

ITV DIGITAL ADVERTISING AND DIGITAL SOLUTIONS SERVICES TERMS AND CONDITIONS

1. Parties, Structure and Interpretation

- 1.1 These terms and conditions (the **Terms**) apply with effect from 29 October 2021 to all Digital Advertising displayed on a Platform and all Digital Solutions Services provided by or on behalf of the Company.
- 1.2 The Terms are entered into between: (i) the Company, acting through its disclosed agent, ITV Commercial (a division of ITV Broadcasting Limited) (**ITV**); and (ii) the Buyer (each as identified on the Order (as defined below) or if an Order does not specify which entity is the Company:
 - (a) where it relates to the provision of Digital Advertising on any Platform except that set out in (b) including www.itv.com, the ITV video player (as at the publication date of these terms known as the ITV Hub) or an App (as defined below), the Company is ITV Consumer Limited (company number 02937518), 2 Waterhouse Square, 140 Holborn, London EC1N 2AE;
 - (b) where it relates to it relates to the provision of Digital Advertising on www.itv.com/goodmorningbritain or www.itv.com/Lorraine, the Company is ITV Breakfast Broadcasting Limited (company number 02578005), 2 Waterhouse Square, 140 Holborn, London EC1N 2AE; and
 - (c) where it relates to the provision of Digital Solutions Services, the Company is ITV Online (a division of ITV Broadcasting limited (company number 00955957)), 2 Waterhouse Square, 140 Holborn, London EC1N 2AE.
- 1.3 In the event that more than one company is identified as the Company in the Order, a separate, severable Agreement shall be formed between the Buyer and each respective Company.
- 1.4 These Terms and the Order together constitute the agreement made between the Company and the Buyer (the **Agreement**). In the event of any inconsistency between an Order and these Terms, these Terms shall prevail (except where a particular provision of these Terms expressly allows for control by the Order) unless and except to the extent that the parties have entered into a separate overarching trading agreement in respect of Digital Advertising and/or Digital Solutions Services in which case such overarching trading agreement shall prevail over these Terms in the event of any inconsistency. These Terms and/or any overarching trading agreement in respect of Digital Advertising and/or Digital Solutions Services shall apply to the Agreement to the exclusion of any terms that the Buyer seeks to impose or incorporate, or which are implied by law or practise.
- 1.5 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;
 - (b) references to any statute or statutory provision or regulatory code of practise shall include reference to any statute or statutory provision or regulatory code of practise which amends, extends, consolidates or replaces the same and shall include any directions, orders, regulatory codes of practise, 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;
 - (g) any reference to a "party" or "parties" shall mean a party or the parties to this Agreement; and
 - (h) references to processing, **controller**, **processor**, **data subject** and **personal data** and their derivatives shall bear the meanings ascribed to them in the UK GDPR.

1.6 For the purposes of this Agreement:

- (a) **Advertiser** has the meaning given in clause 15.1 (b);
- (b) **Advertising Delivery Date** means, unless otherwise agreed, the delivery date specified in the Digital Specifications or (if no date is specified) the date falling five (5) Business Days prior to the campaign start date as specified in the Order;
- (c) **Affected Party** has the meaning given in clause 18.2;
- (d) **App** means the ITV Hub mobile application and/or any other applications (whether for mobile or other platforms) owned and/or operated directly or indirectly by ITV plc (including without limitation through ITV Group companies) or for which ITV Group companies sell advertising;
- (e) **Applicable Laws** means any and all applicable legislation, statutes, statutory instruments, regulations, directives, orders and other legislative provision and any applicable judgement of a relevant court of law or decision of a tribunal or competent authority and all applicable codes of practise (whether statutory or self-regulatory) including the UK Code of Non-Broadcast Advertising and Direct and Promotional Marketing (CAP Code) and other codes under the supervision of the Advertising Standards Authority 9(or any successor or replacement authority);
- (f) **Appropriate Safeguards** means such mechanism(s) as recognised under Data Protection Laws as enabling the transfer of personal data from inside the United Kingdom to a country outside the European Economic Area, including adequacy decisions, standard contractual clauses and binding corporate rules;
- (g) **Approved Buyer** has the meaning given in clause 3.7;
- (h) **Assets** means any and all Creative, content, designs, briefs, materials, information and data provided and/or approved by or on behalf of the Buyer;
- (i) **Bribery** means conduct which constitutes an offence under the Bribery Act 2010 or which could constitute an offence under the Bribery Act 2010 if that Act were in force in the jurisdiction where the conduct took place;
- (j) **Business Day** means a day (other than a Saturday or Sunday) on which banks in the City of London are open for ordinary business;
- (k) **Cookies & Tracking Technologies** means cookies and any other devices or technologies now known or developed in the future which store or access information on devices of end-users of any Platform;
- (l) **Copy Clearance Body** means Clearcast Limited (company number 06290241) or any other copy clearance body as may be approved by Company (or ITV on its behalf) from time to time;
- (m) **Creative** means VOD Advertising Creative and/or Display Advertising Creative;
- (n) **Digital Solutions Services** means services related to the design and/or production of any creative assets (including without limitation Creative production, app development, website or microsite build, social media services) provided by or on behalf of the Company to the Buyer;
- (o) **Data Protection Laws** means all applicable laws relating to data protection, data privacy and/or information security as applicable, including the Data Protection Act 2018, the UK GDPR and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (p) **Digital Advertising** means VOD Advertising and Display Advertising on any Platform and any other digital advertising formats offered in relation to any Platform;
- (q) **Display Advertising** means the advertising formats commonly known as display advertising, including (without limitation) banners, MPUs, leaderboards, premium pushdowns, splash reveal advertising (a premium in-stream display above and below the fold advertising format) and second screen take overs;
- (r) **Display Advertising Creative** means creative relating to Display Advertising;

