

CARLTON TELEVISION LIMITED

Airtime Terms and Conditions

PREAMBLE

These terms and conditions shall only apply to agreements having an effective start date of or after 1 January 2003.

These terms and conditions, together with the Glossary of Contract Terms (“the Glossary” as set out on the Carlton television website at www.carlton.com/mediasales) apply to all agreements between Carlton and the Advertiser or Agency for the sale of Advertising Airtime (whether Carlton is selling on behalf of Carlton subsidiaries or on behalf of third parties) and, save as the same may be amended or supplemented expressly in writing by the parties, are deemed incorporated in the relevant Booking.

1 Definitions

Any capitalised terms in these terms shall be defined as set out in the Glossary and the terms set out in that Glossary are hereby deemed incorporated into this Agreement.

2 Booking

2.1 Bookings may be made by telephone, but in any event, the Advertiser or Agency shall confirm all Bookings in writing (including electronically) in advance of the Advance Booking Deadline.

2.2 In the case of Interactive Applications produced by third parties, the Booking must be made sufficiently in advance to allow such Interactive Applications to be put through the Compliance Procedure.

2.3 Carlton reserves the right, in its sole discretion, to refuse any Booking placed after the Advance Booking Deadline or to apply a late approval surcharge of such sum as Carlton may at its absolute discretion determine.

2.4 Where Bookings have been made before the Advanced Booking Deadline Carlton will send to the Advertiser or Agency prior to the proposed first transmission date (and in other cases then to the extent reasonably practicable) a schedule of the proposed airtime to meet the Booking. Carlton shall use its reasonable endeavours, but does not guarantee, to meet any particular requirements of the Booking.

2.5 A failure to meet the Advance Booking Deadline shall not excuse the Advertiser or Agency from the proper performance of its obligations under any Booking and/or Agreement, unless otherwise agreed.

3 Advertiser/Agency Obligations

3.1 The Advertiser or Agency, as the case may be, agrees to:

- 3.1.1 satisfy Carlton's technical requirements as may be notified to it by Carlton from time to time;
- 3.1.2 comply with the Broadcasting Act and any ITC, ASA or other applicable regulatory codes of practice;
- 3.1.3 submit scripts and/or story boards for all Spot Advertising in advance for provisional approval by Carlton through the BACC and that it shall not commence filming or recording until such approval has been obtained;
- 3.1.4 comply with the BACC Notes of Guidance for Television Advertising and any other ITV Network procedural rules in force at the time of transmission and submit all new Advertisements to the BACC for approval before transmission;
- 3.1.5 obtain and pay for all necessary licences and consents that are required for and relate to the transmission of any advertising or copyright material contained in its Advertisement or Interactive Application;
- 3.1.6 within fourteen days of the commencement of the relevant airtime agreement between the parties, provide Carlton with planning schedules for planned bookings and schedules for the first twelve months of the agreement;
- 3.1.7 comply with the Distance Selling Regulations 2000 and the Data Protection Acts 1984 and 1998 or other applicable statutory controls in fulfilling orders placed by its customers as a result of its advertising campaign; and
- 3.1.8 ensure that, subject to Clause 5.1, all Advertisements are of Standard Timelengths.
- 3.2 The Advertiser or Agency as the case may be, further acknowledges and undertakes that in relation to all Advertisements supplied to Carlton, it shall:
 - 3.2.1 provide Carlton with the Advertisement and all relevant transmission instructions at least two Working Days before the date of intended transmission; and
 - 3.2.2 not provide any Advertisement that:
 - 3.2.2.1 is in breach of or contrary to any common law, statute or regulation, including in particular any Advertisement which is defamatory, racist or sexist, threatening or menacing to any person or group of people, or contains any obscene elements, or which in the reasonable opinion of Carlton is likely to cause annoyance or distress to any person;
 - 3.2.2.2 infringes the copyright or other intellectual property rights of any other person, company or partnership, anywhere in the world; or
 - 3.2.2.3 constitutes personal data that is subject to the Data Protection Act 1998 without first ensuring that it has complied with all relevant provisions of that Act.
 - 3.2.3 use its best endeavours to ensure that the Interactive Application passes the Compliance Procedure at least 5 Working Days prior to the scheduled date for transmission;

