

VOD ADVERTISING AND ONLINE TERMS AND CONDITIONS

1. Parties, structure and Interpretation

- 1.1 These terms and conditions (“**Terms**”) are entered into between (i) the Company, as identified on the corresponding order confirmation, insertion order, “commercial-terms-confirmation” section of a Buyer’s online booking system, booking form incorporating online elements or booking documentation issued by, or on behalf of, the Company (“**Order**”), represented by ITV Broadcasting Limited (“**ITV**”) as its agent; and (ii) the Buyer. These Terms and the Order together constitute the agreement made between the Company and the Buyer (the “**Agreement**”). If an Order does not specify which entity is the Company: where it relates to www.itv.com, the Company shall be ITV Consumer Limited, The London Television Centre, Upper Ground, London, SE1 9LT; where it relates to www.itv.com/daybreak or www.itv.com/Lorraine, the Company shall be ITV Breakfast Limited, The London Television Centre, Upper Ground, London, SE1 9LT and where it relates to www.itvwild.com, the company shall be ITV Studios Limited, The London Television Centre, Upper Ground, London, SE1 9LT. For the avoidance of doubt, where the Order is a booking form incorporating online elements, the Agreement shall be comprised of sections 1, 5, 6, 7b, 7c and 7d of that booking form and these Terms.
- 1.2 In the event that more than one company is identified as the Company on one Order, a separate, severable Agreement shall be formed between the Buyer and each respective Company.
- 1.3 In this Agreement, words and expressions shall have their ordinary meaning unless otherwise defined herein, and unless the context requires otherwise:
- (a) references to clauses are references to the clauses of these Terms 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) the words include, including and in particular shall not be interpreted as limiting the generality of any foregoing words;
 - (f) headings and sub-headings are inserted for convenience only and shall be ignored in construing this Agreement;
- and

(g) any reference to a “party” or “parties” shall unless otherwise stated mean a party or the parties to this Agreement.

1.4 For the purposes of this Agreement; **‘Display Advertising’** means the advertising formats commonly known in the industry as display advertising including, but not limited to, leaderboards and skyscrapers; and **‘VOD Advertising’** means moving picture advertising that can be placed (without limitation) immediately before, after or during video content, on any platform.

1.5 For ease of reference, these Terms contain sections that are specifically relevant to (i) Display Advertising; (ii) VOD Advertising; and (iii) services provided by or on behalf of the Digital Solutions team (or any successor or replacement team), who form part of ITV (the **“Digital Solutions Services”**). The Buyer shall refer to the relevant Order in order to determine which of these sections apply. Any sections and clauses that are not marked as referring specifically to one of the aforementioned services will apply to all elements that comprise the Order.

2. **Placement of Advertisement Creative**

In relation to Display Advertising and/or VOD Advertising, (collectively, the **“Advertisement Creative”**), the Buyer agrees that, subject to the Buyer meeting its obligations with regards to delivery of the Advertisement Creative, the only obligation of the Company is to display the Advertisement Creative 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 and/or providing the Digital Solutions Services, as specified on the Order, the Buyer shall pay the fee set out on the relevant Order (the **“Fee”**).

4. **Content of (i) Advertisement Creative; and (ii) any assets provided by the Buyer in relation to the Digital Solutions Services**

4.1 The Buyer represents and warrants to the Company that:

(a) all Advertisement Creative and any and all content, materials, information and/or assets provided by or on behalf of the Buyer in relation to the Digital Solutions Services (the **“Assets”**) comply with all applicable laws and the codes of practice issued by the Advertising Standards Authority in respect of electronic and online 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 Creative and the Assets and all content therein by the Company for the purpose of this Agreement;
- (c) the Use will not cause the Company to breach any statutory or regulatory duty (and, in particular but without limitation, that the Advertisement Creative does 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;
- (d) the Advertisement Creative, the Assets and/or other material submitted by the Buyer will not contain viruses, bugs, worms, trojan horses, harmful codes or any other form of defect or contaminant which could cause temporary or permanent damage to or will otherwise impair or harm or cause the malfunction of the software or hardware of the Company’s websites, the Company’s computer systems or any third party’s computer system; and
- (e) it shall not collect, retain or use any data, in the form of cookies or otherwise, in relation to the consumers that visit the Company’s websites, whether that data identifies the relevant consumer or not.

4.2 The Buyer shall indemnify and keep indemnified the Company and/or ITV and shall hold the Company and/or ITV 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 (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 representations and warranties.

4.3 All Advertisement Creative shall be sent to the email address interactivetraffic@itv.com, or to suzie.bedo@itv.com if for www.itv.com/daybreak or www.itv.com/lorraine, with the sales contact at ITV and/or the Company cc’ed on such email.

