

## ITV TERMS AND CONDITIONS

### 1. PARTIES, STRUCTURE AND INTERPRETATION

1.1 These terms and conditions ("**Terms**") are entered into between the Company as identified on the corresponding insertion order ("**Order**") represented by ITV Mobile as its agent, and the Buyer. These Terms and the Order together constitute the agreement made between the Company and the Buyer (the "**Agreement**").

1.2 In this Agreement, words and expressions shall have their ordinary meaning unless otherwise defined herein, and unless the context requires otherwise:

- (a) references to clauses are references to the clauses of these Terms unless otherwise stated;
- (b) references to any statute or statutory provision or regulatory code of practice shall include reference to any statute or statutory provision or regulatory code of practice which amends, extends, consolidates or replaces the same and shall include any directions, orders, regulatory codes of practice, instruments or other subordinate legislation made under any relevant statute or statutory provision;
- (c) references to a "person" shall include any individual, company, corporation, firm partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality;
- (d) references importing a particular gender include all genders and references importing the singular include the plural and vice versa;
- (e) headings and sub-headings are inserted for convenience only and shall be ignored in construing this Agreement; and
- (f) any reference to a "party" or "parties" shall unless otherwise stated mean a party or the parties to this Agreement.

### 2. PLACEMENT OF ADVERTISEMENT CREATIVES

The Buyer agrees (unless otherwise specified in an Order) that, subject to clause 6 below, the only obligation of the Company is to display the advertisement creatives (the "**Advertisement Creatives**") in accordance with the booking information and any creative information as set out in the relevant Order.

### 3. FEE

In consideration for the Company displaying the Advertisement Creative, the Buyer shall pay the fee set out on the relevant Order (the "**Fee**").

### 4. CONTENT OF ADVERTISEMENT CREATIVES

4.1 The Buyer represents and warrants to the Company that:

- (a) all Advertisement Creatives comply with all applicable laws and the codes of practice issued by the Advertising Standards Authority in respect of electronic and mobile advertising and any other relevant industry codes of practice (whether or not the same have force of law);
- (b) the Buyer holds the necessary rights (including, without limitation, intellectual property rights) to permit the use, reproduction, display, transmission and distribution ("**Use**") of the Advertisement Creatives and all content therein

by the Company for the purpose of this Agreement;

- (c) the Use will not cause the Company to breach any statutory or regulatory duty (and, in particular but without limitation, that the Advertisement Creatives do not constitute a financial promotion within the meaning of the UK Financial Services and Markets Act 2000 (the "**Act**"), as amended, or that, if they do, it is permitted under section 21 of the Act) or any criminal laws or any rights of any third parties (including, without limitation, any rights of intellectual property or other proprietary or property right), and that the Advertisement Creative will not constitute false or misleading advertising, constitute unfair competition, be defamatory or an invasion of privacy or invasion of similar rights, be a violation of any anti-discrimination laws or regulations, or otherwise breach any other right of any person or entity; and
- (d) The Buyer warrants that the Advertisement Creatives or other material submitted by the Buyer will not contain viruses, bugs, worms, Trojan horses, harmful code 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 the Company's mobile site, the Company's computer systems or any third party's computer system.

4.2 The Buyer shall indemnify and keep indemnified the Company and/or ITV Mobile and shall hold the Company and/or ITV Mobile harmless, on demand, from any and all liability, loss, damages, claims, or causes of action, including, without limitation, reasonable legal fees and expenses that may be incurred by the Company and/or ITV Mobile (as the case may be), arising out of or related to the Buyer's breach of any of the terms of this Agreement including, without limitation, the foregoing representations and warranties.

### 5. DELIVERY OF ADVERTISEMENT CREATIVES

5.1 All Advertisement Creatives shall be sent to ITV Mobile's Sales Contact (as specified in the relevant Order) as follows:

- (a) all banner artwork must be received at least 5 (five) working days prior to the campaign start date (as specified on the Order); and
- (b) all non-banner artwork and video advertising must be received at least 7 (seven) working days prior to the campaign start date (as specified on the Order).

5.2 The Company agrees where possible, and where specifically instructed by the Buyer, to change Advertisement Creatives on an advertising campaign a maximum of once per week, subject to:

- (a) Notification of changes to banner artwork being received by ITV Mobile's Sales Contact at least 3 (three) working days prior to the desired change date;
- (b) notification of changes to non-banner artwork being received by ITV Mobile's Sales Contact at least 5 (five) working days prior to the desired change date; and
- (c) notification of changes to video advertising being received by ITV Mobile's Sales Contact

at least 7 (seven) working days prior to the desired change date.