3.2.4 in the event that the Interactive Application fails the Compliance Procedure, ensure that any amendments necessary are made to rectify the problem as soon as practicable, and in any event, at least 5 Working Days prior to the scheduled transmission date;

4 **Advertisement Copy**

4.1 Delivery of Advertisement Copy shall be deemed to have been made only when the Advertiser or Agency has complied with its obligations set out in Clause 3 above.

4.2 Carlton reserves the right at its absolute discretion to refuse any Advertisement advertising more than one product.

4.3 If Carlton decides that Advertisement Copy is for any reason unsuitable for transmission then Carlton shall notify the Advertiser or Agency who must supply alternative Advertisement Copy as soon as possible.

4.4 If no response to a notification under Clause 4.3 is received within a reasonable timescale, Carlton reserves the right, in its absolute discretion, to do any act or thing in respect of the transmission of any Advertisement or part thereof (including fading, editing or cutting) in the event that it deems the same to be unsuitable Advertisement Copy and Carlton shall not thereby incur any liability to the Advertiser or the Agency who shall have no claim whatsoever for damages or otherwise in respect of any retransmission of any such Advertisement or part thereof. The Advertiser or Agency shall remain liable to Carlton for the charges payable hereunder for such Advertisement.

4.5 In exceptional cases Carlton will endeavour to accept an Advertisement delivered less than two Working Days before the date of transmission save that in such cases Carlton will not be obliged to notify the Advertiser or Agency in advance if it decides in its absolute discretion the Advertisement Copy is unsuitable (as set out in Clause 4.3) and if it so decides, the Advertiser or Agency shall be liable to pay in full for the Advertising Airtime booked whether or not any Advertisement is transmitted.

4.6 Any request for changes to the transmission instructions (except for Copy Rotation instructions), given by the Advertiser or Agency to Carlton less than two Working Days before the intended transmission date will be accepted at Carlton's absolute discretion and will be subject to a surcharge of £250 plus VAT per Advertisement payable by the Advertiser or Agency within 30 days of the date of invoice.

4.7 Carlton shall endeavour to adhere to Copy Rotation instructions but shall not be liable for any failure to comply with those instructions, whether or not such failure is due to Carlton's (or its employees' or agents') negligence.

4.8 Unless any Booking is cancelled or deferred in accordance with these terms and conditions, an Advertiser or Agency who fails to deliver Advertisement Copy in accordance with this Clause 4 will remain liable to pay in full for the Advertising Airtime booked whether or not any Advertisement is transmitted.

4.9 Unless otherwise instructed by the Advertiser or Agency, the medium on which Advertisements are recorded may be destroyed by Carlton without further

reference to the respective Advertiser or Agency if not transmitted for a period of six weeks.

5 **Non-Standard Timelengths; Tagging**

5.1 Advertisements which are not Standard Timelengths will only be accepted by Carlton if they can be transmitted within the same break as other Advertisements for the same client or product and the total length bought is a Standard Timelength. Rates for non-Standard Timelengths are available from Carlton on request.

5.2 If in Carlton's opinion an Advertisement advertising more than one product is the consequence of editing two or more Advertisements with the purpose of taking advantage of reduced rates for Advertisement Airtime of a greater timelength ("Tagging"), Carlton reserves the right, at its absolute discretion, to charge such Advertisements at a rate equivalent to that which Carlton would have charged had the Advertisement for each product been submitted to it separately.

6 **Transmission**

6.1 Carlton does not guarantee that proposed times and/or dates of transmission will be adhered to. Where an Advertisement is not transmitted in any Day Part or on any date specifically agreed, Carlton will offer an alternative transmission time and or date in consultation with the Advertiser or Agency.

