
MEDIA AND ADVERTISING TERMS AND CONDITIONS



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THIS AGREEMENT (“Agreement”)

BETWEEN:

- (1) **SPACE & TIME MEDIA LTD**, Registered in England & Wales with company number: 02660562 whose registered office is ELM YARD 10-16 ELM STREET LONDON WC1X 0BJ (“**Agency**”)
- (2) **THE CLIENT** (as identified in the Client Service Level Agreement) (“**Client**”)

INTRODUCTION:

- (A) The Client wishes to purchase and the Agency has agreed to provide services and deliverables as more particularly described in the Client Service Level Agreement.
- (B) The parties agree that such services and deliverables shall be provided in accordance with this Agreement.
- (C) The terms of this Agreement shall apply between the Agency and the Client and any Client Group company that purchases Media Placements and/or is supplied media planning services (or other goods or services) through or from the Agency.

IT IS AGREED AS FOLLOWS:

1. Definitions & Interpretation

1.1 In this Agreement, references to clauses and schedules are to clauses of and schedules to this Agreement. This Agreement incorporates the terms set out in any Client Service Level Agreement. Where any provision contained in the schedules or the Client Service Level Agreement conflicts with any provision of the main body of this Agreement the following order of precedence shall apply (unless otherwise expressly stated in the Client Service Level Agreement)

1.1.1 Main body of this Agreement

1.1.2 Client Service Level Agreement

1.1.3 Schedules

1.2 Unless the context otherwise requires:

1.2.1 a person includes a legal person (such as a limited company) as well as a natural person;

1.2.2 the words “include” and “including” shall be construed without limitation; and

1.2.3 any reference to an enactment of legislation includes any subordinate legislation made from time to time under it and is to be construed as references to that enactment as from time to time amended or modified or any enactment replacing it.

1.3 The headings in this Agreement are for ease of reference only and shall be disregarded in construing or interpreting the Agreement.

1.4 The following terms shall have the corresponding meanings for the purposes of this Agreement:

"Accounts" means the Client's products and services that are the subject of the Services as referred to in a Service Specification;

"Advertising" means all the Client's advertising or sponsorship materials for which the Agency is procuring Media Placements on the Client's behalf in connection with the Services;

"Advertising Regulations" means any present or future applicable code of practice or adjudication of the Committee of Advertising Practice or the Advertising Standards Authority and includes any applicable modification, extension or replacement thereof in force from time to time, together with other UK laws, statutes and regulations which are directly applicable to the Services;

"Agency Materials" means those Materials specifically created by the Agency for the purposes of a Campaign (including any Materials adapted, modified or derived from the Client Materials), incorporated into Deliverables during the Term but specifically excluding the Agency Proprietary Materials;

"Agency Proprietary Materials" means software (including all programming code in object and source code form), methodology, know-how and processes and Materials in relation to which the Intellectual Property Rights are owned by (or licensed to) the Agency and which are:

- in existence prior to the date on which it is intended to use them for a Campaign; or
- created by or for the Agency outside of a Campaign and which are intended to be reused across its business;

"Agreement" means this agreement including the Schedules;

"Approval" means approval given in accordance with clause 10.1;

"Associates" means a party's employees, officers, agents, sub-contractors or authorised representatives;

"Authorised Agency Approver" means those Agency personnel who have the authority to bind the Agency contractually in all matters relating to this Agreement (and any successor(s) notified to the Client);

"Authorised Client Approver" means those Client personnel who have the authority to bind the Client contractually in all matters relating to this Agreement (and any successor(s) notified to the Agency);

"Business Day" means any day other than:

- a Saturday, Sunday or public holiday in England; or
- any day between 24th December in any year and 1st January in the immediately following year (inclusive);

"Campaign" means the Client's advertising campaign;

"Cancellation Fee" means a sum equal to 1 months' Fees calculated as an average of the Fees due to the Agency from the Client over the 3 month period prior to the date of cancellation;

"Client Group" means:

- (a) the Client (and any holding companies or subsidiary companies of the Client) and any subsidiary company of the holding Company (together with any holding companies or subsidiary companies of such subsidiary) where 'holding company' and 'subsidiary company' shall have the meaning given in s1159 Companies Act 2006 or equivalent in any applicable country;

- (b) any affiliated or associated companies of the Client or any affiliated or associated companies of any entity within the same group of companies as the Client (irrespective of the Client's percentage shareholding) including any companies with which the Client has a joint venture; and
- (c) any sub-contractor or agent of the Client or any other entity providing services directly or indirectly to the Client authorised to purchase Media Placements on behalf of the Client.

"Client Materials" means any client equipment, computer systems, software, documents, copy, and any other materials or information owned by or licensed to the Client including any Advertising or Materials which have been prepared for the Client (by a third party or otherwise) and which are provided to the Agency by or on behalf of the Client and in respect of which the Agency is asked to provide Services under this Agreement;

"Client Platforms" means any websites, social media pages, mobile apps or other digital platforms that are owned, controlled or operated by the Client that are relevant to the provision of the Services and/or Deliverables;

"Confidential Information" means all information (whether written or oral) concerning the business and affairs of the Agency or of its clients which is obtained or received by the Client as a result of the discussions leading up to the entering into or performance of this Agreement (including without limitation all technical, financial and non-public information of any nature whatsoever) and which is marked confidential or which ought reasonably to be treated as confidential;

"Controller Personal Data" means all Personal Data which is owned, controlled or processed by the Agency on behalf of the Client and which is provided by or on behalf of the Client to the Agency or which comes into the possession of the Agency as a result of or in connection with the supply of the Services;

"Data Controller", **"Data Processor"**, **"Data Subject"**, **"Personal Data"** and **"Process"** shall bear the respective meanings given to them in the Data Protection Act 1998 or General Data Protection Regulation 2016 (as applicable) (in each case as may be amended, updated, replaced or superseded from time to time) (and "Processes" and "Processing" shall be construed accordingly);

"Data Protection Legislation" means the EU Data Protection Directive 95/46/EC, the Data Protection Act 2018 and any other legislation in force from time to time which implements that Directive, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and any laws that replace or amend any of these (including without limitation the General Data Protection Regulation 2016 (Regulation (EU) 2016/679) (GDPR)), together with the equivalent legislation of any other applicable jurisdiction and all other applicable law, regulations, guidance and codes of conduct in any relevant jurisdiction relating to the processing of personal data and privacy including the guidance and codes of practice issued by the Information Commissioner's Office (ICO), the Article 29 Working Party, the European Data Protection Board or any other relevant supervisory authority from time to time;

"Data Subject Requests" means a request by a Data Subject to exercise any of their rights set out in the Data Protection Legislation, including but not limited to, requests for access, rectification, erasure or blocking of their Personal Data;

"Deliverables" means the media plans, media buys and advertising, creative and other materials which are to be provided by the Agency pursuant to the Service Specification;

"DMA" means Digital Media Account; this refers to, but is not limited to, a social media account on Facebook, a Google Ads account, a Microsoft Ads account, programmatic management tools (eg DV360; DBM), Amazon Advertising, data warehousing or integrating (eg Big Query, Supermetrics), call tracking

packages (eg ResponseTap) and other such platforms managed by the Agency which the Client may be given access to;

"Effective Date" means the date on which the Services commenced;

"Expenses" means reasonable travelling, hotel, subsistence and other expenses incurred by the Agency in connection with the supply of Services and Deliverables provided that such Expenses have received the Client's prior;