4.4 The Buyer accepts full responsibility for ensuring that the correct Advertisement Creative copy is sent to ITV. In the event that the Buyer sends the wrong copy to ITV resulting in ITV serving the incorrect copy, the Buyer’s obligation to pay the amount specified in the Order shall continue unabated.

(i) The following Clause 5 relates to Display Advertising

5. Delivery of Advertisement Creative – Display Advertising

- 5.1 All Display Advertising must be received by the Company at least 2 (two) working days prior to the campaign start date (as specified on the Order) (the “**Display Advertising Due Date**”).
- 5.2 The Company agrees where possible, and where specifically instructed by the Buyer, to change Display Advertising creative on an advertising campaign a maximum of once per week, subject to notification of changes being received by the Company at least 3 (three) working days prior to the desired change date.

(ii) The following Clauses 6 and 7 relate to VOD Advertising

6. Delivery of Advertisement Creative – VOD Advertising

- 6.1 All VOD Advertising must be received by the Company at least 5 (five) working days prior to the campaign start date (as specified on the Order) (the “**VOD Advertising Due Date**”).
- 6.2 All VOD Advertising must be supplied in either IMX 50 or MP4 format and adhere to ITV’s online specifications, the current version of which is available via the following link:
<http://www.itvmedia.co.uk/brand-activation/online/creative-specs-video> or on request.
- 6.3 The Company agrees where possible, and where specifically instructed by the Buyer, to change VOD Advertising creative on an advertising campaign a maximum of once per week, subject to notification of changes being received by the Company at least 5 (five) working days prior to the desired change date.

7. Advance Booking Deadline

- 7.1 The Buyer shall book VOD Advertising in advance of the ABD, as defined below. The Company reserves the right, in its sole discretion, to apply a late booking fee if a booking of VOD Advertising is made after the ABD and accepted by the Company, of such sum as the Company may at its reasonable discretion determine or as may have otherwise been agreed by the parties. For the purposes of this Agreement, ABD means the relevant date from the list of dates published by ITV Brand and Commercial from time to time on its website at www.itvmedia.co.uk by which the Buyer is required to make its booking (or such other deadline as is agreed between the parties).

(iii) The following clauses 8 to 12 relate to Digital Solutions Services

8 Approval of Designs

- 8.1 ITV will deliver to Buyer for Buyer’s approval any designs created by and/or on behalf of ITV as part of any Digital Solutions Services at such stages as determined by ITV in its sole discretion.

- 8.2 Subject to clause 8.3, following delivery of any such designs, Buyer shall promptly notify ITV of any reasonable amendments it proposes to any such designs and ITV shall make any such amendments if reasonably practicable and shall re-deliver such designs for Buyer's approval.
- 8.3 The submission and amendment process set out in clause 8.2 above may be repeated but Buyer acknowledges and agrees that ITV shall be under no obligation to amend and re-deliver any designs after they have been submitted for the third time following such process.
- 8.4 Buyer shall provide such materials, resource, assistance and information to ITV as ITV may reasonably request in order to enable ITV to provide the Digital Solutions Services and shall have due consideration for any proposed launch date. In the event that the Buyer delays any materials, information, resource or assistance requested by ITV then the Buyer agrees and acknowledges that ITV may delay the launch date and/or increase the Fees on a pro rata basis.

9 Interactivity

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

10 Data Capture

- 10.1 ITV may capture, and transfer to the Buyer, end-user data (including personal data) in data fields as agreed between the parties ("**User Data**") to the extent necessary to perform the Digital Solutions Services and subject always to compliance with applicable data protection and privacy legislation, regulations, guidance and codes of practice. For the avoidance of doubt, nothing in this Agreement shall restrict ITV's ability to use any User Data for its own purposes unless expressly agreed otherwise and ITV shall act as the data controller of the User Data for those purposes.
- 10.2 So that there is no doubt, the Buyer shall act as the data controller in respect of the Buyer's use of any User Data transferred to it by ITV. The Buyer warrants that:
- (a) it shall only process User Data in accordance with all applicable data protection and privacy legislation, regulations, guidance and codes of practice;
 - (b) it has and shall have at all material times all appropriate technical and organisational measures in place against unauthorised or unlawful processing of User Data and against accidental loss or destruction of, or damage to, User Data and that it has taken, and shall take at all material times all reasonable steps to ensure the reliability of any staff which may have access to User Data;
 - (c) where ITV has incorporated "opt-in" or consent wording at the point of data capture ("**Opt-In**"), it shall not process the User Data beyond the scope of the Opt-In. ITV shall be entitled to make such amendments to any Opt-In provided by the Buyer as it deems appropriate; and

(d) it shall not transfer any User Data to: (1) any country or territory outside the European Economic Area; or (2) any third party (including any data processor or other contractor) other than, in each case, with the prior consent of the data subject (including without limitation by the Opt-In) and/or unless permitted under applicable laws and regulations.