6.2 In the event of any significant alteration(s) to the ITV programme schedule Carlton reserves the right to cancel Bookings. If a current Booking falls within an affected break Carlton will offer an alternative transmission time in consultation with the Advertiser or Agency.

6.3 Subject to Clause 6.4, if the offer of an alternative time and/or date of transmission by Carlton in accordance with Clause 6.1 or 6.2 above is not accepted by the Advertiser or Agency:

6.3.1 the original Booking shall be cancelled;

6.3.2 the Advertiser or Agency shall have no claim against Carlton for any expenses or damage whatsoever incurred as a result of non-transmission; and

6.3.3 Carlton shall not charge the Advertiser or Agency for such Booking save for any amounts which Carlton has incurred in connection with the Booking.

6.4 For the avoidance of doubt, Clause 6.3 shall only apply where a material part of the Agreement has been affected and it shall not apply where individual spots are affected. In the case of spots which are part of an Agreement involving a series of spots, "a material part" shall be assessed against the totality of that Agreement and not just the spots or the Booking in question.

6.5 Advertisements appearing within five minutes of an agreed Day Part will be regarded as appearing within that Day Part. Advertisements agreed as being for transmission at a specific time will generally be transmitted in the commercial break nearest to that time.

- 6.6 Where split area transmissions are available Carlton reserves the right from time to time and at its absolute discretion to transmit Advertisements for total area campaigns in one or more sub-areas.
- 6.7 Without prejudice to Clauses 4.3 and 4.4, Carlton reserves the right to decline to transmit any Advertisement where it has a genuine concern over the broadcast proceeding, in which case the Agency or Advertiser shall not be charged for any Advertisement which Carlton so declines to transmit.
- 6.8 Unless agreed otherwise, all transmissions shall be undertaken by Carlton subject to Optimisation.

7 **Cancellation/Deferral**

- 7.1 Any Booking may be cancelled or deferred without liability by either party on written notice to the other provided that any such written notice of cancellation or deferral is received by the other party prior to the Advance Booking Deadline for the month of the intended transmission.
- 7.2 An Advertiser or Agency wishing to cancel a Booking after the Advance Booking Deadline for the month of the intended transmission will remain liable to pay in full for the Advertising Airtime booked.
- 7.3 An Advertiser or Agency wishing to defer a Booking after the Advance Booking Deadline for the month for which Booking was made shall submit to Carlton a written request to do so. Any acceptance of such request shall be at Carlton's sole discretion on terms to be agreed. Any acceptance of deferral shall require an immediate prepayment of the deferred budget to Carlton.
- 7.4 Any deferral made under Clause 7.1 or 7.3 above must be recommitted at the time of the deferral to a time not more than three calendar months after the start date of the campaign being deferred and in any event before the end of the same calendar year or Carlton's financial year, whichever is the earlier.

8 **Suspension or Termination**

- 8.1 Carlton may by notice in writing to the Advertiser or Agency suspend or terminate any Booking or agreement immediately upon the happening of any one of the following events:-
- 8.1.1 if the Advertiser or Agency fails to agree express terms as to price and/or scheduling to govern the transmission of Advertisements prior to the commencement of the relevant transmission schedule or thereafter; or
- 8.1.2 without prejudice to Carlton's discretion to refuse to accept delivery of any Advertising Copy or transmit any Advertisement, if the Advertiser or Agency commits any material breach of any provision of these terms and conditions and fails to remedy such breach within a period of 10 Working Days from the service on it of a notice specifying the breach and requiring it to be remedied; or
- 8.1.3 if the Advertiser or Agency 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 (otherwise than in furtherance of

any scheme for amalgamation or reconstruction) or undergoes any similar or equivalent process in any jurisdiction; or

8.1.4 if there is a material change in the ownership of or a change in control of the Advertiser or Agency or if the Advertiser or Agency disposes of all or a substantial part of its assets or undertaking.