## 6. REJECTION OF ADVERTISEMENT CREATIVES

6.1 Without in any way limiting the Buyer's liability, the Company reserves the right to reject any Advertisement Creatives which, in the Company's opinion, are not compliant with one or more applicable laws or regulations, relevant codes of practice issued by the Advertising Standards Authority or other industry codes of practice applicable to it (whether or not the same have force of law), or which would cause the Company to breach any statutory or regulatory duty, or to infringe a third party's intellectual property rights or other rights.

6.2 In addition to clause 6.1 above, the Company shall have the right, at any time, to remove any of the Buyer's advertising once live (whether under this Order or otherwise) if the Company determines, in its sole discretion, that the Advertisement Creatives or any portion thereof:

(a) breaches the Company's then applicable editorial policy or any laws or regulations, relevant codes of practice issued by the Advertising Standards Authority or other industry code of practice applicable to the Company (whether or not the same have force of law), or would or might cause the Company to breach any statutory or regulatory duty, or to infringe or possibly infringe a third party's intellectual property rights or other rights; and/or

(b) is otherwise reasonably objectionable to the Company,

in which event the Company shall at its discretion refund to the Buyer a pro rata portion of the costs which the Buyer has paid to and which have been received by ITV Mobile for display of the Advertisement Creatives.

## 7. REPORTING OF ADVERTISEMENT CREATIVES AND UNDER-DELIVERY

7.1 Advertising performance reports concerning the Advertisement Creatives are generated by the Company's preferred third party advertising delivery system and shall be provided to the Buyer at the end of the relevant campaign period. The figures in such reports shall be the official definitive measure of the Company's performance and the billing of costs will be based, where applicable, on these figures.

7.2 If the Buyer has paid and at the end of a campaign a discrepancy occurs between the number of booked creative types (as set out on the Order) and actual delivery by the Company, through the under-delivery of advertising due to a default by the Company of its obligations under this Agreement, a credit will only be given to the Buyer when such under-delivery is in excess of 5% (five percent) of the Buyer's total booked creative types.

## 8. TERM AND RENEWAL

The term of the Agreement shall commence when the Company or ITV Mobile is in possession of an Order signed by it and the Buyer (and any signatures which are sent and/or received by facsimile shall be treated as originals) and this Agreement shall remain in force until the finish date set out in the Order unless terminated earlier in accordance with clause 9 or clause 13.10. Except as expressly set forth in the Order, any renewal of the Order, acceptance of any additional orders, and pricing for such renewal or

additional orders shall be at the Company's sole discretion.

## 9. TERMINATION AND EFFECT OF TERMINATION

9.1 Without prejudice to its other rights and remedies, the Company may terminate this Agreement and/or any Order in whole or in part forthwith at any time by giving notice in writing to the Buyer if:

(a) the Buyer commits a breach of any term of this Agreement and, provided that such breach is capable of remedy, fails to remedy the same within 10 (ten) working days after receipt of a written notice from the Company giving full particulars of the breach and requiring it to be remedied; or

(b) a petition is presented, or a meeting convened for the purpose of considering a resolution for the making of an administration order, the winding-up, bankruptcy or dissolution of either (i) the Buyer; or (ii) if the Buyer is a media buying agency acting on behalf of an advertiser client (the "Advertiser"), the Advertiser; or

(c) the Buyer stops payment or ceases or threatens to cease to carry on its business; or

(d) the Buyer or the Advertiser is or shall become unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or

(e) the Buyer or the Advertiser compounds with or enters into a scheme of arrangement for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) or if a receiver is appointed over the Buyer or the Advertiser 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 Buyer or the Advertiser.

9.2 Without prejudice to its other rights and remedies, the Company may terminate this Agreement and/or any Order in whole or in part forthwith at any time by giving notice in writing to the Buyer if the Buyer fails to pay any sums due to the Company under clause 3.

9.3 Termination or expiry of this Agreement and or any Order in whole or in part shall not affect any rights of any party in respect of any antecedent breach of this Agreement by any other party, nor shall it affect any accrued rights or liabilities (or the coming into force of any accrued rights or liabilities) of any party.

9.4 Once an Order is signed by both parties, the Buyer cannot terminate it or this Agreement for any reason unless expressly provided for in the Order or unless agreed to in writing by the Company, at its exclusive option.

9.5 Upon termination of this Agreement for any reason:

(a) the Buyer shall remain liable for any amount due under an Order for Advertisement Creatives displayed by the Company and such an obligation to pay shall survive termination of this Agreement; and

(b) at the request of the Company and/or ITV Mobile, the Buyer shall immediately return to ITV Mobile and/or the Company or permit ITV Mobile and/or the Company to collect all items in the possession of the Buyer which are the property of ITV Mobile and/or the Company (including the Company's statistics provided under clause 7 of these Terms) and the Buyer shall immediately cease to use the intellectual property rights of the Company and ITV Mobile.