"Fees" means the Agency fees for the Services as detailed in the Client's Service Specification, as may be amended by the parties from time to time in accordance with this Agreement;

"Force Majeure Event" has the meaning set out in clause 23.1;

"Intellectual Property Rights" means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, rights to goodwill or to sue for passing off (or unfair competition), rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted, and renewals or extensions of, and rights to claim priority from such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Key Individuals" means the Agency individuals assigned to work under the Account Director named in the Service Specification on behalf of the client;

"Losses" means all losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses);

"Materials" means any artwork, copy, models, designs, photographs, commercial, feature film, character, music, voice over, sound recording, performance, book, painting, logo, or any other material protected by Intellectual Property Rights;

"Media Cost" means the cost invoiced by Media Owners in respect of Media Placements;

"Media Owner" means any third party with whom the Agency contracts or places an order either directly or indirectly for the purchase of Media Placements, including media owners, publishers, exchanges, platform providers, search engines, ad-servers, campaign partners and related technology and data providers, including, without limitation, affiliates of the Agency, Google, Video on Demand (**VOD**), YouTube, Sky and DoubleClick as well as online or other media research providers or social media platforms (e.g., Facebook, Twitter, Instagram, LinkedIn);

"Media Placement" means the advertising, sponsorship or promotional space and/or time in a publication, broadcast stream, press insert, transmission, VOD, website or any other on or off-line platform which is purchased either directly or indirectly from third parties by the Agency in connection with the provision of Services and all clicks howsoever purchased;

"Moral Rights" means all rights described in Part I, Chapter IV of the Copyright Designs and Patents Act 1988 and any similar rights of authors anywhere in the world;

"Payment Schedule" means the payment schedule set out in the Client Service Level Agreement;

"SEO" means search engine optimisation;

“Service Specification” means the description of the Services and/or Deliverables to be provided by the Agency and other relevant details of the proposed Campaign and as may be amended by the parties from time to time in writing, as detailed within the Client Service Level Agreement;

“Services” means some or all of the services listed in Schedule 1 which are to be provided under this Agreement as detailed in the Service Specification;

“Term” means the duration of this Agreement as more particularly described in clause 3.1;

“Territory” means the United Kingdom. Publication and marketing on globally accessible mediums such as the internet shall not mean that the Territory is deemed to be world-wide;

“Third Party Contracts” has the meaning set out in clause 2.3;

“Third Party Costs” has the meaning set out in clause 15.1;

“Third Party Materials” means those Materials which are either commissioned by the Agency from third parties during the Term and incorporated into the Deliverables, or which have been created by a third party and which are in existence at the time it is desired to make use of them for inclusion in the Deliverables; and

“Year” means a twelve-month period commencing on the Effective Date and each anniversary of the Effective Date during the Term.

2. Appointment

2.1 The Client appoints the Agency as its exclusive agent to provide the Services including negotiating contracts with Media Owners in accordance with the Client Service Level Agreement and in accordance with the terms and conditions of this Agreement.

2.2 The Agency acts in all its contracts with third parties in respect of the provision of Services as a principal at law.

2.3 The Agency enters into contracts with third party suppliers and Media Owners in respect of the Services and Deliverables in accordance with such suppliers’ and Media Owners’ standard or individual conditions and contracts (**“Third Party Contracts”**). The Client acknowledges and agrees that such Third Party Contracts entered into by the Agency with such third party suppliers and Media Owners on behalf of the Client pursuant to this Agreement shall be binding on the Client as if they were incorporated into this Agreement, and the rights and liabilities between the Client and the Agency shall correspond to those between the Agency and the various third party suppliers and Media Owners under such Third Party Contracts. The Agency shall have no liability to the Client for any act or omission or breach by a third party supplier or Media Owner or for any discrepancy or non-conformance between the terms of this Agreement and the terms of the Third Party Contracts.

2.4 No terms or conditions endorsed upon, delivered with or contained in the Client’s acceptance of the proposal, quotation, acknowledgement or acceptance of the Client Service Level Agreement or similar document will form part of this Agreement and the Client waives any right which it otherwise might have to rely on such terms and conditions.

2.5 The Client warrants, represents and undertakes and shall procure that the terms of this Agreement apply to all companies within the Client Group that contract with the Agency in relation to the purchase of Media Placements and/or media planning or other relevant media related services.

3. Term

- 3.1 This Agreement shall commence on the Effective Date within the Client Service Level Agreement and subject to earlier termination in accordance with its terms shall continue for the period outlined. After this time, this agreement shall automatically renew for yearly periods, unless either party notifies the other, in writing, at least 90 days before the end of the then current term that it does not wish the term to renew.

4. Client's Obligations

- 4.1 The Client must give the Agency full and clear instructions as to its requirements for the Services and Deliverables which shall be in accordance with the description of the same as set out in the Service Specification (included within the Client Service Level Agreement). The Client will ensure that all the facts given are materially accurate and not misleading.
- 4.2 The Client will provide to the Agency promptly and at no charge any Client Materials reasonably required by the Agency or otherwise necessary to provide the Services and Deliverables. The Client shall ensure that it has all rights and licences in place to enable use of all Client Materials by the Agency. Indemnifying the Agency in relation to the provision of Client Materials, clause 20.6 shall apply.
- 4.3 Solely for the purposes of the Agency providing the Services, the Client agrees to provide the following when requested by the Agency:
- (a) administrative or back-end access to the Client Platforms and any other Client IT infrastructure for analysis of its content and structure necessary for the delivery of the Services;
 - (b) permission for the Agency to make changes to the Client Platforms for the purpose of providing the Services;
 - (c) permission for the Agency to communicate directly with any applicable third parties (for example, Client's hosting provider) in order to provide the Services; and
 - (d) all reasonable assistance required to enable the Agency to deliver the Services.
- 4.4 The Client will promptly inform the Agency if the Client considers that any Deliverables submitted to the Client by the Agency for approval are false or misleading or in any way contrary to law or applicable Advertising Regulations.
- 4.5 To the extent that the Client does not perform its obligations under this Agreement, then (without prejudice to the Agency's rights and remedies) to the extent that the Agency is prevented from performing the Services in accordance with this Agreement it shall not be liable for Losses sustained by the Client due to such failure of the Client to perform its obligations.

5. Service Delivery

- 5.1 The Agency will provide the Client with clear and full instructions as to the Client Materials it reasonably requires in order to perform the Services and to provide the Deliverables.
- 5.2 The Agency shall:
- (a) apply such time, attention, and reasonable skill and care as may be necessary or appropriate for its proper performance of the Services and provision of the Deliverables

and use reasonable care and skill to make the Campaign as successful as is to be expected from a competent media agency;

- (b) comply with all lawful and reasonable directions regarding the Services and Deliverables communicated to it from time to time by the Client (provided such directions do not materially deviate from or add to the applicable Service Specification with the Client Service Level Agreement and any such material amendment must be agreed in accordance with clause 10.1);
- (c) keep Client Materials that are in its possession or control reasonably safe and secure; and
- (d) ensure the Services and Deliverables comply with all applicable laws.

5.3 The Agency shall not in any way be responsible for the preparation, content, production or supply of copy for any Advertising, unless otherwise agreed in writing.

5.4 If at any time the Agency becomes aware that it may not be able to perform the Services or deliver any Deliverables by any date set agreed by the parties in writing, the Agency will promptly notify the Client and give details of the reasons for the delay. Time for the performance of the Services shall not be of the essence of this Agreement.