8.2 Any termination by Carlton in accordance with Clause 8.1 above shall be without prejudice to Carlton's right to be paid by the Advertiser or Agency any monies due and owing by the Advertiser or Agency to Carlton at the time of such termination.

9 **Change of Day Parts**

9.1 While Carlton will endeavour to give four weeks' notice in respect of any change of Carlton's standard Day Parts, Carlton reserves the right to make such changes at shorter notice.

9.2 In the event of such a change, the rate payable shall be the rate in force at the time of transmission after taking into account any such change. If these are announced at less than two weeks' notice the Advertiser or Agency with Bookings in the segments affected by such changes shall (by serving written notice on Carlton within one week of publication of such change) be entitled to cancel any Booking to which the changed rates would otherwise have been applicable at no cost.

10 **Invoicing and Payment**

10.1 For Agencies registered by the Agency Registration and Credit Listing Committee of the ITV Association and listed in its credit list (or that of any subsequently named body charged with credit listing), Carlton will invoice the Advertiser or Agency within 7 Working Days of the end of the month, for any Bookings in relation to which Advertisements were transmitted in that month, at the prices calculated in accordance with this Agreement or as shall have been otherwise agreed between the parties, by sending such invoices by first class mail to the Advertiser or Agency. All amounts due shall, for the avoidance of doubt, be exclusive of VAT (and any other applicable taxes or duties) which will be payable in addition, where applicable.

10.2 For Advertisers, or Agencies not registered by the Agency Registration and Credit Listing Committee of the ITV Association and not listed in its credit list, accounts in the amounts budgeted in advance shall be paid by the Advertiser or Agency not later than ten Working Days prior to the scheduled transmission date and in default of payment Carlton shall be entitled without prejudice to its other remedies for breach of contract to refuse to transmit the Advertisement. For the avoidance of doubt Carlton shall not repay the cash value of any amount by which a Booking is exceeded.

10.3 For Agencies registered by the Agency Registration and Credit Listing Committee of the ITV Association and listed in its credit list:-

10.3.1 accounts shall be paid by the Agency not later than the fifteenth day of the month following the month in which the transmission takes place;

- 10.3.2 any amount not paid by the credit listed Agency by the twenty-fifth day of the month following the month in which the transmission takes place will be subject to interest at the then applicable statutory rate payable on demand which will be imposed in respect of any part of the original amount which is still outstanding on the tenth day of the subsequent month; and
- 10.3.3 in the event of an Agency failing to comply with Clause 10.3.1 after one written notice of warning, Carlton reserves the right by notice in writing, to require any future accounts to be dealt with by such Agency in accordance with Clause 10.2 above notwithstanding that the Agency remains listed in the ITV Network Credit List.
- 10.4 In the event of any Advertiser or Agency not paying an account by the tenth day of the month following the month in which payment became due, Carlton reserves the right without prejudice to all its other rights:
- 10.4.1 not to accept further Bookings from that Advertiser or Agency;
- 10.4.2 where Carlton deems it appropriate, to inform the Agency Registration Credit Listing Committee of any failure to make due payments;
- 10.4.3 to treat any amount due to Carlton as a simple debt recoverable forthwith.
- 10.5 The existence of a disputed item in an account will only affect the due date of payment of the disputed element of the item. The Agency or Advertiser must notify Carlton of any query within 7 Working Days of receipt of the invoice. In the event of a disputed item being resolved in favour of Carlton, the disputed item will be subject to the full rate of interest as specified in Clause 10.3.2.
- 10.6 All Bookings are accepted on the understanding that they will be paid for at the rates agreed and in accordance with this Clause 10.

11 **Alternative Rates**

Special Advertising Airtime rates and conditions may be announced by Carlton from time to time in relation to particular programmes.

12 **Agencies**

- 12.1 Each Agency shall:-
- 12.1.1 be deemed to have full authority to book Advertising Airtime on behalf of the Advertiser for whom it has been booked;
- 12.1.2 be deemed to bind itself as principal in all respects unless the Booking otherwise provides;
- 12.1.3 be personally responsible for the payment of monies due to Carlton; and
- 12.1.4 comply with the undertaking on its part contained in any agreement relating to the registration and/or credit listing of that Agency between the ITV Network and that Agency in the same manner as if they had been expressly included in these terms and conditions.