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

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

11. Availability of Digital Solutions Services

11.1 Digital Solutions Services shall be provided on an 'as-is' and 'as available' basis and ITV does not guarantee that the Digital Solutions Services will be free from errors or omissions nor that they will be available uninterrupted and in a fully operating condition nor that any information obtained by the Buyer as a result of using the Digital Solutions Services will be accurate or reliable. The Digital Solutions Services may be suspended temporarily and without notice in the case of system failure, maintenance or repair or for reasons reasonably beyond ITV's control. No conditions, warranties or other terms (including any implied terms as to satisfactory quality, fitness for purpose or conformance with description) apply to the Digital Solutions Services except to the extent that they are expressly set out in these Terms.

12. Case Studies

12.1 The Buyer agrees that ITV may compile one or more case studies based upon the Digital Solutions Service provided pursuant to this Agreement and the results of the same. The Buyer agrees that the case study may be used by ITV on any platform and in any manner, provided that ITV shows the results to the Buyer in advance of publishing the case study and/or the results.

13. Rejection of Advertisement Creative

13.1 Without in any way limiting the Buyer's liability, the Company and/or ITV reserves the right to reject or (at ITV or the Company's sole discretion) request/require amendments to any Advertisement Creative or Assets which, in ITV and/or the Company's sole 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 or may cause the Company and/or ITV to breach any statutory or regulatory duty, or to infringe a third party's intellectual property rights or other rights.

13.2 In addition to clause 13.1 above, the Company shall have the right, at any time, to remove any of the Buyer's advertising or the Assets once live (whether under this Order or otherwise) if the Company determines, in its sole discretion, that the Advertisement Creative or the Assets or any portion thereof:

(a) breaches the Company's then applicable editorial policy; and/or

(b) is otherwise reasonably objectionable to the Company

in which event the Company may, 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 as agent for the Company for display of the Advertisement Creative or for provision of the relevant Digital Solutions Services.

14. Serving, Reporting and Under-Delivery of Advertisement Creative

14.1 Advertising performance reports concerning the Advertisement Creative are generated by the Company's preferred third party advertising delivery system and shall be provided to each 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 in respect of the delivery of Advertisement Creative.

14.2 In the event that a campaign will last more than one month, upon reasonable request, and at the Buyer's cost, the Company, or ITV on its behalf, shall provide monthly website traffic reports to the Buyer.

14.3 No reach or frequency capping shall be applied to particular Advertisement Creative within a campaign unless otherwise agreed between the Buyer and the Company at the time of booking, and set out in the relevant Order. The campaign shall be delivered on an even-handed basis when compared to the delivery of all Advertisement Creative across the relevant site.

14.4 If a Buyer provides ad tags to ITV in order for ITV to be able to serve Advertisement Creative from a third party's server and the ad tags are not implemented correctly or the wrong advertisement copy is served, and the same is not as a result of an error of the Company or ITV; such event shall not constitute a breach of the Agreement and the impression that is consequently served shall count towards the target number of impressions set out in the relevant Order.

14.5 If a campaign is set up so that the Buyer's Advertising Creative clicks through to another site, and that site is not correctly configured for the platform on which it is being accessed and, consequently, it cannot be reached, ITV shall have the right to disable the click through facility and the same shall not constitute a breach of the Agreement by ITV or the Company. For the avoidance of doubt, impressions served shall count towards the target number of impressions set out in the relevant Order regardless of whether the consumer is able to click through to the intended site.

- 14.6 The Company shall invoice the Buyer for the booked number of Advertisement Creative at the end of the campaign period or, if the campaign period is longer than one month, on a monthly basis. The Buyer shall provide payment thirty (30) working days from receipt of invoice.
- 14.7 If during the term of a campaign, the Company discovers that there will be an under delivery of the agreed number of impressions, as set out in the Order, and the same is not as a result of any error or omission by or on behalf of the Buyer; the Company will attempt to reallocate the relevant impressions in like for like placements across the relevant website or, if agreed with the Buyer, the Company will extend the end date of the relevant campaign.
- 14.8 As standard practice, and as set out in clause 14.6 above, ITV shall invoice the Buyer based on the booked Advertisement Creative. If, at the end of a campaign, a discrepancy has occurred between the number of booked creative types (as set out on the Order) and actual delivery by the Company, through the under-delivery of impressions due to a default by the Company of its obligations under this Agreement (and the same is not as a result of any error or omission by or on behalf of the Buyer); Company will grant the Buyer a credit, with the value of the credit calculated as being such proportion of the Fee as corresponds pro-rata with the extent of the under-delivery (the “**Credit**”). The Credit may only be used to purchase Display Advertising, VOD advertising or Digital Solutions Services. The period over which the Credit may be used by the Buyer shall start from the end date of the relevant campaign and shall be extinguished at the end of the then current calendar year. Once the Credit has been extinguished, no party shall have any further liability to the other in respect of the same.