- (s) **Digital Specifications** means the technical, creative and copy submission specifications relating to Digital Advertising (As many be updated from time to time) available on <http://www.itvmedia.co.uk> (as at the date of publication of these Terms at <http://www.itvmedia.co.uk/specifications>) or on request;
- (t) **Fee** has the meaning given in clause 3;
- (u) **Force Majeure Event** has the meaning given in clause 18.3;
- (v) **Insolvency Event** means in respect of a party;
 - (i) that party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (ii) an order is made by a court of competent jurisdiction or a resolution is passed for the administration of that party;
 - (iii) a petition is presented for winding up that party;
 - (iv) an order is made or a resolution is passed for winding up that party, other than a genuine solvent reconstruction or amalgamation with the resulting entity assuming all the obligations of the entity that has been wound up;
 - (v) the application for an order or application for the appointment of a receiver (including an administrative receiver or manager), administrator, examiner, liquidator, provisional liquidator, trustee or similar officer is made in respect of that party;
 - (vi) that party becomes entitled to appoint a receiver, administrative receiver, administrator, examiner, liquidator, provisional liquidator or similar officer, or such as officer is appointed, over all or any part of the assets or undertaking of that party;
 - (vii) that party commences negotiations with any or all of its creditors in relation to rescheduling any of its debts, enters into or proposes a "Voluntary Arrangement" as defined in Part 1 of the Insolvency Act 1986, or makes a proposal for or enters into any compromise or composition with any of its creditors or an assignment for the benefit of its creditors, or other similar arrangement (other than a genuine solvent reconstruction or amalgamation);
 - (viii) that party goes into liquidation (voluntary or otherwise), other than a genuine solvent reconstruction or amalgamation;
 - (ix) that party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
 - (x) any third party enforces a security interest over all, or any part, of the assets of that party
 - (xi) any event analogous to any of those described in (i) to (x) above affects that party in any jurisdiction;
- (w) **ITV Group** means ITV plc and its direct and indirect subsidiaries worldwide;
- (x) **ITV Personal Data** means data held by or on behalf of the Company (or the ITV Group) in respect of end-users of the Platform(s) who have not opted out of personalised advertising;
- (y) **Modern Slavery** means conduct which constitutes an offence under the UK's Modern Slavery Act 2015, or which would constitute an offence under the Modern Slavery Act 2015 if that Act were in force in the jurisdiction where the conduct took place;
- (z) **Non-Human and Fraudulent Traffic** means data that counts or uses in calculations, anything other than natural persons viewing VOD Advertising and includes the counting of views (i) by non-human

visitors; and (ii) that are not actually visible to the human eye, discernible to human senses or perceived by a human being;

- (aa) **Order** means the order confirmation, insertion order, “commercial-terms-confirmation” or order submission section of an online booking system, booking form or other booking documentation issued by or on behalf of the Company;
- (bb) **Platform** means:
 - (i) www.itv.com and/or any other website(s) owned and/or operated directly or indirectly by ITV plc (including without limitation through ITV Group companies);
 - (ii) the ITV video player (as at the publication date of these Terms known as the ITV Hub);
 - (iii) any App;
 - (iv) any other digital platform owned and/or operated directly or indirectly by ITV plc (including without limitation through ITV Group companies) and any Third Party Platform;
 - (v) any other digital platform for which any of the ITV Group companies sell advertising;
- (cc) **Third Party Platform** means online software-as-a-service applications, and any associated software and code provided by the Company (or any affiliate or subcontractor of any ITV Group company) to the Buyer in connection with these Terms and/or the Digital Advertising, Digital Solutions Services);
- (dd) **Tax Evasion** means conduct that constitutes any criminal offence of tax evasion or facilitation of tax evasion in any jurisdiction, including the tax evasion facilitation offences under section 45(1) and 46(1) of the Criminal Finances Act 2017;
- (ee) **UK GDPR** means the General Data Protection Regulation (EU) 2016/679 as transposed into UK law by section 3 of the European Union (Withdrawal) Act of 2018 and as amended by the Data Protection Act 2018, and any amendments or replacement to it (including any corresponding or equivalent national law or regulation which implements the General Data Protection Regulation (EU) 2016/679));
- (ff) **Use** has the meaning given in clause 5.1(b);
- (gg) **VOD Advertising** means moving picture advertising that can be placed (without limitation) immediately before, after or during video content on any Platform; and
- (hh) **VOD Advertising Creative** means creative relating to VOD Advertising.

1.5 These Terms contain sections that are specifically relevant to: (i) Digital Advertising; and (ii) Digital Solutions Services. Any sections and clauses of these Terms that do not relate specifically to Display Advertising, VOD Advertising or Digital Solutions Services will apply to all elements that comprise the Order.

2. Term

2.1 The term of this Agreement shall commence:

- (a) when ITV is in possession of an Order signed by the Company (or by ITV on its behalf) and the Buyer (and any signatures which are sent and/or received by email shall be treated as originals); or
- (b) where any online booking system is used, when both the Buyer and the Company (or ITV on its behalf) have expressly agreed (which may include final (and not interim or preliminary) electronic or written approval) via that booking system that the Order reflects their agreed position; or
- (c) if neither of the above, when ITV commences provision of Digital Advertising or Digital Solutions Services in accordance with the Order.

- 2.2 This Agreement shall remain in force until the end date set out in the Order (or such extended date as may be agreed between the parties including pursuant to clause 4.7) unless terminated earlier in accordance with clause 15 or clause 18.2.
- 2.3 Except as expressly set out in the Order, any renewal of the Order or acceptance of any additional orders, and pricing for such renewal or additional orders, shall be at the Company's sole discretion and subject to agreement between the parties either in writing or by approval within any online booking system.

3. Fees and Payment

- 3.1 The Buyer shall pay the fee(s) for the booked number of impressions in connection with the Digital Advertising, Digital Solutions Services and/or such other fee(s) as set out in the Order or as otherwise agreed between the parties (the **Fee**). The Buyer may request that the Fee is calculated in relation to delivered impressions and Company may, acting in its sole discretion, agree to vary this term.
- 3.2 If the Buyer is an Approved Buyer, the Buyer shall be invoiced by or on behalf of the Company for the relevant Fee at the end of the campaign period or, if the campaign period is longer than one month and the Company elects (acting in its sole discretion) to invoice on a monthly basis, on a monthly basis. The Buyer shall pay the relevant invoice within 30 days of the date of the invoice. If the Buyer ceases to be an Approved Buyer or fails to make any payment when due, ITV or the Company may at its absolute discretion revoke the Buyer's entitlement to credit and treat the Buyer as a Non-approved Buyer and clause 3.3 will apply to any further payments.
- 3.3 If the Buyer is a Non-approved Buyer, the Buyer shall be invoiced by or on behalf of the Company, and the Buyer shall pay, for the Fee prior to the start of the campaign period. If the Buyer fails to pay prior to the start of the campaign period, the Company shall, without prejudice to its other rights and remedies under this Agreement or otherwise at law, be entitled to refuse to display the Digital Advertising and/or provide Digital Solutions Services without incurring any liability to the Buyer.
- 3.4 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 and/or the Company in collecting such amount.
- 3.5 If the Buyer has a query or dispute on its invoice, it must bring the same to the Company's attention within 60 days of the receipt of the invoice or it shall lose its right to make such query or raise such dispute.
- 3.6 ITV and the Company each reserve the right to withhold the sale of further Digital Advertising and/or provision of further Digital Solutions Services to the Buyer if the Buyer has outstanding invoices and these are not being validly disputed.
- 3.7 For the purposes of this Agreement, an **Approved Buyer** means a Buyer approved for credit by ITV (subject to any conditions which may be imposed by ITV) and **Non-approved Buyer** shall be interpreted accordingly.
- 3.8 All sums payable under this Agreement are exclusive of any value added tax (**VAT**), which the Buyer shall additionally, be liable to pay at the prevailing rate subject to receipt of a valid VAT invoice.
- 3.9 Commitments and/or payments made by or on behalf of the Buyer pursuant to this Agreement shall not count towards any commitments by the Buyer (or any Advertiser) in relation to the purchase of broadcast airtime unless expressly agreed otherwise in writing by the Company and the relevant ITV Group broadcasting entities (or ITV on their behalf).