- 12.2 Carlton shall pay each Agency registered on the ITV Network Credit List, except for overseas Agencies, which complies with these terms and conditions to Carlton's satisfaction, an agreed Commission of up to 15% of the amount payable to Carlton for the relevant Booking (excluding any interest or surcharge, less any applicable discounts) which will be paid by way of deduction to sums invoiced by Carlton.
- 12.3 Carlton will at its sole discretion consider applications for Commission from overseas Agencies or Advertisers who are not registered with the ITV Network in relation to which charging will be agreed on a case by case basis.

13 **Liability**

- 13.1 In no event will Carlton be liable for (i) any indirect or consequential loss, claim or damage, nor (ii) any direct or indirect loss of profits, loss of reputation or other economic loss, data, business or opportunity; in each case whether such claim is based on breach of contract, tort (including negligence) or otherwise, and whether or not the Advertiser or Agency has been advised of the possibility of such damage.
- 13.2 Each of the Parties acknowledges and agrees that the only remedy available to it for breach of this Agreement shall be for breach of contract. Without prejudice to Clause 13.1 above and for the avoidance of doubt Carlton shall incur no liability for:
- 13.2.1 loss or damage of the Advertisement whether in the studios or in transit and whether or not such films, recording, goods or equipment are supplied by Carlton;
- 13.2.2 any addition to, changes in or deletions from any Advertisement Copy required by the ITC or the BACC;
- 13.2.3 any failure to transmit all or any part of any Advertisement for any reason, any failure to adhere to Advertisement Copy Rotation instructions, or for any error in any Advertisement transmitted except that if a total failure to transmit shall be due to the fault of Carlton the Advertisement shall not be charged for; and
- 13.2.4 any losses occasioned by errors or failures occurring during dynamic updating of data.
- 13.3 Notwithstanding the provisions of Clauses 13.1 and 13.2 above, in the event that Carlton is held liable for damages or losses suffered by the Advertiser or Agency, the maximum liability that Carlton shall have towards the Advertiser or Agency shall be the lesser of five times the amount payable by the Advertiser or Agency to Carlton for the affected Booking or one million pounds.
- 13.4 Nothing in this Clause 13 purports to limit or exclude liability for fraud, or exclude or limit liability for death or personal injury caused by Carlton's negligence or to the extent otherwise not permitted by law.
- 13.5 Both parties acknowledge and agree that the terms of this clause 13 are reasonable and act fairly upon them, recognising that the levels of liability have been set based on the charges and fees which have been agreed between them and are as such commercially reasonable. Each party agrees that it is always open to

them to amend these levels of liability but that such an amendment would be reflected in a change to the charging structure.

14 **Shortfall (Minimum Share Commitments)**

Unless the parties otherwise agree, at the end of each agreed time period (or if none is expressed each calendar year) Auditors will subject the Advertiser's or Agency's spend under the Agreement to an audit and the parties shall co-operate in providing information for the same. If the Auditor calculates that there has been a Shortfall, then it shall determine the cash amount represented by that Shortfall, which determination shall be binding on both parties and within 14 days unless otherwise agreed by both parties in writing of the end of that calendar year, the Advertiser or Agency shall pay to Carlton (or SMG if applicable) an amount by electronic funds transfer equal to the cash amount so determined. For the avoidance of doubt Carlton shall not repay the cash value of any amount by which a commitment is exceeded.

15 **Widescreen Disclaimer**

Carlton will use all reasonable endeavours to ensure that Advertisements are transmitted in the screen format that is delivered by the Advertiser/Agency, but it is understood and accepted by the Advertiser/Agency that for technological reasons Carlton cannot guarantee to do so and the Advertiser Agency will remain liable for all charges hereunder notwithstanding if through technical error, breakdown or Force Majeure the Advertisements are not transmitted in the intended format.