6. Media Services

6.1 The Agency shall use reasonable care and skill in the selection and appointment of actual or potential Media Owners for Media Placements.

6.2 The Client agrees and acknowledges that Media Owners may restrict users from engaging in certain activities and/or displaying certain content on or via the Media Owner's services and/or may further require certain specific privacy disclosures. The Client agrees to abide by such requirements and agrees that the Agency is not responsible for any activities undertaken by the Client, or that are approved by the Client in breach of such requirements.

6.3 The Agency shall not in any way be responsible for providing any terms of use, privacy policies or notices or other terms or conditions on or for the Client Platforms.

6.4 The Agency will notify the Client in writing promptly if it becomes aware that any Media Owner is, or is likely to become, unable for any reason to provide any Media Placement which has been purchased by the Agency.

7. Social & Digital Media Marketing Services

DMA

7.1 Where as part of the provision of the Services, the Client is granted access to a DMA set up on its behalf as part of a Campaign, via the Agency's systems then the Client acknowledges and agrees that it is solely liable for all account activity undertaken by or on behalf of the Client via the grant of such access including (but not limited to) any changes made to such DMA by the Client which negatively impact on the performance of the DMA or which have a financial implication including (but not limited to) in respect of the latter any additional costs or the cost of resourcing remedial work incurred due to the Client's actions. Accordingly, the Agency excludes all liabilities for the actions taken by the Client as detailed in this clause 7.1. The Client acknowledges that the 'change history' on Google Ads and the 'activity history' in Facebook Business Manager record the changes made by each party which is granted access to such accounts.

- 7.2 The Client may be granted a revocable, non-transferable, non-exclusive, limited license to use the DMA solely for the purpose agreed in the Service Specification within their Client Service Level Agreement. The Client's access shall be password protected and the Client agrees that it shall not share its password with third parties. If the Client believes or suspects that a third party knows its login details the Client shall immediately inform the Agency.

SEO & PPC Services

- 7.3 In relation to SEO, Client acknowledges and agrees that Agency does not guarantee positions for any particular keyword, phrase or search term as it is solely at the discretion of the search engines themselves to list a website.

- 7.4 In relation to PPC, Client acknowledges and agrees that due to the way paid search algorithms operate, the Agency is unable to give any guarantees that the amount(s) bid by the Agency in respect of any words or phrases will secure or maintain any particular position, at any particular cost, on the relevant search engines.

- 7.5 Furthermore, in relation to both SEO and PPC, the Client acknowledges that the Agency cannot be held responsible for any fluctuations, perceived non delivery or damage that may have been caused by third party actions or changes including but not limited to:

- (a) the Client Platform in question being treated differently by the search engines for any reason;
- (b) the adoption by the Client of any unethical practices related to the Client Platform or engaged in practices disapproved of by the search engines;
- (c) the Client not taking the actions required by the Agency within the time frame specified by the Agency including but not limited to implementing on-page changes to the relevant Client Platform.
- (d) any other search engine marketing provider being instructed by the Client to work on the same Client Platform at the same time; and
- (e) the Client making any unauthorised changes;

in such circumstances the Fees are still payable by the Client.

- 7.6 Client acknowledges that Agency has no control over the policies of search engines with respect to the type of websites and/or content that they accept or the way in which websites are ranked either now or in the future. As a result search engines may:

- (a) stop accepting submissions from Agency for an indefinite period of time with or without notice; or
- (b) cease to list a website at its discretion, however should a website not reappear within thirty (30) days of it not being listed then Agency will re-optimize the applicable website based on the current policies of the relevant search engine at a cost to be agreed between the parties, and Agency shall not be liable to Client for any such actions of search engines.

- 7.7 Agency is not responsible for changes made to the website by:

- (a) other parties; or

(b) Client in choosing to link to or obtain a link from a particular website without prior consultation with Agency,

that adversely affect the search engine rankings of the website.

- 7.8 Agency shall not be responsible for Client overwriting actions it has taken as part of the Services on the website.
- 7.9 Agency shall promptly report to Client any material issues with the performance of the Services and/websites. Upon the reasonable request of Client, and subject to an agreement on costs between the parties, Agency shall use reasonable endeavours to correct any such material issues with the performance of the Services and/or Client Platforms.
- 7.10 Agency shall include in the SEO pages only materials and any other content that it has developed pursuant to the Specifications.
- 7.11 Solely for the purposes of Agency providing the Services, Client agrees to provide the following:
- 7.11.1 administrative or back-end access to the website for analysis of its content and structure;
 - 7.11.2 permission for Agency to make changes to the website for the purpose of optimisation;
 - 7.11.3 permission for Agency to communicate directly with any applicable third parties connected with the website (for example, Client's web designer) in order to provide the Services;
 - 7.11.4 access to existing traffic statistics for the website in order for analysis and tracking purposes; and
 - 7.11.5 where the website is lacking in textual content, Client will provide additional text content in electronic format for the purpose of creating additional or richer web pages.
- 7.12 The Client acknowledges and agrees that the Agency cannot guarantee that the owners of any other third party website will agree to provide a link from that website to the Client's Platforms.
- 7.13 The Client acknowledges that paid activity with Google is subject to Google's passing on of the Digital Services Tax (DST), and that this amount will be added to invoices at 2% of the media cost on the client's expenditure with Google. This amount will not be subject to the agency's bid management fee or any other mark up, however it will be subject to VAT at the prevailing rate. This amount will not be visible in schedules provided by the agency. Unless otherwise agreed in the Client Service Level Agreement, discussion and approval of budgets on Google activity will be net of this charge. The client further acknowledges that should other Media Owners pass on the DST in the same way or the amount of the DST change, its treatment will be identical to that set out for Google within this clause 7.13.

Social Media

- 7.14 If the Agency is engaged to manage paid social media activity as part of the Services, the Agency will endeavour to address all requests for Campaign adjustments and customer relationship management within reasonable timescales. However, the Agency can only guarantee that such adjustments and responses will be executed between the hours of 09:00 and 17:30, Monday to Friday.

Content Verification and Brand Safety

- 7.15 The Client will agree with the Agency which brand safety and content verification tools ("**CV Tools**") will be used in relation to the Client's Digital Media Placements to enable the Client to monitor and block websites and mobile applications content. The selected CV Tools must have been certified by the Audit Bureau of Communications ("**ABC**") (https://www.abc.org.uk/images/CV_Report.pdf) according to the JICWEBS Content Verification Product Principles (<http://www.jicwebs.org/content-verification-cv-product-principles/principles>). The Agency will actively enforce the Blacklist Content using the CV Tools. The Agency will actively monitor, recommend and manage new Blacklist Content categories to ensure brand safety for the Client.
- 7.16 The parties will review the choice of CV Tools and their efficacy on an annual basis. The cost of using such CV Tools will be borne by the Client.
- 7.17 The Agency will provide the Client with a list of websites and mobile applications that appear on its brand safe list so that the Client can create, if it wishes, its own list of third party approved websites and mobile applications ("**Client Whitelist**"). The Agency will only purchase Digital Media Placements on websites and mobile applications if they appear on the Client Whitelist. The Client shall have the right to amend the Client Whitelist on [INSERT NUMBER] Business Days' written notice to the Agency.
- 7.18 The Agency shall not purchase Media Placements on websites and mobile applications that it should reasonably be aware contain or link to the following content ("**Blacklist Content**"):
- 7.18.1 obscene, indecent or pornographic content (including child pornography);
 - 7.18.2 content that is hateful, threatening, harassing or abusive;
 - 7.18.3 violent content;
 - 7.18.4 content liable to incite racial hatred or other forms of unlawful discrimination;
 - 7.18.5 content liable to incite acts of terrorism;
 - 7.18.6 content containing excessive profanity;
 - 7.18.7 content relating to illegal drugs or drug paraphernalia;
 - 7.18.8 content relating to the sale of firearms, ammunition or other weapons;
 - 7.18.9 content that is defamatory or trade libellous;
 - 7.18.10 content relating to the sale or promotion of counterfeit goods; and