4. Serving and Reporting of Digital Advertising

- 4.1 Subject to Buyer's compliance with the terms of this Agreement, the Company shall use its reasonable endeavours to deliver the Digital Advertising during the campaign period specified in the Order. The Buyer shall be fully responsible for ensuring that the details in any Order are correct and meet the Buyer's requirements. If the Buyer submits the wrong details in an Order, this is not the Company's responsibility and the Buyer shall be obliged to pay the Fee relating to such Order in full.

- 4.2 Where agreed in the Order, Digital Advertising may be targeted positively or negatively based on the expected audience for programme content, data held by ITV Group companies (which may come from end users and may be combined with data provided by the Buyer or Advertiser (see clause 14)), modelled data and/or data from third party data sources and may be based on different targeting methodologies which may include modelling, statistical analysis and/or predictive behaviour. The Buyer agrees and acknowledges that the Company does not guarantee accuracy of such data and targeting methodologies and that targeting products and options may change from time to time (as determined by the Company at its sole discretion)
- 4.3 Digital Advertising performance reports relating to the campaign will be generated by the Company's preferred advertising delivery system and shall be provided to the Buyer either manually following the end of the campaign or via a reporting portal. Where the Company (at its discretion) uses third party verification vendors to assist with the prevention and detection of Non-Human and Fraudulent Traffic in respect of VOD Advertising it will share such reports as may relate to the Buyer's VOD Advertising campaigns. Notwithstanding the use of any third party verification tools, the parties agree and acknowledge that the figures in the reports of the Company's preferred advertising delivery system shall be the official definitive measure of the Company's performance in respect of the delivery of Digital Advertising.
- 4.4 No clash management, reach or frequency capping shall be applied to particular Digital Advertising within a campaign unless expressly agreed between the Buyer and the Company at the time of booking and set out in the relevant Order.
- 4.5 If the Buyer provides ad tags to the Company in order for the Company to be able to serve or count Digital Advertising from a third party's server and the ad tags are not implemented correctly or the wrong Digital Advertising is served, and the same is not as a result of an error of the Company, such event shall not constitute a breach of this Agreement and the impressions that are consequently served shall count towards the number of impressions set out in the Order.
- 4.6 If a campaign is set up so that the Digital Advertising clicks through to another website or service and that website or service is not correctly configured for the Platform on which it is being accessed and cannot be reached, the Company shall have the right to disable the click through facility without providing prior notice to the Buyer and the same shall not constitute a breach of this Agreement by the Company. For the avoidance of doubt, impressions served shall count towards the number of impressions set out in the Order regardless of whether the consumer is able to click through to the intended website or service.
- 4.7 The Buyer acknowledges and agrees that the number of impressions stated in the Order is an estimate of the number of impressions to be delivered over the campaign period. 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 shall attempt to deliver impressions to meet the agreed number of impressions (which may be an allocation to similar placements across the relevant Platform) and/or, if agreed with the Buyer, the Company shall extend the end date of the campaign.
- 4.8 If, at the end of a campaign, the number of impressions actually delivered by the Company is less than the number of impressions stated in the Order, such that there has been an 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), the Company shall use its reasonable endeavours to agree with the Buyer another display date of reasonably equivalent value. If this is not possible, the Company shall grant the Buyer a credit to the value of the 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 Digital Advertising or Digital Solutions Services as determined by the Company. The period over which the Credit may be used by the Buyer shall start from the end date of the campaign and shall expire at the end of the then current calendar year, unless otherwise agreed between the parties (the **Credit Period**). For campaigns ending in October, November or December, the Company will not unreasonably withhold approval to an extension of the Credit Period to a date falling three (3) months from the end of the campaign period. Once the Credit Period has expired, neither party shall have any further liability in respect of the Company's under-delivery of impressions or the Credit granted to the Buyer by the Company.

5. Warranties

- 5.1 The Buyer undertakes, represents and warrants to the Company that:

- (a) the Buyer, all Digital Advertising, use of any Platform and any and all Assets comply with all Applicable Laws;
- (b) the Buyer holds the necessary rights (including, without limitation, intellectual property rights) to permit the use, processing, reproduction, display, transmission and distribution (the Use) of the Digital Advertising and the Assets and all content therein by the Company for the purposes of this Agreement;
- (c) the Use will not cause the Company to:
 - (i) breach any Applicable Laws, in particular (but without limitation) the Digital Advertising does not constitute a financial promotion within the meaning of the UK Financial Services and Markets Act 2000 (**FSMA**) (as amended) or, if it does, it is permitted under section 21 of FSMA;
 - (ii) infringe any rights of any third parties (including, without limitation, any intellectual property rights);
- (d) the Digital Advertising will not constitute false or misleading advertising, constitute unfair competition, be defamatory or an invasion of privacy or similar rights or be a violation of any anti-discrimination laws or regulations or otherwise breach any other right of any person or entity;
- (e) the Digital Advertising, 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 Platform and/or software or hardware, computer systems or devices of any of the ITV Group or any third party (including without limitation users of the Platform(s));
- (f) the Buyer shall not acquire any rights (including, without limitation, intellectual property rights) in or associated with the Platform(s) as a result of this Agreement;
- (g) keep confidential its password (and procure its personnel keep their passwords confidential) for the use of the Platform and/or services related to the Platforms;
- (h) it is contracting as principal and not as agent for any third party; and
- (i) the Buyer shall not:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Platform and/or documentation provided in relation to a Platform (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of a Platform except with the prior written consent of the Company;
 - (iii) access all or any part of the Platform, or documentation or services relating to a Platform, in order to build a product or service which competes with a Platform (or related services or documentation);
 - (iv) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make a Platform, or services and/or documentation relating to a Platform;
 - (v) attempt to obtain, or assist third parties in obtaining, access a Platform, or services and/or documentation relating to a Platform; and
 - (vi) only use a Platform in accordance with the instructions given by the Company (or any affiliate of the Company) to the Buyer from time to time.

5.2 The Buyer shall indemnify and keep indemnified the Company and ITV and ITV Group companies and shall hold the Company and ITV and ITV Group companies harmless, on demand, from any and all liability, loss, damages, claims or causes of action (whether foreseeable or unforeseeable), including (without limitation) reasonable legal fees and expenses, that may be incurred by the Company and/or ITV and/or ITV Group companies arising out of or related to the Buyer's breach of any of the representations and warranties in this

Agreement, or otherwise howsoever arising out of or in connection with the display of the Digital Advertising or the use of the Assets provided by or on behalf of the Buyer.