16 **Indemnity**

16.1 The Advertiser or Agency, as the case may be, will indemnify and keep Carlton indemnified against all actions, proceedings, costs, damages, expenses, penalties, claims, demands and liabilities arising directly or indirectly from any actual or threatened breach of any of its obligations contained herein or in any manner whatsoever in consequence of the use, recording or broadcasting in the form submitted or prescribed of any Advertisement or matter supplied by the Advertiser or Agency or any third party on behalf of the Advertiser or Agency.

16.2 The Advertiser or Agency will further indemnify and keep Carlton indemnified against all costs, damages, expenses, claims and liabilities arising from any failure to fulfil its obligations owed to third parties placing orders with the Advertiser or Agency as a result of the advertising campaign, including but not by way of limitation, any:

16.2.1 failure in the secure payment system;

16.2.2 failure to fulfil any third party orders; and

16.2.3 failure to comply with the Distance Selling Regulations 2000 and the Data Protection Acts 1984 and 1998.

16.3 The indemnities set out in this Clause 16 shall be deemed to apply to ensure that the Agency will indemnify Carlton against any claims brought by an Advertiser for any claims made under the terms of an agreement between Carlton and the Agency (acting on behalf of that Advertiser).

17 **Auditing/Records**

17.1 In the event that the Advertiser or Agent has agreed with Carlton to make payments for Advertising Airtime based upon any Share of the Advertiser or Agent's television advertising expenditure that it has agreed to commit in purchasing Advertising Airtime sold by Carlton, then within 30 days of the end of each month the Advertiser or Agent shall provide a report to Carlton. Such report shall detail the information necessary to calculate the payments due to Carlton based upon the Advertiser or Agent's actual television advertising expenditure in respect of the preceding period, together with a calculation of the amount payable as a result of such calculation.

17.2 Carlton shall have the right to audit the Advertiser's or Agency's records at its own cost at any time on reasonable prior written notice to ensure that payments are being made in accordance with any agreement to which clause 17.1 above applies. If any such audit reveals that the Advertiser or Agent has underpaid Carlton by more than 3% of sums properly due, then the Advertiser shall pay to Carlton forthwith the cost of the audit, together with the amount of the shortfall and interest thereon accruing daily at the annual rate which is 3% above the base lending rate of HSBC plc from the date when sums were due until the date of actual payment. In the event of any shortfall being revealed which is less than 3% of sums properly due to Carlton, the Advertiser or Agent shall immediately make payment to Carlton of the shortfall together with interest as aforesaid.

18 **Force Majeure**

18.1 If either party (the "Affected Party") is prevented or delayed in whole or in part from complying with its obligations under this Agreement by reason of Force Majeure, 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. If the event of Force Majeure continues for a period of more than 6 months, the other party shall be entitled to terminate the affected Booking by notice in writing to the Affected Party.

18.2 If the Advertiser or Agency loses a Client or brand then the parties shall meet to renegotiate prices for the Advertising Airtime for the remainder of its Clients/brands.

19 **Assignment**

19.1 The Advertiser or Agency may not assign, dispose of, hold on trust or part with the benefit or burden of any part of a Booking without the prior written consent of Carlton. For the avoidance of doubt, if Carlton grants such consent the Advertiser or Agency shall nonetheless remain responsible for the performance of its obligations under this Agreement.

19.2 Carlton shall be free to novate, sub-contract and otherwise deal freely with its obligations under this Agreement, including any assignment of the benefits of this Agreement.

20 **Dispute Resolution Procedure/Governing Law**

20.1 The parties agree that they will endeavour to resolve any dispute between them by direct meetings between the relevant representatives of each party. To the extent that a resolution to a dispute cannot be found within 15 Working Days of either party raising such dispute the matter shall then be referred to the relevant Sales Director of Carlton and the Media Director of the Advertiser or Agency for resolution. If such dispute shall remain unresolved 30 Working Days following such secondary referral then either party may commence proceedings to refer such matter to the relevant Courts.