7.18.11 content that contains viruses, Trojan horses, worms, time bombs, cancel content that contains viruses, Trojan horses, worms, time bombs, cancel bots or other computer programming routines that are intended to damage, surreptitiously intercept, detrimentally interfere with or expropriate any system, data or personal data; or content that is otherwise harmful, unlawful or illegal

and shall use CV Tools that have been certified by ABC to JICWEBS Content Verification Product Principles to verify that the websites or mobile applications on the Client Whitelist do not contain any Blacklist Content. The Client shall not pay for ad impressions, clicks or post-campaign conversions delivered on inventory that contains any Blacklist Content at the time of delivery. If, after delivery, the inventory is discovered to appear outside the Client Whitelist or contain or link to any Blacklist Content the Agency will use reasonable efforts to obtain reimbursement from the relevant Media Owners of the Third Party Costs for such Digital Media Placements and will pass the Clients proportionate share of such reimbursed Third Party Costs back to the Client within thirty (30) days of receipt by the Agency.

In the event that the Agency discovers or is notified that advertising has appeared on a website or mobile application that contains or links to Blacklist Content it shall use its best endeavours to remove the advertising from that Media Placement as soon as possible of discovery or notification. Notwithstanding the foregoing, the parties acknowledge news reporting editorial about content considered to be Blacklist Content ("**Editorial Content**") may feature on Client Whitelist websites and mobile applications and that the Agency shall not be in breach of this clause or any other clause in this Agreement if advertising is placed in Media Placements on Client Whitelist websites or mobile applications featuring such Editorial Content.

7.19 The Client shall be entitled to request for specific websites and mobile applications to be removed/blocked from its Digital Media Placements and the Client must be made aware of and approve the use of any ad network(s) or ad exchanges before any insertion orders (IOs) or trading deals are signed off by the Agency.

7.20 The Agency is aware of the Digital Trading Standards Group ("**DTSG**") Good Practice Principles (<http://www.jicwebs.org/agreed-principles/jicwebs-brand-safety-dtsg>) and will comply with those principles, including minimising (and procuring that its proprietary trading desks minimise) the risk of ad misplacement, when supplying the Services. A list of signatories who have been or are undertaking certification against these principles can be found here: <http://www.jicwebs.org/digital-trading-standards-group-good-practice-principles/dtsg-information-ad-forms/151-dtsgsignatories>. The Agency and its proprietary trading desks will select Media Owners, publishers, online platforms and programmatic ad tech suppliers that are signatories to the DTSG's Good Practice Principles.

7.21 The Agency shall not place media on websites that appear on the Police Intellectual Property Crime Unit ("**PIPCU**") Infringing Website List.

Ad Fraud

7.22 The Client will agree with the Agency which ad fraud tool(s) will be used in relation to the Client's Digital Media Placements. The parties will review the choice of ad fraud tool(s) and its efficacy on an annual basis. The cost of using such ad fraud tool(s) shall be borne by the Client.

7.23 The Agency shall adopt policies and strategies to identify fraudulent activities on all Digital media Placements and mitigate its impact through implementing ad fraud tool(s) to detect and prevent such fraudulent activities.

7.24 The Agency is aware of the sets of standards advocated by JICWEBS in relation to tackling fraud online. The Agency and its proprietary trading desks will select Media Owners, publishers, online

platforms and programmatic ad tech suppliers that it considers to possess integrity with a view to the minimisation of ad fraud.

7.25 If, after delivery, it is discovered that the Third Party Costs for a Digital Media Placement were attributable to fraudulent ad traffic, the Agency will use reasonable efforts to obtain reimbursement from Media Owners of the Third Party Costs for such Digital Media Placements and will pass such reimbursed Third Party Costs back to the Client once received from the Media Owners.

7.26 The Agency is aware of the IAB Tech Lab Digital Advertising Sellers (Ads.txt) initiative (<https://iabtechlab.com/ads-txt/>), and will only purchase inventory from resellers of inventory that have been identified as legitimate sources via Ads.txt.

Ad Viewability

7.27 The Client will agree with the Agency which ad viewability tool(s) will be used in relation to the Client's Digital Media Placements. The selected ad viewability tool(s) should have been certified

7.28 The Agency shall work with the Client to define the viewability threshold for the Client's Digital Media Placements, through implementing technology to monitor, prevent and report. In the absence of an agreed viewability metric with Agency, default MRC/IAB viewability recommendations (http://www.mediaratingcouncil.org/063014%20Viewable%20Ad%20Impression%20Guideline_Final.pdf) will apply.

7.29 If, after delivery, it is discovered that the Third Party Costs for a Digital Media Placement were below the viewability thresholds agreed, the Agency will use reasonable efforts to obtain reimbursement from Media Owners of the Third Party Costs for such Digital Media Placements and will pass a proportionate share of such reimbursed Third Party Costs back to the Client once received from the Media Owners.

Programmatic Trading (fully disclosed programmatic trading model)

7.30 In relation to Digital Media Placements procured Programmatically by the Agency, the Agency shall:

7.30.1 provide a fully transparent programmatic solution;

7.30.2 grant the Client appropriate read-only access to all media-buying platforms, including access to reports;

7.30.3 comply with the Client's programmatic optimisation and trading including tolerance of bid prices, floor prices, buying strategy on Open Marketplace (OMP) and Private Market Place (PMP) deals, strategy budgets and campaign budgets including all standard campaign management controls in order to avoid unwarranted trading to the extent stipulated in the Client Service Level Agreement;

8. Personnel

8.1 The Agency will allocate suitable personnel with appropriate levels of experience to provide the Services. The Client acknowledges and agrees that it may be necessary for the Agency to replace the personnel providing the Services with alternative personnel with similar levels of experience.

9. Amendments and Cancellations

9.1 In the event that either party wishes to make a material change to the Service Specification within their Client Service Level Agreement, such change shall be subject to the agreement of both parties

in writing. The Deliverables' turnaround timescale of such a change shall be agreed in writing by both parties at the time of the request.

- 9.2 Pending approval of any changes to the Client's Service Specification in accordance with clause 9.1 above, the Agency shall continue to perform the Services and be paid for them as if such change(s) had not been requested (unless otherwise agreed).
- 9.3 Subject to clause 9.4 the Client may request in writing that the Agency cancels a Service Specification or part thereof, including any plans, schedules or work in progress. The Agency will take all reasonable steps to comply with any such request provided that the Agency is able to do so within its contractual obligations under the Third-Party Contracts. However, if the Agency is not able to cancel, for example, booked media spend, then the Client shall remain liable for the full amount of such expenditure. An indication only of the cancellation periods imposed by third party Media Owners is set out in Schedule 2.
- 9.4 In the event of any such cancellation the Client will reimburse the Agency for all Fees up to the date of cancellation together with the Cancellation Fee and any third party charges or other expenses or costs reasonably incurred by the Agency or to which the Agency is committed as well as any charges or other expenses or costs imposed on the Agency by third parties (including Media Owners) arising from the cancellation. In certain circumstances the Agency might be committed to costs beyond the cancellation date. Where this applies the Client will be liable for such costs. In such circumstances evidence from the Media Owner will be provided to the Client by the Agency.