- 5.3 In addition to any of the rights and remedies contained at clause 5.2, the Company may suspend the Buyer's access to a Platform until any breach of clause 5.1 has been remedied.

6. Delivery of Advertising Creative

- 6.1 All Creative must adhere to the Digital Specifications and be supplied in the format specified by the Company (or ITV on its behalf).
- 6.2 The Company reserves the right to appoint a third party to approve Creative on its behalf. If directed by the Company, it is the Buyer's responsibility to procure the approval of such third party and to comply with the requirements or guidelines of such third party.
- 6.3 Unless otherwise agreed with the Company, all VOD Advertising Creative must be submitted by the Buyer to the Copy Clearance Body to be approved and clocked before being submitted to the Company. Approval by the Copy Clearance Body of VOD Advertising Creative shall not in any way prejudice the Company's right to reject the same in accordance with this Agreement.
- 6.4 Following approval in accordance with clause 6.2 and 6.3 above (if required), the Buyer shall submit the Creative together with the copy instructions, the proposed campaign start and end dates and (for VOD Advertising Creative) the clock number in accordance with the Digital Specifications. The Creative and all accompanying information must be received by the Company on or before the relevant Advertising Delivery Date and the Buyer acknowledges and agrees that the Company is not responsible for network failures of any kind.
- 6.5 The Buyer accepts full responsibility for ensuring that the correct Creative is sent to the Company. In the event that the Buyer sends the wrong Creative to the Company resulting in the Company serving incorrect Creative, the Buyer's obligation to pay the Fee in full shall remain in force.
- 6.6 The Buyer agrees to only request changes to the Creative on an advertising campaign a maximum of once per week, unless otherwise agreed between the parties. The Company agrees to make any such changes which it, in its sole discretion, considers possible and subject to notification of such changes being received by the Company at least five (5) Business Days prior to the desired change date unless otherwise agreed between the parties. This Buyer's rights under this clause do not apply where bookings are made within any online booking system.
- 6.7 Subject to clause 17.3, where the Company provides the Buyer with tools or resources (by way of example only, access to and use of a third party studio to create Creative or resources such as specifications, guidelines and checklists on the website at www.itvmedia.co.uk), the Company shall not be liable, whether in tort, contract or otherwise, for any breach of this Agreement which is caused by use of any such tools or resources or by any third party involved in the production of the Creative.

7. Late Delivery of Creative

- 7.1 Where approved Creative is received by the Company later than midday on the day following the relevant Advertising Delivery Date, the number of impressions to be delivered will be reduced on a pro-rata basis for each day or part day that the Creative is late but the Buyer shall remain obliged to pay the full Fee without any reduction.
- 7.2 Where approved Creative is not received by the Company before the intended campaign start date, the Company shall be under no obligation to display the Digital Advertising and the Company reserves the right to charge the Buyer the Fee in full.

8. Rejection of Creative or Assets

- 8.1 Without in any way limiting the Buyer's obligation to pay the Fee, the Company reserves the right (at its sole discretion) at any time to reject and refuse to display or take down or require amendments to any Creative or Asset provided by or on behalf of the Buyer:

- (a) which, in the Company's sole opinion, is/are in breach of the provisions of clause 5.1 or any other term of this Agreement;
- (b) if any third party including law enforcement agency, regulatory body or third party distribution platform requires the amendment to or removal of any Digital Advertising or the Assets;
- (c) which, in the Company's sole opinion, fail to comply with the Digital Specifications at any time;
- (d) which in the Company's sole opinion is/are in breach of the Company's then applicable editorial or technical policy or in circumstances where the Company, acting reasonably, considers that there is a conflict of commercial interest between ITV and/or the Company and the Advertiser.

8.2 Subject to clause 17.3, the Company shall not have any liability to the Buyer in respect of any loss arising out of or in connection with removal of Creative or Assets pursuant to this clause 8 except that, in the event of removal of Creative or Assets pursuant to clause 8.1(d) the Company may, at its sole discretion, refund to the Buyer a pro rata portion of the Fee which has been received by the Company. The Buyer agrees and acknowledges that the Company will not exercise such discretion to refund if it considers that the Creative or Assets is/are in breach of this Agreement.

9. Placement of Creative on Third Party Platforms and Social Media

9.1 If an Order includes an obligation for the Company to place Creative on an App or other Platform distributed via a third-party distribution platform, such obligation shall be subject to: (i) the distribution platform's approval (where applicable); (ii) the applicable distribution platform terms and conditions, policies, rules and guidelines; and (iii) the distribution platform's distribution of that Platform to consumers.

9.2 In relation to any social media communications made pursuant to the Order and/or made by the Buyer in connection with any Digital Advertising and/or Digital Solutions Services, the Buyer shall be responsible for and shall ensure that any such social media communications shall be as agreed with the Company and shall:

- (a) not be obscene, offensive, blasphemous, pornographic, unlawful or defamatory and shall not cause injury to, invade the privacy of or otherwise infringe or violate the rights of Company, ITV or any third party; and
- (b) comply with all Applicable Laws; and
- (c) comply with any and all third party terms and conditions and policies that govern the social media platform.

9.3 In the event that the Company and/or the relevant social media platform objects to any social media communications made by the Buyer in connection with the Order for any reason, the Buyer shall immediately remove or amend (as directed by the Company) such communications from all such social media.

9.4 The Company shall have editorial control over any social media activity which it has committed to arrange (whether via social media pages administered by it, other ITV Group companies or third parties) in connection with the Order. If the social media platform requires the removal of or amendment to any social media activity and content made in relation to the Order (a **Third Party Platform Request**), the Company shall not be in breach of this Agreement and shall not have any liability in relation to compliance with such Third Party Platform Request.

10. Licence

10.1 The Buyer hereby grants the Company a worldwide, non-exclusive, royalty-free, sub-licensable licence to use and to authorise the use of the Digital Advertising and the Assets as provided by or on behalf of the Buyer for the purpose of performing its obligations under this Agreement and for any other purposes expressly agreed between the parties. The Company agrees and acknowledges that it shall not acquire any rights (including, without limitation, intellectual property rights) in or associated with the Digital Advertising and/or the Assets except as expressly permitted pursuant to this Agreement.