9.6 The provisions of those clauses intended to have continuing effect (including but not limited to clauses 4, 6.2, 9, 10, 11, 12 and 13) shall continue in full force

and effect following the termination for any reason or expiry of this Agreement.

#### 10. PAYMENT AND LATE PAYMENT/DELIVERY CHARGES

10.1 Save as set out in Clause 10.2, all sums due under an Order or this Agreement shall be invoiced by the Company, or ITV Mobile on its behalf, at the start date (as specified on the Order), or as otherwise specified on the Order, and the Buyer shall pay such amounts in full within 10 (ten) days of the relevant invoice date.

10.2 Where the Buyer is a first time buyer of the Company's mobile advertising inventory; the Company, or ITV Mobile on its behalf, shall be entitled, in their sole discretion, to invoice the Buyer for the Fee before the start date of the relevant campaign and not deliver the Advertisement Creatives until payment of the Fee is made by the Buyer in full.

10.3 If the Buyer fails to make any payment when due the Buyer shall be liable for any interest on any sum outstanding from the date of the invoice until settlement at a rate of 3% over Barclays Bank PLC standard variable interest rate from time to time to run from day to day (both before and after any judgment) from the due date until payment is received and for all expenses (including any administrative and/or legal fees) incurred by ITV Mobile in collecting such amounts.

10.4 Without prejudice to clause 6.2 of these Terms, the Buyer understands that once this Agreement is executed there shall be no refunds or suspension of payments even if the Buyer wishes to discontinue display of the Advertisement Creatives prior to expiration of the Term (unless the Company agrees otherwise, at its sole discretion).

10.5 Where Advertisement Creatives are received by the Company or ITV Mobile later than midday on the day prior to the start date (as specified on the Order), the number of impressions delivered or to be delivered (each where applicable, as set out in the Order) will be reduced on a pro-rata basis for each day or part day that the Advertisement Creatives are late with no change to the costs payable by the Buyer as set out in the Order.

#### 11. CANCELLATION AND CANCELLATION CHARGES

11.1 The Company, or ITV Mobile on its behalf, in their absolute discretion, may consider requests in writing from a Buyer to cancel a booked campaign subject to the following terms:

- (a) the Buyer will pay 50% of the total value of any campaign which the Buyer cancels between 2 and 3 weeks prior to the intended start date of the campaign;
- (b) the Buyer will pay 75% of the total value of any campaign which the Buyer cancels between 1 and 2 weeks prior to the intended start date of the campaign; and
- (c) the Buyer will pay 100% of the total value of any campaign which the Buyer cancels less than 1 week prior to the intended start date of the campaign.

#### 12. LIMITATION OF LIABILITY

12.1 Subject to clause 12.3, no party shall be liable to any other, whether in tort, contract or otherwise, for any anticipated loss of profit, 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 it arises as a direct and natural result of a breach of this Agreement, was not at the time this Agreement was made, a reasonably foreseeable result of such breach.

12.2 Subject to clause 12.3, ITV Mobile and the Company's combined maximum aggregate liability for any loss or damage in respect of any claims arising out of this Agreement whether in contract, tort or otherwise shall not exceed the total amount paid to and received in clear funds by ITV Mobile under this Agreement.

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

12.4 Except as expressly set out in this Agreement, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the obligations of the parties under this Agreement are excluded insofar as it is possible to do in law. In particular, the Company and/or ITV Mobile make no representations, and expressly disclaim all warranties, terms and/or conditions regarding the Company's services or any portion thereof, including any implied warranty of satisfactory quality or fitness for a particular purpose and implied warranties arising from course of dealing or performance. Without limiting the generality of this clause, the Company and/or ITV Mobile specifically disclaim any warranty regarding:

- (a) the number of persons who will access and/or view the Advertisement Creatives; and
- (b) any benefit the Buyer might obtain or be seeking to obtain from requesting the Company to display and/or to arrange the display of the Advertisement Creatives.

#### 13. MISCELLANEOUS PROVISIONS

13.1 Each party to this Agreement is duly authorised to enter into, and to perform its obligations under, this Agreement.

13.2 In the event of any inconsistency between an Order and these Terms, these Terms will prevail (except where a particular provision of these Terms expressly allows for control by the Order).

13.3 No party shall either during or after the expiry of this Agreement, duplicate, disclose, permit the duplication or disclosure of any confidential information (including any of the Company's statistics that have been provided to the Buyer under clause 7 of these Terms), nor use the same in any way other than to perform its obligations under this Agreement unless such duplication, use or disclosure is specifically authorised by the other party in writing, or it is required to disclose such information by law, save that ITV Mobile and the Company may disclose, permit the duplication or disclosure of confidential information to any company in the ITV group.