15. Term and Renewal

The term of the Agreement shall commence when ITV is in possession of an Order signed by it or by the Company and the Buyer (and any signatures which are sent and/or received by facsimile shall be treated as originals) or, if the Order is an online booking system, when both the Buyer and the Company (or ITV on its behalf) have expressly agreed via that booking system that the terms set out therein reflect their agreed position. This Agreement shall remain in force until the finish date set out in the Order (or such date as may be agreed pursuant to clause 14.7) unless terminated earlier in accordance with clause 16 or clause 20.6. 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.

16. Termination and Effect of Termination

- 16.1 Without prejudice to its other rights and remedies, the Company may terminate this Agreement 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) business 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) if 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.
- 16.2 Without prejudice to its other rights and remedies, ITV may terminate this Agreement 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 ITV under clause 3.
- 16.3 Termination or expiry of this Agreement in whole or in part shall not affect any rights of any party in respect of any antecedent breach of this Agreement by any other party, nor shall it affect any accrued rights or liabilities (or the coming into force of any accrued rights or liabilities) of any party.
- 16.4 Once an Order is signed by or on behalf of both parties or, if the Order is an online booking system, when both the Buyer and the Company (or ITV on its behalf) have expressly agreed via that booking system that the terms set out therein reflect their agreed position; the Buyer cannot terminate the Agreement for any reason unless expressly provided for in the Order or unless agreed to in writing by the Company, at its exclusive option. Without prejudice to clause 13.2 of these Terms, the Buyer understands that there shall be no refunds or suspension of payments even if the Buyer wishes to discontinue display of the Advertisement Creative or provision of the Digital Solutions Services prior to expiration of the Term (unless the Company agrees otherwise in accordance with Clause 18, at its sole discretion).
- 16.5 Upon termination of this Agreement for any reason:

- (a) the Buyer shall remain liable for any amount due under an Order for Advertisement Creative 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, the Buyer shall immediately return to ITV and/or the Company or permit ITV and/or the Company to collect all items in the possession of the Buyer which are the property of ITV and/or the Company (including the Company's statistics provided under clause 14.1 of these Terms) and the Buyer shall immediately cease to use the intellectual property rights of the Company and ITV.

15.6 The provisions of those clauses intended to have continuing effect (including but not limited to clauses 4, 14, 16, 17, 18, 19, 20.3 and 20.17) shall continue in full force and effect following the termination for any reason or expiry of this Agreement.

17. Payment and Late Payment / Delivery Charges

17.1 All sums due under an Agreement shall be invoiced by ITV either in advance or in arrears in accordance with whether the Buyer is an accredited buyer with ITV. The Buyer shall pay the relevant invoice within 30 (thirty) days of the date of the invoice.

17.2 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% (three percent) 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 in collecting such amounts.

17.3 Where Advertisement Creative is received by the Company later than midday on the day following the Display Advertising Due Date or the VOD Advertising Due Date (as relevant), the number of impressions to be delivered will be reduced on a pro-rata basis for each day or part day that the Advertisement Creative are late with no change to the costs payable by the Buyer as set out in the Order.

17.4 If the Buyer has a query or dispute on its invoice, it must bring the same to ITV's attention within 90 days of the date of the invoice, or it shall lose its rights to make such query or raise such dispute.

17.5 ITV reserves the right to withhold the sale of further online inventory to a Buyer if ITV has outstanding invoices in respect of that Buyer and these are not being validly disputed.

18. Cancellation and Cancellation Charges

18.1 ITV, in its absolute discretion, may consider requests in writing from a Buyer to cancel a booked campaign of Advertisement Creative. If the Buyer cancels such a campaign less than 3 calendar weeks before the intended start date of the campaign then ITV reserves the right to charge a cancellation fee, as follows:

- (a) the Buyer will pay 50% of the total value of any campaign which the Buyer cancels between 2 and 3 calendar 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 calendar 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 calendar week prior to the intended start date of the campaign.