11. Digital Solutions Services

- 11.1 Where Digital Solutions Services are being provided to the Buyer, the Company shall deliver to the Buyer for the Buyer's approval any designs created by and/or on behalf of the Company as part of any Digital Solutions Services at such stages as specified in the Order (or, if not specified in the Order, as determined by the Company in its sole discretion).
- 11.2 Subject to clause 11.3, following delivery of any such designs, the Buyer shall promptly notify the Company of any reasonable amendments it proposes to any such designs and the Company shall make any such amendments if reasonably practicable and shall re-deliver such designs for the Buyer's approval. The Buyer agrees and acknowledges that if the Buyer requests any changes to the original Order or brief, those changes are subject to agreement by the Company and additional fee(s) may apply.
- 11.3 The submission and amendment process set out in clause 11.2 may be repeated but the Buyer acknowledges and agrees that the Company shall be under no obligation to amend and re-deliver any designs after they have been submitted for the third time.
- 11.4 The Buyer shall provide such Assets, materials, resource, assistance and information as the Company may reasonably request (including (where applicable) providing approvals and/or feedback to the Company in accordance with such timelines as specified in the Order or, if not specified in the Order, as set by the Company) in order to enable the Company to provide the Digital Solutions Services and, in doing so, the Buyer shall have due consideration for any proposed launch date. If the Buyer delays the provision of any materials, information, resource or assistance requested by the Company or fails to meet relevant timelines then the Buyer agrees and acknowledges that the Company may delay the launch date and charge the full Fee and/or increase the Fee.
- 11.5 To the extent that the Company provides Digital Solutions Services, the Company shall provide such services with reasonable care and skill in accordance with Applicable Laws and will hold the necessary rights (including, without limitation, intellectual property rights) to permit the Use of the products of Digital Solutions Services (excluding any Creative and Assets provided by or on behalf of the Buyer) only for the purposes agreed between the parties and subject always to the Buyer complying with the terms of this Agreement.
- 11.6 All intellectual property rights in or to the final products of the Digital Solutions Services (save for the Creative and/or Assets provided by or on behalf of the Buyer) shall belong to and vest in the Company. The Company hereby grants the Buyer a non-exclusive licence to use and to authorise the use of the final products of the Digital Solutions Services only on the Platforms (and any other platforms expressly agreed by ITV or the Company in writing in advance) for the duration of the relevant campaign or project (or such other period as may be agreed between the parties). The Buyer agrees to comply with any restrictions on the use of such products as provided by or on behalf of the Company from time to time. The Buyer shall not use the products of the Digital Solutions Services except as expressly permitted in this Agreement or as otherwise expressly approved by the Company in writing in advance.
- 11.7 Any interactivity 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 the Company's prior approval and the Buyer shall comply with such guidelines as notified by the Company from time to time in respect of any interactivity.
- 11.8 The Digital Solutions Services (including any products of such services) shall be provided on an 'as-is' and 'as available' basis. The Company 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 the Company's control. Notwithstanding the preceding sentence, the Company shall endeavour to provide notice where reasonably practical in the event the Digital Solutions Services are temporarily suspended for reasons beyond the Company's control for twenty-four (24) hours or more. 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 the Agreement.

12. Case Studies and Post Campaign Analysis

- 12.1 The Buyer agrees that the Company may undertake post campaign analysis to measure the effectiveness of a campaign and/or compile one (1) or more case studies based upon the Digital Advertising campaign and / or Digital Solutions Services provided pursuant to this Agreement and the results of the same. The Buyer shall provide ITV with such reporting and/or analysis of the campaign, as ITV may reasonably request, in order to assist ITV in measuring the effectiveness of the campaign or preparing its case studies. The Buyer agrees that ITV and/or the Company may use case studies on any media and in any manner subject to the Buyer's approval (not to be unreasonably delayed or withheld) in advance of publishing the case studies, results and/or post campaign analysis externally. The Company acknowledges that it shall be reasonable for the Buyer to withhold approval to the disclosure of any commercially sensitive information.

13. Cookies & Tracking Technologies

- 13.1 The Buyer warrants that it shall not set (or permit the setting of) Cookies & Tracking Technologies within the Platform and must not use (or permit) any form of tracking or collection of any data from end users of the Platform except where expressly approved by the Company in writing in advance. Where the Company does expressly permit Cookies & Tracking Technologies then the Buyer shall comply with the restrictions set out in clause 13.2.
- 13.2 Where the Buyer has been expressly permitted in writing by the Company to set Cookies & Tracking Technologies, the following restrictions shall apply unless otherwise agreed with the Company:
- (a) prior to setting any Cookies & Tracking Technologies, the Buyer shall provide the Company with detailed information on such Cookies & Tracking Technology for the Company's review, including (without limitation) the name of the applicable Cookie & Tracking Technology, the name of the person setting the Cookies & Tracking Technology, the type of Cookies & Tracking Technology, its purpose (including whether it is used for targeted advertising), what data it holds, whether the Cookies & Tracking Technology is linked to other data held about the user, the Cookies & Tracking Technology duration and expiry date, how to disable the relevant Cookies & Tracking Technology and such other information as may be requested by the Company from time to time;
 - (b) the Company's privacy and cookie policies along with any consent approach on Cookies & Tracking Technologies are available to the Buyer to view on the relevant Platform. The Buyer shall advise the Company of any updates to relevant policies which it thinks are required for the Buyer's applicable Cookies & Tracking Technology and shall satisfy itself that its use or setting of such Cookies & Tracking Technologies complies with all Applicable Laws including that it has (directly or indirectly via the Company's solution) obtained any consent to its use of Cookies & Tracking Technologies and the Buyer shall adhere to any permissions, preferences or consents set or indicated by the end user of the Platform and any restrictions specified by the Company;
 - (c) such Cookies & Tracking Technologies shall not involve or result in the processing of any special category personal data (as defined in the UK GDPR);
 - (d) such Cookies & Tracking Technologies shall not be used for any purposes other than those approved by the Company and in particular the Buyer shall not use or store information collected or stored from such Cookies & Tracking Technologies (which may include device IDs, IP address) for any categorisation or profiling purposes (including appending to existing user profiles or building user profiles) on an individual or audience level;
 - (e) the Buyer shall ensure that the use of Cookies & Tracking Technologies complies with any policy or other restrictions from time to time adopted by the Company relating to the use of Cookies & Tracking Technologies (either by the Company or third parties) on the Platform including those policies which are publicly available to end-users of the Platform; and
 - (f) the Buyer shall ensure that such Cookies & Tracking Technologies expire no later than thirty (30) days after the end of the term of this Agreement.
- 13.3 The Buyer may (subject to the restrictions in clause 13.2 above) use impression verification tools or technologies (such as impression pixels or dynamic click tags) which are approved by the Company in writing in advance provided that any such verification tools or technologies must only be used to verify impressions and not for any other purpose.

- 13.4 The Buyer agrees and acknowledges that the Company may put in place measures to prevent unauthorised use of Cookies & Tracking Technologies and/or data leakage including without limitation use of proxy servers and the Buyer shall not circumvent or attempt to circumvent such measures.

14. Data

- 14.1 Each party shall comply with Data Protection Laws and shall assist the other party to enable it to comply with such obligations as are imposed on it by Data Protection Laws in respect of User Data or other personal data processed pursuant to this Agreement including without limitation providing reasonable assistance in complying with any subject information request.