10. Approvals and Authority

- 10.1 For the purposes of this Agreement, any reference to "approval" to be given by the Client shall mean the Client giving approval by one of the following methods:
- (a) the Client issuing a purchase order bearing the signature of an Authorised Client Approver; or
 - (b) an e-mail from the individual business e-mail address of an Authorised Client Approver; or
 - (c) the signature of an Authorised Client Approver on the Agency's documentation; or
 - (d) where an approval is time critical, including (but not limited to) where the Client wishes to take advantage of a short term offer, then the Agency will accept a verbal approval from the Client. In such circumstances the Agency will confirm the actions taken as soon as reasonably practicable in writing to the Client.
- 10.2 For the purposes of this Agreement, any reference to "approval" to be given by the Agency shall mean the Agency giving approval by one of the following methods:
- (a) an e-mail from the individual business e-mail address of an Authorised Agency Approver; or
 - (b) the signature of an Authorised Agency Approver on the Client's documentation.
- 10.3 If a party is requested to give approval under this Agreement or in connection with it, such approval shall not be unreasonably withheld or delayed. The Client shall ensure that its approval is provided in sufficient time to the Agency to the extent necessary for the satisfactory performance of the Services by the Agency. The Agency shall not be held responsible for any delay in the performance of the Services resulting from the unavailability of an approver to provide written approval(s).

- 10.4 The Agency will seek the Client's prior approval in respect of:
- (a) any estimates or quotations for any third-party costs to be paid by the Client; and
 - (b) any plans for Media Placements;
- and the Client's approval of such estimates and creative treatments will be the Agency's authority to enter into contracts with relevant third parties and Media Owners.
- 10.5 The Agency will seek the Client's prior approval of any draft Deliverables and such approval will be the Agency's authority to proceed with the use of the relevant Deliverables.

11. Relationship Management

- 11.1 At the beginning of the Term, the parties will agree in writing the number of meetings to be attended per annum to review the status and progress of the Services, Deliverables and Campaigns and to seek to resolve any issues that have arisen. Such meetings shall be held at such intervals as shall be agreed by the parties in the Client Service Level Agreement and either at such locations as specified in said agreement or by remote access (eg Skype). Additional meetings outside of this pre agreed number will be charged at the cost notified to the Client at the time such additional meetings are requested.

12. Reporting

- 12.1 The Agency shall provide to the Client reporting and Client campaign data, as specified in the Client Service Level Agreement.

13. Remuneration

- 13.1 The Agency will invoice the Client in respect of all Fees, Expenses and Third Party Costs, the latter of which will be invoiced as detailed at clause 15.1.
- 13.2 In consideration of the Agency providing the Services and Deliverables set out in the Client Service Level Agreement, the Client shall pay the Agency the Fees which shall be payable in accordance with clause 13.3. Expenses shall be paid by the Client by the due date stated on the invoice. Third Party Costs will be payable as stated at clause 15.1.
- 13.3 The Client shall make payment of an invoice issued by the Agency under this Agreement by the due date for payment as shown in the Payment Schedule (or as notified by Agency from time to time). Payment shall be made in cleared funds to the bank account nominated by the Agency in writing.
- 13.4 All sums stated in this Agreement or in any Client Service Level Agreement, quotation or estimate exclude VAT and any other applicable sales tax (unless otherwise stated) which shall also be payable by the Client at the rate prevailing from time to time.
- 13.5 The terms of remuneration set out in this Agreement do not cover the performance of services which are outside of a Client Service Level Agreement nor do they cover the performance of Services outside the Territory. If any such Services are required the terms relating to their provision together with the applicable Fees will be agreed in writing by the parties.
- 13.6 If any payment of the Fees, Expenses or Third Party Costs is subject to tax (whether by way of direct assessment or withholding at its source), the Agency shall be entitled to receive from the Client such amounts as shall ensure that the net receipt to the Agency of the Fees, Expenses and

Third Party Costs after tax in respect of the payment is the same as it would have been were the payment not subject to such tax.

- 13.7 The Client is advised that where an invoice remains unpaid for more than 90 days, then within the terms of its credit insurance policy it is obliged to report such debt to the Agency's credit insurance company. Should the Agency's credit insurers refuse, revise or withdraw cover for the Client, or if the Agency is unable to obtain sufficient credit references in respect of the Client, the Agency reserves the right to revise its terms of payment and/or require advance payments from the Client. Where the Client does not agree to such revised payment terms then the Agency has the right to terminate this Agreement immediately on written notice.
- 13.8 Where a surcharge is levied by a supplier against the Agency due to late payment and this is caused by a late payment by the Client, the Client shall immediately upon being notified reimburse to the Agency the amount of such surcharge, together with any accrued interest charged by the supplier in respect of the overdue amount.
- 13.9 The Client shall be responsible for any late copy charges levied by a Media Owner against the Agency, save to the extent caused by the negligence or breach of this Agreement by the Agency. The Agency shall provide the Client with evidence of all such charges and the Client will immediately reimburse the amount of such late copy charge to the Agency.
- 13.10 The Client accepts that in respect of Ad-serving services, targets may be under delivered or over delivered and all quoted costs are therefore estimates only and are subject to reconciliation.
- 13.11 The Client shall pay all monies which are payable by it to the Agency without any right of set off, abatement or withholding in respect of monies which are due to it or alleged to be due to it from the Agency.

14. Invoicing

- 14.1 Subject to any payment terms outlined in the of Client Service Level Agreement or set out on the fact of the Agency's invoices, where credit insurance is available for a Client, invoices for media costs are payable within 28 days after invoice. In the event that credit insurance is unavailable in relation to a Client, payment will be made in advance of the media cost being purchased, in cleared funds.
- 14.2 In accordance with the instructions issued to all Advertising Agencies by the Media Proprietor's Associations in agreement with the Advertising Association and the Institute of Practitioners in Advertising, all invoices rendered by the Agency will be subject to a 3% surcharge if not paid on, or before, the last working day of the month following the date of the invoice; a further 2% surcharge will be applied to all amounts remaining unpaid until a further 30 days, unless subject to dispute.
- 14.3 Invoices for biddable media e.g. Facebook and Google are rendered monthly once the actual spends are known. As a result, invoices will be issued as early as possible in the month following the month of activity. The invoice will be dated on the last day of the month of activity. Payment for such invoices will fall due on the last working day of the month following date of activity. i.e. if the invoice is raised on the 2nd May for April activity, then the due date for payment is the last working day of May.
- 14.4 Any queries concerning invoices by the Client should be notified to the Agency in writing within 7 days of the invoice date. The Client shall compare invoices with the statements issued and any missing invoices should be requested from the Agency in writing within 7 days of the statement date. If the Client has not raised any queries during such 7-day period it is deemed to have accepted that the invoices are correct.

14.5 The Client agrees that any queries raised subject to clause 14.4 which apply only to part of an invoice (rather than to its entirety) will not impede the payment of the undisputed amount of the queried invoice which will be settled within the requisite timescales.