20.2 These terms and conditions shall be governed by and construed in accordance with the laws of England and each party irrevocably agrees to submit to the exclusive jurisdiction of the English Courts.

21 **Acceptance of Terms and Conditions**

21.1 The placing of any Booking with Carlton by an Advertiser or Agency constitutes acceptance of these terms and conditions.

21.2 While Carlton will endeavour to give four weeks' notice in respect of changes of rates and terms and conditions, Carlton reserves the right to make such changes at shorter notice. In the event of a material change, the rates payable and the terms and conditions applicable to any Booking shall be those in force at the time of transmission, but the Advertiser or Agency concerned shall (by serving written notice on Carlton within two weeks of receiving notice of such a change) be entitled to cancel any Booking for an Advertisement to which the change of rates (if increased) or terms and conditions would otherwise be applicable.

21.3 In the event of Carlton being appointed to sell Advertising Airtime on behalf of any third party, then in relation to airtime booked by Advertisers or Agencies with that third party, all Carlton's terms and conditions shall automatically supercede the terms and conditions of that third party.

22 **Publicity and Information Concerning Advertisements**

22.1 The Advertiser or Agency shall not without the prior written consent of Carlton make or cause to be made any public statement relating to any agreement relating to the provision of airtime by Carlton. The Advertiser or Agency agrees that it shall be liable for claims from Carlton for loss relating to wasted management time, loss of reputation and any related public relations costs incurred in mitigating the effects of such breach.

22.2 The Advertiser or Agency shall not without the prior written consent of Carlton publish any information (including marketing/promotional materials) in connection with any Advertisement which has been transmitted or is scheduled for transmission which makes any reference to Carlton.

22.3 Carlton shall have the right to make reference to or use any Interactive Application in connection with its PR or marketing activities.

23 **Confidentiality**

23.1 Each party shall keep confidential all confidential information disclosed to it by the other whether relating to the Booking or otherwise relating to the content or

operation of this agreement. Each party will only disclose confidential information to those of its employees, officers, approved sub-contractors and agents who (i) need to know it for the purpose of exercising or performing its rights and obligations under this agreement (ii) are informed of the confidential nature of the information divulged and (iii) agree to act in compliance with this agreement. Neither party will disclose that information to any third party (other than its employees, officers, approved sub-contractors and agents in accordance with this clause), except for information that:

- 23.1.1 is already in the public domain at the time of disclosure;
 - 23.1.2 becomes publicly known through no fault of its own; or
 - 23.1.3 is acquired by that party from a third party without any breach of any obligation of confidence.
- 23.2 Notwithstanding any other provision of this agreement it shall not be a breach of this agreement for either party to disclose any information given to it in connection with this agreement pursuant to a court order or a request from a regulatory (or other analogous) authority with jurisdiction or from any other third party with statutory power to require the disclosure of such information, provided that the affected party gives all reasonable notice of such disclosure to the other party.

24 **Other Provisions**

- 24.1 No terms or conditions other than those set forth herein or any variation thereof shall be binding upon Carlton or the Agency or the Advertiser as applicable unless in writing and signed on behalf of both parties.
- 24.2 In the event that any Barter deals are concluded by a Client who forms part of any agreement with an Agency, then such Barter deal shall be excluded from the scope of that agreement with that Agency unless specifically agreed by Carlton in writing.
- 24.3 No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party, save where Carlton has been appointed to sell Advertising Airtime on behalf of a third party (including SMG) whereupon such third party will be entitled to enforce any term of this agreement against the relevant Agency and/or Advertiser.
- 24.4 If any provision of this agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this agreement which shall remain in full force and effect.
- 24.5 No waiver of any breach of any provision hereunder shall be deemed to be a waiver of any other breach of the same or any provision hereof and no waiver shall be effective unless in writing and then only to the extent specifically set forth.

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