14.2 Buyer Provision of Personal Data

- 14.3 To the extent that the Buyer provides or authorises the provision of any personal data to the Company (**Buyer Personal Data**) directly or indirectly via a Data Match Provider or otherwise the following will apply unless expressly agreed otherwise:

- (a) The Buyer will provide details of its key contact(s) responsible for the processing of such Buyer Personal Data on request (which may include when uploading the data);
- (b) The Buyer agrees to implement such security measures and/or processes (which may include the use of SFTP (secure file transfer protocol), encryption and/or hashing) as may be reasonably specified by the Company prior to transferring the Buyer Personal Data to us;
- (c) The Buyer shall not provide any personal data relating to persons under 16 years of age or any special category personal data;
- (d) The Buyer is responsible for ensuring that the Buyer Personal Data remains up to date during the relevant period of activity and, for any periods of activity which are over a month in duration, the Buyer will review and, if applicable, provide updated Buyer Personal Data on at least a monthly basis; and
- (e) the Buyer will on request confirm to us whether it is relying on its legitimate interests or consent or other lawful basis as the lawful basis for providing the Buyer Personal Data to us and (as between the parties) will be responsible for ensuring that it is lawfully able to share those Buyer Personal Data for the purposes contemplated in the Agreement (including that the data subjects included in the Buyer Personal Data have been provided with notices which cover the nature of the processing in connection with the Digital Advertising and/or Digital Solutions Services).

Bring Your Own Data - data matching via a data match provider

- 14.4 The Company's preferred approach to data matching is via an agreed third party provider (**Data Match Provider**). As at the date of these Terms, the Company approves Infosum Limited and The Addressable Platform Limited as Data Match Providers.
- 14.5 For this option, the Buyer will provide the Data Match Provider with Buyer Personal Data (which may include contact details or user identifiers such as email addresses, IP addresses, device IDs, postcodes and/or other identifiers which are also held by ITV or the Company as well as targeting segments or other information provided by the Buyer) in order for the Data Match Provider to generate a matched subset of the relevant ITV Personal Data including any additional information provided by the Buyer (**Matched ITV Data**) which the Data Match Provider then confirms to the Company. The Company may then use the Matched ITV Data for the purposes agreed between the parties which may include creating lookalike or other modelled audiences; providing insights on end users within Buyer Personal Data; targeting or avoidance of targeting advertising to specific end users or audiences; and/or for advertising effectiveness. The Company may set minimum criteria for these services and does not guarantee that all these options will be available for all campaigns.
- 14.6 Where the Buyer refreshes the Buyer Personal Data provided to the Data Match Provider in order to keep it up to date as required by clause 14.2(d) above, the Company shall instruct the Data Match Provider to generate an updated set of Matched ITV Data which shall supersede the previous Matched ITV Data.
- 14.7 The Buyer will be the controller for the original Buyer Personal Data and the Buyer will be responsible for its

agreement and arrangements with the Data Match Provider (which will act as a processor). The Company will be responsible for its agreement and arrangements with the Data Match Provider (which will act as a processor in respect of the ITV Personal Data) and will be an independent controller of the Buyer Personal Data to the extent it forms part of the Matched ITV Data for the agreed purposes. Unless expressly agreed otherwise:

- (a) each party shall comply with Data Protection Laws in respect of its own processing including without limitation ensuring that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data and not transferring any Buyer Personal Data (as applicable) outside the European Economic Area unless it ensures that there are Appropriate Safeguards in place;
- (b) each party shall be responsible for compliance with the rights of data subjects and have in place procedures for dealing with data subject access requests, complaints or queries and shall (where reasonably practicable) consult with the other party about data subject access requests in relation to the Buyer Personal Data or Matched ITV Data (as applicable); and
- (c) each party shall provide the other party with reasonable assistance in complying with any data subject access request and/or regulatory codes of practice and in providing information in respect of compliance with its obligations under the Data Protection Laws (by way of example in relation to data protection impact assessments and/or regulatory requests for information); and
- (d) if either party receives a data subject access request in relation to the Buyer Personal Data, that party will be responsible for ensuring that the data subject can easily access their personal data that is contained in the Buyer Personal Data or the Matched ITV Data (as applicable).

Data Capture & Transfer to Buyer

14.8 Subject always to compliance with Data Protection Laws, the Company (or another ITV Group entity) may in connection with the Digital Advertising and/or as part of the Digital Solutions Services capture data of end users of the Platform (including personal data) (**User Data**) in line with consent wording as agreed between the parties permitting the transfer to and use of such data by the Buyer and shall transfer the same to the Buyer (or the Buyer's nominated third party). In such circumstances, the following will apply unless otherwise expressly set out in the Order:

- (a) there is no joint control of data. Each party will be an independent controller - the Company along with any applicable controller entities in the ITV Group shall be the controller(s) of the User Data which it captures and transfers to the Buyer (or the Buyer's authorised third party) and nothing in this Agreement shall restrict the Company's (or ITV Group's) ability to use such User Data for its own purposes unless expressly agreed otherwise. Following transfer, the Buyer shall be a controller in respect of the Buyer's use of the User Data transferred to it by or on behalf of the Company. Each party shall be a separate controller and shall not be joint controllers.
- (b) each party shall only process User Data in accordance with all applicable Data Protection Laws;
- (c) if the Buyer requests transfer of User Data to a country or territory outside the European Economic Area then it agrees that the Company will not make such transfer unless and until the Buyer has provided evidence that it has in place Appropriate Safeguards in respect of such transfer and/or shall agree Appropriate Safeguards such as standard contractual clauses with the Company;
- (d) to the extent applicable, each party shall provide reasonable co-operation with the other in relation to any complaints or queries received from any data subject or regulator in respect of the User Data; and
- (e) the Buyer will not process the User Data beyond the scope of any "opt-in" or consent wording at the point of data capture. The Buyer will also ensure that end-users are informed of their right to withdraw consent to marketing at any time, that it has in place an unsubscribe or opt-out mechanic which is easily accessible for end-users and will promptly remove any end-user from its marketing lists and those of third parties promptly on request by the Company or end users.