19. Limitation of Liability

19.1 Subject to clause 19.3, ITV and/or the Company shall not be liable to the Buyer and vice versa, whether in tort, contract or otherwise, for any anticipated loss of profit, loss of profit, loss of revenue, loss of opportunity, loss of goodwill, loss of reputation, loss of data and/or any loss which is indirect, consequential or economic or which, whether or not in practice it arises as a direct and natural result of a breach of this Agreement, was not at the time this Agreement was made, a reasonably foreseeable result of such breach.

19.2 Subject to clause 19.3, ITV 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 under this Agreement.

19.3 Nothing in this Agreement shall exclude or restrict ITV's, the Company's or the Buyer'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.

19.4 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 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 specifically disclaim any warranty regarding:

- (a) the number of persons who will access and/or view the Advertisement Creative; 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 Creative.

20. Miscellaneous Provisions

- 20.1 Each party to this Agreement is duly authorised to enter into, and to perform its obligations under, this Agreement.
- 20.2 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).
- 20.3 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 14 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 and the Company may disclose, permit the duplication or disclosure of confidential information to any company in ITV's corporate group.
- 20.4 The Company reserves the right to refuse to carry links to sites that disable the "Back" facility.
- 20.5 This Agreement and the Order to which it relates (together with any overarching volume commitment agreements and/or 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.
- 20.6 Neither the Company, ITV or the Buyer shall be liable in any way for any losses arising directly or indirectly from any failure or delay in performing any of its obligations under this Agreement caused by any Force Majeure Event (as defined below) provided that such Force Majeure Event is notified promptly to the other party. If either the Buyer or the Company and/or ITV (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.
- 20.7 For the purposes of this Agreement a "**Force Majeure Event**" means an event, inability or delay which is caused by circumstances beyond the Affected Party's reasonable control and which cannot be cured by measures which might

reasonably be taken in the course of that relevant party's business, including, without limitation, war or other action of military forces, terrorism, riot, civil commotion, sabotage, vandalism, accident, breakdown or damage to machinery or equipment or technology, fire, flood, acts of God, regulatory, legislative or administrative interference, ruling or decision PROVIDED THAT no circumstance or cause shall be considered to be beyond the control of the Affected Party if it arises as a result of that party's failure to take reasonable care. For the avoidance of doubt, where the Buyer is a media buying agency, the loss of a client (including, without limitation, by virtue of insolvency or by virtue of a win by a third party agency) will not be deemed to be a Force Majeure Event;

20.8 Subject to clause 20.9 below, each of the parties acknowledges and agrees that:

- (a) it does not enter into this Agreement on the basis of and does not rely, and has not relied, upon any statement, representation, warranty, forecast or other information (in any case whether oral, written, express or implied) made, given or agreed to by any person (whether negligently or innocently and whether or not made by a party to this Agreement) which is not expressly contained or referred to in this Agreement (a "**Representation**");
- (b) it shall have no remedy (including any rights to damages or rescission in an action for misrepresentation) for any Representation which was, is, or becomes false or misleading; and
- (c) save as set out in clause 4.2 above, the only rights or remedies available in respect of any statement, representation, warranty, forecast or other information (in any case whether oral, written, express or implied) made, given or agreed to by any person (whether negligently or innocently and whether or not made by a party to this Agreement) which is expressly contained or referred to in this Agreement shall be the rights and remedies for breach of contract under this Agreement.

20.9 Nothing in this Agreement shall limit or exclude any liability for fraud (including fraudulent misrepresentation).

20.10 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.

20.11 No waiver by ITV or the Company of any breach of the Buyer's obligations shall constitute a waiver of any other prior or subsequent breach and ITV 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.

20.12 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.

- 20.13 Nothing in this Agreement shall constitute a partnership or joint venture between the parties or constitute either the Company (and/or ITV) 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.
- 20.14 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, any notice must also be sent to Director of Legal Affairs, ITV Brand and Commercial, 200 Gray's Inn Road, London, WC1X 8HF.
- 20.15 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 and/or the Company shall be entitled to sub-contract, assign or otherwise transfer this Agreement (including any benefit or obligation under it) to any other company within ITV's corporate group.
- 20.16 No person other than a party to this Agreement and ITV may enforce this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 20.17 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.
- 20.18 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.
- 20.19 The Agreement may be executed in counterpart but the counterparts shall together constitute one and the same instrument.

20.20 Each party shall be responsible for paying its own costs and expenses incurred in the negotiation, preparation and execution of this Agreement.

20.21 Rights and remedies of ITV and the Company under this Agreement are independent, cumulative and without prejudice to their rights under the law.