14.6 In the event that the Client requires the invoices raised by the Agency to quote a specific purchase order (**PO**) number then the Client shall set out the nature of this requirement in writing prior to the Effective Date and ensure that all such PO numbers are provided to the Agency before the 25th of the month in which the activity took place or is due to take place. Save where the provision of POs is stated in the Client Service Level Agreement to be a mandatory element of the Client granting approval prior to a Media Placement being made, then the Client agrees that any failure or delay by the Client in issuing POs (where approval has been provided pursuant to Clause 10) will not impede the payment of invoices in accordance with the terms set out in this Clause 14.

15. Third Party Services & Costs

15.1 Subject to the Client approving all such costs in advance in writing, the Agency will invoice the Client in respect of all third party costs incurred by the Agency on behalf of the Client in performing the Services, including (but not limited to) the cost of Adserving and Tech fees and the cost of Media Placements and Third Party Materials and services purchased on behalf of the Client (collectively defined as "**Third Party Costs**"). Subject to clause 15.4, the Client will pay all invoices issued pursuant to this clause 15.1 by the due date stated on the invoice.

15.2 The Agency will advise the Client promptly upon becoming aware of any changes in estimated Third Party Costs.

15.3 The actual cost to the Agency of Third Party Costs purchased overseas for the Deliverables may be more or less than the cost anticipated at the date when the Agency ordered the relevant Media Placements, Third Party Materials or services (or obtained the Client's approval for such Third Party Costs) as a result of fluctuations in the rate of currency exchange. If so, the Agency will charge the Client at the rate of currency exchange in operation on the date the Agency pays for the relevant Third Party Costs, which shall be deemed to be the closing mid-point rate in London for that day as subsequently quoted in the next published edition of The Financial Times.

15.4 The Agency shall disclose to the Client all payment terms for Third Party Costs and shall supply the Client with evidence of such payment terms on request. The Agency will notify the Client as soon as reasonably practicable in the event that Media Owners or other third parties require payment in advance or sooner than previously notified and the Client shall pay such costs within the timescale stated in order that the Agency may meet such payment deadlines imposed by the relevant third party.

16. Confidentiality

16.1 The Client acknowledges that the Agency may disclose Confidential Information to the Client including (but not limited to) the Agency's financial position and personnel compensation arrangements, the media plans, marketing platforms used by the Agency, fees, prices and other terms of any arrangements with Media Owners. The Client shall hold that information in strict confidence and shall not disclose that information to any third party without the Agency's prior written consent.

16.2 The confidentiality obligations under this Clause 16 will remain in effect for a period of 5 years from the date of termination or expiry.

16.3 Confidential Information shall exclude information which:

- (a) at the time of receipt by the Client is in the public domain;
 - (b) subsequently comes into the public domain through no fault of the Client;
 - (c) is lawfully received by the Client from a third party on an unrestricted basis; and/or
 - (d) is already known to the Client before receipt hereunder.
- 16.4 The Client undertakes to maintain the confidentiality of the Agency's Confidential Information at all times and to use no less adequate measures than it uses in respect of its own confidential information to keep the Client's confidential information reasonably secure. The Client shall not at any time, whether during the Term or at any time thereafter, without the prior written approval of the Agency, use, disclose, exploit, copy or modify any of the Agency's Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the exercise of its rights and/or the performance of its obligations in connection with this Agreement.
- 16.5 The Client undertakes to disclose the Agency's Confidential Information only to those of its employees to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement.
- 16.6 The Client shall not be in breach of this Clause 16 if it discloses the Agency's Confidential Information in circumstances where such disclosure is required by law, regulation or order of a competent authority, provided that the Agency is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.
- 16.7 The Client hereby indemnifies the Agency from and against all Losses arising out of or in connection with the Client's breach of this Clause 16.

17. Agency Warranties

- 17.1 The Agency warrants that it has full power and authority to enter into this Agreement and that by doing so it will not be in breach of any obligation to a third party and it will perform the Services with reasonable skill and care.
- 17.2 All warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise are hereby excluded to the fullest extent permitted by law, including any condition of satisfactory quality or fitness for a particular purpose.

18. Client Warranties

- 18.1 The Client warrants and undertakes that:
- (a) it has full power and authority to enter into this Agreement and that by doing so it will not be in breach of any obligation to a third party;
 - (b) the Client Materials will not, when used in accordance with this Agreement and any written instructions given by the Client, infringe a third party's Intellectual Property Rights;
 - (c) the Client Materials will comply with all applicable laws and regulations including all Advertising Regulations; and
 - (d) the Client Materials are accurate and complete in all material respects.

19. Limitation of Liability and Indemnification

- 19.1 Subject to sub-Clause 19.2 the Agency's maximum aggregate liability under or in connection with this Agreement and any indemnity contained in this Agreement, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed the Fees received by the Agency from the Client in the 12 month period prior to which that liability arose.
- 19.2 Nothing in this Agreement shall exclude or in any way limit either party's liability for fraud, death or personal injury caused by its negligence or any other liability to the extent such liability may not be excluded or limited as a matter of law.
- 19.3 Subject to sub-Clause 19.2 (and including for the avoidance of doubt any indemnity contained in this Agreement), in no event will the Agency be liable under or in connection with this Agreement for:
- (a) loss of actual or anticipated income or profits;
 - (b) loss of goodwill or reputation;
 - (c) loss of anticipated savings; or
 - (d) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.
- 19.4 In planning and securing Media Placements the Agency shall use its reasonable endeavours to ensure the accuracy of all estimated and target figures relating to the number, proportion or type of people likely to be exposed to the Advertising and the related costs notwithstanding this however the Client acknowledges and agrees that this is ultimately beyond the Agency's control and therefore no warranties are given by Agency as to the accuracy of such estimates/targets and the Agency excludes all liability to the Client in respect of any Client or third party losses caused by the Client's reliance on such estimates and targets. The Client acknowledges and agrees that the Agency makes no guarantees with respect to the results generated by any of the Services provided under this Agreement.
- 19.5 The Agency does not guarantee the continuous or uninterrupted display or distribution of any content or other products or services or that the Services will be secure, error or virus free. In the event of interruption of availability, display or distribution of any Services the Agency's sole obligation will be to restore service as soon as practicable.
- 19.6 The Client shall on demand indemnify and keep indemnified, defend and hold harmless the Agency from any and all Losses arising from or in connection with:
- (a) the content of any Advertising which has been provided by the Client to the Agency; or
 - (b) any Client Materials or materials supplied by a third party acting on the Client's behalf; or
 - (c) use of the Deliverables outside of the agreed terms; or
 - (d) any of the Client's products or services being defective; or
 - (e) any claim against Agency where it acted on Client's specific instructions;
 - (f) a breach of clause 7.1 by the Client;

- (g) any third party claim that any Deliverables provided by the Agency under this Agreement infringe any third party's Intellectual Property Rights where such infringement: (i) was due to any amendments, adaptations or changes made to the Deliverables by the Client or any third party acting on its behalf which rendered such Deliverables infringing; or (ii) was due to such Deliverables being used other than in accordance with this Agreement or outside the agreed terms (including the terms of any third party licence); or (iii) arises in respect of any Client Materials; or (iv) in the event that the Agency had previously notified the Client of a specific risk that the Deliverables infringed third party Intellectual Property Rights or breached Advertising Regulations or other laws and regulations and the Agency had obtained the prior approval of the Authorised Client Approver to use such Deliverables notwithstanding such notified risk.