Company Processing Buyer Data

- 14.9 To the extent the Company processes any personal data by or on behalf of the Buyer as processor in connection with the provision of the Digital Advertising and/or Digital Solutions Services the relevant processing particulars are as follows unless otherwise set out in the applicable Order:
- (a) **Purpose and nature of processing:** the provision of any processing of personal data on behalf of the Buyer for the purposes of providing the Digital Advertising and/or Digital Solutions Services.
 - (b) **Type of personal data:** the Buyer Personal Data comprising contact details or user identifiers and any profile data attached to the same.
 - (c) **Data subjects:** end users or potential end users comprised in any Buyer Personal Data.
- 14.10 In respect of such processing:
- (a) the Company shall process the personal data only on documented instructions from the Buyer, including with regards to transfers of personal data to a third country or international organisation, unless required to do so by Union or Member State law to which the Company is subject, in which case the Company shall inform the Buyer in writing of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. The Buyer agrees and acknowledges that the Company uses suppliers based outside the European Economic Area in connection with the services provided pursuant to the Agreement (including the service of Digital Advertising) and hereby approves the use of such suppliers subject to clause 14.9(e) provided that the Company shall ensure that any transfer of data outside the European Economic Area is subject to Appropriate Safeguards;
 - (b) the Company shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (c) the Company has in place, and shall continue to have in place, appropriate technical and organisational security measures required by Article 32 (Security of Processing) of the UK GDPR including in relation to unauthorised or unlawful processing of or access to personal data and against accidental or unlawful loss or destruction of, or damage to, personal data;
 - (d) the Buyer hereby generally authorizes the Company to engage other processors in connection with the service of Digital Advertising (including without limitation any supplier of its adserver) and/or provision of Digital Solutions Services subject to clause 14.5(e) below. The Company maintains a list of such third party processors as set out in Appendix 1. The Company may propose changes to this list from time to time. Should the Buyer have any objections to such changes it must inform the Company within two weeks and the parties will reasonably discuss the same. If Buyer does not approve, the Buyer may cease provision of Buyer Personal Data and terminate any Digital Advertising and/or Digital Solutions Services associated with the same;
 - (e) if the Company engages another processor, the Company shall ensure that substantially the same data protection obligations as set out in the Agreement shall be imposed on that other processor by way of a written contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of Data Protection Laws. The Company shall remain fully liable to the Buyer for the performance by such other processor of such obligations;
 - (f) the Company shall, taking into account the nature of the processing, assist the Buyer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Buyer's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III (Rights of the data subject) of the UK GDPR;
 - (g) the Company shall assist the Buyer in ensuring compliance with the obligations in Section 2 (Security of personal data) and Section 3 (Data protection impact assessment and prior consultation) of the UK GDPR, taking into account the nature of the Company's processing of the personal data and the information available to the Company;

- (h) at the choice of the Buyer, the Company shall delete or return all the personal data to the Buyer after the end of the provision of the services relating to processing, and delete existing copies unless Union or Member State law requires storage of the personal data;
- (i) the Company shall co-operate with the Buyer in relation to any complaints or queries received from any data subject or regulator in respect of such processing;
- (j) the Company shall make available to the Buyer all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the UK GDPR and allow for and contribute to audits, including inspections on reasonable notice and during normal business hours, conducted by the Buyer or any auditor mandated by the Buyer in respect of such compliance, in each case at the Buyer's cost; and
- (k) if the Company becomes aware of or receives notification of a personal data breach relating to its processing of Buyer Personal Data it shall notify the Buyer in a timely manner and provide reasonable assistance and information regarding such breach as known to the Company at the time taking into account the reporting obligations imposed on controllers under Data Protection Laws.

15. Termination and Effect of Termination

- 15.1 Without prejudice to its other rights and remedies, either party may terminate this Agreement in whole or in part forthwith at any time by giving notice in writing to the other party if:
- (a) the other party commits a breach of any term of this Agreement (including, in the case of the Buyer, the obligation to pay the Fee when due) and: (i) such breach is incapable of remedy; or (ii) such breach is capable of remedy and the other party fails to remedy it within ten (10) Business Days after receipt of a written notice from the party terminating this Agreement giving full particulars of the breach and requiring it to be remedied;
 - (b) on the occurrence of an Insolvency Event relating to the other party or, where the other party is the Buyer and the Buyer is a media buying agency working for an advertiser client (the Advertiser), the Advertiser.
- 15.2 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.
- 15.3 During the term of this Agreement, the Buyer cannot terminate this Agreement for any reason other than those set out in these Terms unless expressly provided for in the Order or unless agreed in writing by the Company at its discretion. The Buyer understands that there shall be no refunds or suspension of payments if the Buyer wishes to discontinue display of the Digital Advertising or provision of the Digital Solutions Services prior to expiration or termination of this Agreement, unless otherwise expressly set out in these Terms or the Company agrees at its sole discretion.
- 15.4 Upon termination of this Agreement for any reason:
- (a) the Buyer shall remain liable for any amount due under an Order and such an obligation to pay shall survive termination of this Agreement; and
 - (b) at the request of either party, the other party shall immediately return to the requesting party, or permit the requesting party to collect, all items in its possession which are the property of the requesting party and immediately cease to use the intellectual property rights of the requesting party; and
 - (c) all licences granted under these Terms in connection with a Platform shall immediately terminate, and Buyer shall immediately cease any applicable Platform and any related documentation, unless prior written approval of the Company is given.
- 15.5 The provisions of those clauses intended to have continuing effect (including, but not limited to, clauses 1, 3, 5, 12, 13, 14, 16, 17, 18, 19, 21, 22 and 23) shall continue in full force and effect following the termination for any reason or expiry of this Agreement.

16. Cancellation of Digital Advertising Campaigns

- 16.1 Save for where bookings are made within any online booking system, the Company, in its absolute discretion, may consider requests from the Buyer to cancel a booked campaign of Digital Advertising. If the Buyer cancels a campaign less than three (3) weeks before the intended start date of the campaign (as specified in the Order), the Company reserves the right to charge (and, if applicable, Buyer shall pay) a cancellation fee as follows:
- (a) the Buyer shall pay fifty percent (50%) of the total value of any campaign which the Buyer cancels between two and three calendar weeks prior to the intended start date of the campaign;
 - (b) the Buyer shall pay seventy five percent (75%) of the total value of any campaign which the Buyer cancels between one and two calendar weeks prior to the intended start date of the campaign; and
 - (c) the Buyer shall pay one hundred percent (100%) of the total value of any campaign which the Buyer cancels less than one calendar week prior to the intended start date of the campaign.

17. Limitation of Liability

- 17.1 Subject to clause 17.3, neither party shall be liable to the other, whether in tort, contract or otherwise, for any loss of profit (whether direct or indirect), loss of revenue, loss of opportunity, loss of anticipated profit or revenue, 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. For the avoidance of doubt, nothing in this clause 17 shall exclude or limit the Buyer's liability to make payments contractually due to ITV or the Company under this Agreement or otherwise.
- 17.2 Subject to clause 17.3, the Company's 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 the Company under this Agreement (less any applicable VAT). In addition, the Buyer acknowledges and accepts that ITV (in its capacity as agent) shall have no liability to the Buyer under or in connection with this Agreement.
- 17.3 Nothing in this Agreement shall exclude or restrict either party's liability for death or personal injury resulting from the negligence of that party or of its employees while acting in the course of their employment or shall exclude or restrict a party's rights, remedies or liability under the law governing this Agreement in respect of any fraud.
- 17.4 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 makes no representations, and expressly disclaims 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 specifically disclaims any warranty regarding:
- (a) the number of persons who will access and/or view the Digital Advertising and/or Digital Solutions Services; 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 Digital Advertising and/or provision of the Digital Solutions Services.