13.4 The Company reserves the right to refuse to carry links to WAP sites that disable the "Back" facility.

13.5 This Agreement and the Order to which it relates (together with any other documents referred to herein) contains the entire agreement and understanding of the parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of the Order.

13.6 Subject to clause 13.7 below, each of the parties acknowledges and agrees that:

- 13.6.1 it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement, representation, warranty, forecast or other information (in any case whether oral, written, express or implied) made, given or agreed to by any person (whether negligently or innocently and whether or not made by a party to this Agreement) which is not expressly contained or referred to in this Agreement (a "**Representation**");
- 13.6.2 it shall have no remedy (including any rights to damages or rescission in an action for misrepresentation) for any Representation which was, is, or becomes false or misleading; and
- 13.6.3 save as set out in clause 4.2 above, and without prejudice to the parties' rights of termination under clauses 9.1 and 9.2 above, the only remedy available in respect of any misleading or false warranty or other term contained in this Agreement shall be a claim for breach of contract under this Agreement.
- 13.7 Nothing in this Agreement shall exclude or restrict a party's rights, remedies or liability under the law governing this Agreement in respect of any fraud.
- 13.8 No variation, supplement, deletion or replacement of or from this Agreement or any of its terms shall be effective unless made in writing and signed by or on behalf of each party with the intention to vary, supplement, delete or replace being clearly expressed.
- 13.9 No waiver by ITV Mobile or the Company of any breach of the Buyer's obligations shall constitute a waiver of any other prior or subsequent breach and ITV Mobile and the Company shall not be affected by any delay, failure or omission to enforce or express forbearance granted in respect of any obligation of the Buyer.
- 13.10 No party shall be liable in any way for any losses arising directly or indirectly from any failure or delay in performing any of its obligations under this Agreement caused by any force majeure event provided that such force majeure event is notified promptly to the other party. If either the Buyer or the Company and/or ITV Mobile (the "**Affected Party**") are unable to perform any of their obligations under this Agreement as a result of the force majeure event for more than 30 business days then any of the other parties may terminate this Agreement at any time and without further liability, upon giving written notice to the Affected Party. The occurrence of an event associated with economic and monetary union in the European Community will not be treated as a force majeure event for the purposes of this Agreement.
- 13.11 If the whole or any part of any provision of this Agreement is or becomes invalid, void or unenforceable for any reason, the same shall to the extent required be severed from this Agreement and rendered ineffective so far as is possible without modifying the remaining provisions of the Agreement and shall in no way affect the validity or enforceability of any other provisions.
- 13.12 Nothing in this Agreement shall constitute a partnership or joint venture between the parties or constitute either the Company and/or ITV Mobile or the Buyer as agent of the other for any purpose whatever and neither shall have authority or power to bind the other or to contract in the name of or create liability against the other in any way or for any purpose save as expressly authorised in writing by the other from time to time. The relationship between the parties is that of independent contractors.
- 13.13 For the purposes of this clause, the authorised addresses of the parties shall be as set out in the Order or such other address (and details) as each party may notify to the others in writing from time to time in accordance with the requirements of this clause. Any notice or other communication to be given under this Agreement shall be in writing and shall be deemed to have been duly served on, given to or made in relation to a party if it is left at the authorised address of that party, posted by pre-paid first class post addressed to that party at such address and shall if: (i) personally delivered, be deemed to have been received at the time of delivery; or (ii) posted to an inland address in the United Kingdom, be deemed to have been received on the second business day after the date of posting; PROVIDED THAT where, in the case of delivery by hand, delivery occurs after 5.00pm on a business day or on a day which is not a business day, receipt shall be deemed to occur at 9.30am on the next following business day. If for the Company and/or ITV Mobile, any notice must be addressed to Director of Legal Affairs, ITV Brand and Commercial.
- 13.14 No party may assign or sub-contract any of its rights or obligations under this Agreement without the prior written consent of the other parties, except that ITV Mobile and/or the Company shall be entitled, upon giving notice to the Buyer, to sub-contract, assign or otherwise transfer this Agreement (including any benefit or obligation under it) to any other company within the ITV group.
- 13.15 No person other than a party to this Agreement may enforce this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999, save that ITV Mobile shall have the right to enforce clauses 4.2, 9.2, 9.3, 9.5, 10, 11, 12 and 13 of this Agreement.
- 13.16 This Agreement 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.
- 13.17 All sums payable under this Agreement are exclusive of any value added tax that may be payable by either party. Invoices will include value added tax at the relevant rate on the date of invoicing.
- 13.18 The Agreement may be executed in counterpart but the counterparts shall together constitute one and the same instrument.
- 13.19 Each party shall be responsible for paying its own costs and expenses incurred in the negotiation, preparation and execution of this Agreement.
- 13.20 Rights and remedies of ITV Mobile and the Company under this Agreement are independent, cumulative and without prejudice to their rights under the law.