and Conditions to the extent that its performance is hindered or delayed by such Force Majeure Event, although the Affected Party shall be required to use all reasonable endeavours to minimise the effect of the Force Majeure Event on the performance of its obligations. If the Force Majeure Event continues for a period of more than six (6) months, the other Party shall be entitled to terminate the affected Booking by notice in writing to the Affected Party.

26 ASSIGNMENT

- 26.1 **Buyer:** The Buyer may not re-sell, assign, dispose of, hold on trust or part with the benefit or burden of any part of the Agreement without the prior written consent of Channel 4. For the avoidance of doubt, if Channel 4 grants such consent the Buyer shall nonetheless remain responsible for the performance of its obligations under the Agreement.
- 26.2 **Channel 4:** Channel 4 shall be free to assign, sub-contract and otherwise deal freely with the Agreement including all or part of its rights and/or obligations under the Agreement to any third party without the other Party's consent by providing written notice to the Buyer.

27 NO PARTNERSHIP OR AGENCY RELATIONSHIP

Nothing in this Agreement will create, or be deemed to create, a partnership, or the relationship of principal and agent, between the Buyer and Channel 4. For the avoidance of doubt this Agreement does not impose any obligations on any Affiliate of Channel 4 or on any Media Partner.

28 ENTIRE AGREEMENT

This Agreement together with any documents referred to in it contains to the fullest extent permitted by law the entire agreement between the Parties with respect to its subject matter and supersedes all previous statements made by either Party and all previous agreements in relation thereto.

29 NO WAIVER

No failure or delay by any Party in exercising any of its rights under this Agreement will be deemed to be a waiver of those rights and no waiver of a breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of the same or any other provision.

30 SEVERABILITY

If any provision of the Agreement is held to be illegal, invalid, or otherwise unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the Parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from the Agreement, while the remainder of the Agreement will continue in full force and effect.

31 RIGHTS CUMULATIVE

The rights, powers, privileges and remedies provided in the Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under other provisions of the Agreement, by law or otherwise.

32 RIGHTS OF THIRD PARTIES

Except as otherwise provided in the Agreement, a person who is not a Party to the Agreement may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999, except that any Affiliate of Channel 4 shall be entitled to enforce any provision of the Agreement as if the Affiliate was Channel 4 under the Agreement. Notwithstanding the foregoing, Channel 4 may enforce this Agreement as trustee for the benefit of its Media Partners.

33 NOTICES

33.1 Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next Working Day delivery service providing proof of postage or proof of delivery, at its registered office or (in any other case) its principal place of business and marked for the attention of the Channel 4 Director of Sales with a copy to the Director of Commercial Affairs.

33.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or otherwise at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.

33.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

34 GOVERNING LAW

These Terms and Conditions and the Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with its subject matter or formation shall be governed by and construed in accordance with the law of England and the Parties submit to the exclusive jurisdiction of the English courts.