18. Force Majeure

- 18.1 Neither party shall be liable in any way for any losses arising directly or indirectly from any failure or delay in performing any of its obligations under this Agreement caused by any Force Majeure Event (as defined below), provided that such Force Majeure Event is notified promptly to the other party.
- 18.2 If either party (**the Affected Party**) is/are unable to perform any of its/their obligations under this Agreement

as a result of the Force Majeure Event for more than thirty (30) Business Days, the other party may terminate this Agreement at any time upon giving written notice to the Affected Party. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination and the Buyer shall pay to the Company a proportion of the Fee as corresponds with the number of impressions delivered or work done on the Digital Solutions Services prior to termination.

- 18.3 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 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. The occurrence of an event associated with economic and monetary union in the European Union or any exit from the European Union will not be treated as a Force Majeure Event for the purposes of this Agreement. 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.

19. Entire Agreement

- 19.1 These Terms and the Order to which they relate (together with any overarching volume commitment agreements and/or any other documents referred to herein) contain the entire agreement and understanding of the parties in relation to its subject matter and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of the Order.

- 19.2 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 this Agreement, 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. Notices

- 20.1 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 or posted by pre-paid first class post addressed to that party at such address and shall:

- (a) if personally delivered, be deemed to have been received at the time of delivery; or
- (b) if 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 in either case 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 Business Day. A copy of any notice sent to the Company must also be sent to Director of Legal & Commercial Affairs, Media and Entertainment, 2 Waterhouse Square, 140 Holborn, London EC1N 2AE.

21. Confidentiality

- 21.1 Each party undertakes that it shall not, either during or after the expiry of this Agreement, disclose the: (i) terms of the Agreement (except as publicly available); (ii) information relating to the display of Digital Advertising or the provision of the Digital Solutions Services prior to the date of public display; or (iii) any other information, ideas or concepts disclosed directly or indirectly in connection with this Agreement whether in writing, verbally or by any other means by or on behalf of one party to the other (or its authorised agents) which is marked as confidential or which may reasonably be considered to be confidential except as permitted by clause 21.2 and clause 21.3. Pricing information will always be considered confidential information of the Company.
- 21.2 Each party may disclose the other party's confidential information:
- (a) to its subcontractors, employees, officers or professionally qualified legal or financial advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement or to its group companies providing that any such recipients have entered into equivalent obligations of confidentiality;
 - (b) which was known to the recipient (without obligation to keep it confidential) at the date of its disclosure or is after the date of disclosure lawfully acquired by the recipient in good faith from a third party who is not subject to any obligation of confidentiality in respect of that confidential information;
 - (c) which was at the time of disclosure or has become public knowledge other than by reason of the recipient's neglect or breach of the restrictions set out in these Terms;
 - (d) as required by law, regulation, court of competent jurisdiction or any governmental or regulatory authority; and/or
 - (e) where such disclosure is specifically authorised by the other party in writing (including pursuant to clause 12). In the case of a Buyer, Buyer may disclose to Advertiser(s), (a) reporting information related to the performance of campaigns for that Advertiser; and (b) relevant pricing and rates for campaigns for that Advertiser provided in each case:
 - (i) the relevant Advertiser(s) are subject to equivalent obligations of confidentiality (and not permitted to disclose any further); and
 - (ii) without prejudice to clause 21.3(i), Buyer or Advertiser may not disclose confidential information to any third parties including without limitation any media auditors, affiliates or companies within the same group of companies, buying and/or planning platforms and any other third party organisations who are looking to "pool" datasets i.e. are not directly involved in the transactional relationship between Advertiser / Buyer / Company.
- 21.3 Buyer acknowledges that the obligations set forth in clause 21.3 are necessary and reasonable in order to protect the Company and its business and that due to the unique nature of the confidential information, monetary damages may be inadequate to compensate Company for any breach of such obligations. Accordingly, Buyer agrees and acknowledges that any such breach or threatened breach could cause irreparable injury and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Company shall be entitled to seek any legal remedy or relief including but not limited to injunctive relief.

22. Compliance

- 22.1 Each party agrees that:
- (a) it has put in place and shall maintain throughout the term of this Agreement all processes, procedures and compliance systems reasonably necessary to ensure that Modern Slavery and/or Bribery and/or Tax Evasion
 - (b) does not occur within its business or down its supply chain;
 - (c) it shall and shall procure that all persons associated with it shall comply with all applicable laws relating to Bribery, Modern Slavery and/or Tax Evasion in connection with this Agreement; and

- (d) it shall inform the other party if Bribery, Modern Slavery and/or Tax Evasion has occurred in connection with the services being provided pursuant to this Agreement.

23. General provisions

- 23.1 Each party to this Agreement is duly authorised to enter into and to perform its obligations under this Agreement.
- 23.2 The names, images and logos identifying ITV, the Company, other companies in the ITV Group, their licensors or other third party partners and any of those parties' products and services are proprietary marks and may not be reproduced or otherwise used without the Company's express permission.
- 23.3 Save for variation under Clause 3.1, 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.
- 23.4 No waiver by either party of any breach of the other party's obligations shall constitute a waiver of any other prior or subsequent breach and neither party shall be affected by any delay, failure or omission to enforce or express forbearance granted in respect of any obligation of the other party.
- 23.5 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 this Agreement and shall in no way affect the validity or enforceability of any other provisions.
- 23.6 Nothing in this Agreement shall constitute a partnership or joint venture between the parties or constitute either the Company or the Buyer as agent of the other for any purpose whatsoever and neither shall have authority or power to bind the other or to contract in the name of the other 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.
- 23.7 No party may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties, except that the Company shall, without notice to the Buyer, be entitled to assign or otherwise transfer this Agreement (including any benefit or obligation under it) to any other company within the ITV Group.
- 23.8 Except for ITV and/or the ITV Group's ability to enforce the indemnity set out in clause 5.2, 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 the Buyer acknowledges that ITV may enforce the rights of the Company under this Agreement. Notwithstanding the foregoing, the parties may rescind or vary this Agreement (and any documents entered into pursuant to or in connection with it) without the consent of any other person.
- 23.9 Rights and remedies of any party under this Agreement are independent, cumulative and without prejudice to its rights under the law.

24. Governing Law and Jurisdiction

This Agreement and any disputes, claims and obligations arising out of or in connection with it or its subject matter or formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.

APPENDIX 1

Infosum Limited

SAS Software Limited

The Addressable Platform Limited with sub-processors including Amobee, Inc; Amobee EMEA Limited; Amazon Web Services, Inc; and Google LLC