20. Intellectual property

- 20.1 The Client acknowledges that all Intellectual Property Rights in the Agency Proprietary Materials and Agency Materials shall be owned by and remain the property of and vested in the Agency. Subject to the Agency receiving payment of all Fees, Expenses and Third Party Costs attributable to the Services, the Agency may grant to the Client a non-exclusive, non-transferable, irrevocable, worldwide and perpetual licence to use such Agency Proprietary Materials and Agency Materials as are included in the Deliverables in the Territory.
- 20.2 The Agency acknowledges that, as between the Agency and the Client, the Client will own all right, title and interest (including all Intellectual Property Rights) in and to any Client Materials. The Client grants the Agency and the Media Owners a non-exclusive, non-transferrable, revocable, royalty-free, worldwide license to use, copy, modify (as permitted herein), publicly perform, display, broadcast and transmit: (a) any Client Materials; and (b) the name, logo, company name and trade mark of the Client; to the extent necessary to perform the Services during the Term. In addition, the Client consents to the Agency, using the Client's name (including any trade name and trade mark), in its marketing and sales materials and on its website in perpetuity.
- 20.3 Prior to delivery of the Deliverables, the Agency shall endeavour to obtain such licences or consents in respect of Third Party Materials as shall be necessary in order that the Client can use such Third Party Materials. The Agency shall notify the Client of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Materials and the Client shall abide by such restrictions.
- 20.4 The Agency shall at the Client's request and expense take all such actions and execute all such documents as are reasonably necessary to enable the Client to obtain, defend or enforce its rights in the Deliverables.
- 20.5 To the extent permitted by law the Agency shall ensure that all Moral Rights in the Agency Materials included in the Deliverables are waived (or where not lawfully possible to waive Moral Rights, the Agency agrees not to assert any Moral Rights in respect of the Agency Materials). The Agency shall use its reasonable endeavours to ensure that all Moral Rights in the Third Party Materials are waived (or where not lawfully possible to waive Moral Rights, the Agency shall use its reasonable endeavours to procure that Moral Rights are not asserted in respect of Third Party Materials), but if the Agency cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any Third Party Materials, the Agency will notify the Client and shall obtain the Client's approval prior to incorporating such Third Party Materials into the Deliverables.
- 20.6 For the avoidance of doubt, the Agency shall not be liable under or in connection with this Agreement for any modifications, adaptations or amendments to any Deliverables made by the Client or by a third party on the Client's behalf, nor in the event that any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to the acts or omissions of the Client or its agents.

20.7 The terms of and obligations imposed by this Clause 20 shall survive the termination of this Agreement for any reason.

21. Termination

21.1 Without prejudice to clause 3.1, the Agency may at any time by giving not less than 30 days' written notice to the Client terminate this Agreement without cause.

21.2 Either party may terminate this Agreement immediately upon written notice to the other party:

- (a) in the event of any material breach of this Agreement by the other party which breach is not remediable or, if remediable, is not remedied within thirty (30) days after the service by the party not in default of a written notice on the defaulting party, specifying the nature of the breach and requiring such breach to be remedied; or
- (b) if the other party suspends, or threatens to suspend payment of its debts or is unable to pay its debts as they fall due, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (c) if the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal or enters into any compromise or arrangement with its creditors (other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other party with other companies); or
- (d) if a petition is filed, or a notice is given, or a resolution is passed or an order is made for or in connection with the winding up of that other party (other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other party with other companies); or
- (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party.

22. Consequences of Termination

22.1 Upon termination of this Agreement for any reason:

- (a) the Client shall pay the Agency all Fees, Expenses and Third Party Costs due to the Agency (in accordance with clauses 13, 14 and 15 where relevant) during the notice period; and
- (b) Subject to clause 22.1(a) each party shall on the reasonable request of the other party promptly deliver or dispose of any and all materials and property belonging or relating to the other party and all copies of the same, which are then in its possession, custody or control, and shall on the request of the other party certify in writing that the same has been done. For the avoidance of doubt the Client is obliged to comply with this clause 22.1(b) in respect of the Agency's Confidential Information.

22.2 On termination of this Agreement, if the Agency has set-up DMA's for the Client (e.g. the Google Ads/Microsoft Ads/Facebook/Amazon Advertising accounts) then these will remain the property of the Agency. Should the Client, or a new supplier of the Client, wish to take over such accounts, the Agency shall charge the Client a fee per account (**DMA Fee**). The DMA Fee shall be a sum equal to 20% of one months' Fees and Third Party Costs payable under this Agreement for the relevant DMA calculated as an average of the Fees and Third Party Costs due to the Agency from the Client over the six month period prior to the date of termination.

22.3 On termination of this Agreement, if the Agency holds performance data in respect of the Client's marketing activity within a data warehousing facility then this will be deleted within 60 days of termination, or earlier on request, according to clause 22.1. If the Client wishes to take over this reporting layer or pass it to a third party then the Agency must be notified in writing prior to the termination of the agreement. The fee charged by the Agency for the work involved in rendering up this reporting layer for transfer shall be £100 per hour, totalling no less than £500.

22.4 Provisions of this Agreement which are either expressed to survive its termination or which from their nature or context are contemplated to survive termination shall remain in full force and effect notwithstanding termination of this Agreement. Notwithstanding the generality of the foregoing, the following clauses shall survive termination of this Agreement: Clause 16 (Confidentiality); Clause 18 (Client warranties); Clause 19 (Liability); Clause 20 (Intellectual Property Rights); Clause 22 (Consequences of Termination); Clause 24 (Notices); Clause 28 (Data Protection) Clause 30 (General); and Clause 31 (Governing law and jurisdiction).

23. Force Majeure

23.1 Neither party shall be liable for any delay in performing or failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any act, event, non-happening, omission or accident beyond its reasonable control (a "**Force Majeure Event**").

23.2 Force Majeure Events shall include but not be limited to the following events affecting either party or its Associates:

- (a) strikes, lock-outs or other industrial action (other than strikes, lock-outs or other industrial action of any Associates of the party seeking to rely on the Force Majeure Event);
- (b) civil commotion, riot, invasion, war (whether declared or not), terrorism, or threat of or preparation for war or terrorist attack;
- (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic or other natural disaster;
- (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; and/or
- (e) compliance with any law or governmental order, rule, regulation or direction.

23.3 The party whose performance is affected by a Force Majeure Event shall, as soon as reasonably practicable after becoming aware of the Force Majeure Event, provide a written notice to the other party, giving details of the Force Majeure Event, its likely duration and the manner and extent to which its obligations are likely to be prevented or delayed.

23.4 If any Force Majeure Event occurs, the date(s) for performance of the affected obligation(s) shall be postponed for so long as is made necessary by the Force Majeure Event, provided that if any Force Majeure Event continues for a period of or exceeding two (2) months, the non-affected party shall have the right to terminate this Agreement immediately on written notice to the affected party. Each party shall use its reasonable endeavours to minimise the effects of any Force Majeure Event.

23.5 If any production of the Deliverables is cancelled, delayed or disrupted due to an act or threatened act of terrorism or military action the Client will be liable to the Agency and will reimburse the Agency for any Third Party Costs relating to the cancelled, delayed or disrupted Deliverables which the Agency is not able to recover or which the Agency is committed to pay, as well as any Losses suffered by the Agency as a result of such act or threatened act of terrorism or military action.

24. Notices

24.1 A notice given to a party under or in connection with this Agreement shall be in writing and sent to the party at the address given in this Agreement or as otherwise notified in writing to the other party.

24.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt.
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage.	9.00 am on the second Business Day after posting.
Pre-paid airmail providing proof of postage.	9.00 am on the fifth Business Day after posting

24.3 For the purpose of this clause and calculating deemed receipt all references to time are to local time in the place of deemed receipt.

25. Advertising Standards

25.1 Both parties acknowledge that they have a responsibility to comply with all Advertising Regulations.

25.2 The parties will co-operate with each other in ensuring that suitable objective factual product and other information is available as required to satisfy the requirements of any applicable Advertising Regulations. Both parties shall comply with all applicable laws relating to the subject matter of this Agreement. Notwithstanding the foregoing, the Client acknowledges that the Agency shall only be responsible for compliance with all applicable laws in relation to the Services performed under this Agreement.

25.3 Each party shall inform the other without delay if the first party discovers that any Advertising is false or misleading or in any way contrary to law or to any applicable code.

25.4 In order to fund the UK self-regulatory system, a levy of 0.1% is payable:

- (a) to the Advertising Standards Board of Finance (**ASBOF**) in relation to non-broadcast advertising, and applies to the 'cost to client' media cost of outdoor, cinema and press display advertisements (excluding classified lineage, semi-display and any displays, screenings and publications outside the UK), the postage cost of direct mailings in the UK, and internet advertising in paid for space; and
- (b) to the Broadcast Advertising Standards Board of Finance (**BASBOF**) in relation to broadcast advertising, and applies to the cost to client cost of broadcast advertisements in the UK.

25.5 The Agency shall add the levies referred to at this clause 25 above to all relevant invoices submitted to Client (and only in respect of media purchased for Advertising in the UK).

26. Assignment and Sub-Contracting

- 26.1 The Agency shall be entitled to sub-contract its performance of the Services and/or Deliverables with the prior written approval of the Client, such approval not to be unreasonably withheld or delayed, and provided that any sub-contracting shall not relieve the Agency from its obligations to the Client under this Agreement.
- 26.2 The Client may not assign, transfer or charge or otherwise dispose of this Agreement or any of its rights or obligations arising hereunder without the prior written approval of the Agency.

27. Third Party Rights

- 27.1 The provisions of this Agreement may be enforced only by a Party to it and the operation of the Contracts (Rights of Third Parties) Act 1999 is excluded in relation to all third parties.
- 27.2 Notwithstanding any provision of this Agreement (including clause 27.1), the Parties do not require the consent of any third Party to rescind, terminate or vary this Agreement.

28. Data Protection

- 28.1 The parties agree that Client is a Data Controller ("**Controller**") and that Agency is a Data Processor ("**Processor**") for the purposes of Processing Controller Personal Data pursuant to this Agreement.
- 28.2 The Controller as at the date of this Agreement gives a general written authorisation to the Agency to engage any agent, sub-contractor or other third party ("**Sub-Processor**") subject to the Processor informing the Controller of any intended changes concerning the addition or replacement of any Sub-processors and allowing the Controller to object to such changes, and the Processor remaining fully liable for all the actions and omissions of the Sub-Processor and, subject to this clause, that any Sub-Processor agrees in writing to comply with obligations at least equivalent to those obligations imposed on the Processor in this clause that relate to the requirements laid down in Article 28(3) of the GDPR. The Processor's obligation under clause 28.2 to impose the obligations on the Sub-Processor as set out in that clause shall be subject to the Processor's ability (acting reasonably) to impose such obligations on the Sub-Processor where the Sub-Processor has provided its non-negotiable standard terms to the Processor, in which case, the Processor shall use its reasonable endeavours to procure that those obligations set out at clause 28.3 are imposed on the Sub-Processor notwithstanding the Sub-Processor's standard terms.
- 28.3 The Processor shall:
- (a) only Process the Controller Personal Data on the documented instructions of the Controller from time to time; and
 - (b) subject to clause 28.4 not transfer, or otherwise directly or indirectly disclose, any Controller Personal Data to countries outside the European Economic Area (**EEA**) without the prior written consent of the Controller except where the Processor is required to transfer the Controller Personal Data by the laws of the member states of the EU or EU law (and shall inform the Controller of that legal requirement before the transfer, unless those laws prevent it doing so). Subject always to the preceding provisions of this clause 28.3 and clause 28.4 the Controller and the Processor shall agree the countries in respect of which the Processor is permitted to transfer the Controller Personal Data on the Effective Date.
- 28.4 The Processor shall be permitted to transfer the Controller Personal Data to countries outside of the EEA to the extent that any one or more of the following applies:

- (a) the Processor has in place with the non-EEA receiving entity/Sub-Processor the EU model contractual clauses as set out in Decision 2010/87/EU or any alternative version of those clauses issued by the European Commission or a supervisory authority from time to time;
 - (b) the transfer is to a non-EEA country that is deemed to have an adequate level of protection from time to time by the European Commission or such other supervisory authority;
 - (c) to the extent that the transfer is to an Agency Group Company located outside of the EEA, the Processor's Group has in place Binding Corporate Rules for the transfer of Personal Data to a non-EEA Group Company;
 - (d) there is an approved code of conduct in place by an association or other body representing the Controller or Processor that applies to the non-EEA territory or territories to which the Controller Personal Data is to be transferred; and
 - (e) there is an approved certification mechanism in place in respect of the non-EEA territory;
 - (f) to the extent that the transfer is to an entity located in the United States, such entity participates in the EU-US Privacy Shield or such other mechanism that may replace or supersede it from time to time.
- 28.5 The Processor shall ensure that access to Controller Personal Data is limited to the Processor Personnel and authorised Sub-Processors who need access to it to supply the Services and who are subject to an enforceable obligation of confidence with regards to the Controller Personal Data.
- 28.6 Taking into account the state of technical development and the nature of Processing, the Processor shall implement appropriate technical and organisational measures to protect Controller Personal Data against accidental or unlawful destruction, loss, alteration and unauthorised disclosure or access.
- 28.7 The Processor shall, taking into account the nature of the Processing, assist the Controller (by appropriate technical and organisational measures), insofar as this is possible, in relation to any request from any Data Subject for: access, rectification or erasure of Controller Personal Data, or any objection to Processing.
- 28.8 The Processor shall notify the Controller without undue delay and in writing if any Controller Personal Data has been disclosed in breach of this clause 28.
- 28.9 The Processor shall notify the Controller promptly if it becomes aware of a breach of security of Controller Personal Data, such notices shall include full and complete details relating to such breach.
- 28.10 The Processor shall provide such assistance (at the Controller's cost) as the Controller may reasonably require in relation to the need to undertake a data protection impact assessment in accordance with the Data Protection Legislation.
- 28.11 The Processor shall provide such assistance (at the Controller's cost) as the Controller may reasonably require in relation to any approval of the Information Commission or other data protection supervisory authority to any Processing of Controller Personal Data.
- 28.12 The Processor shall on the expiry or termination of this Agreement, at the Controller's cost and its option either return all of the Controller Personal Data (and copies of it) or securely dispose of the Controller Personal Data except to the extent that any applicable law requires the Processor to store such Controller Personal Data or the Controller orders the Processor's retention service.

- 28.13 At the Controller's cost, the Processor shall allow for an audit (no more than once per annum) by the Controller and any auditors appointed by it in order for the Processor to demonstrate its compliance with this clause 28. For the purposes of such audit, upon reasonable notice, the Processor shall make available to the Controller and any appointed auditors all information that the Controller deems necessary (acting reasonably) to demonstrate the Processor's compliance with this clause 28.
- 28.14 In the Processor's reasonable opinion, to the extent that it believes that any instruction received by it in accordance with clause 28.13 is likely to infringe the Data Protection Legislation or any other applicable law, the Processor shall promptly inform the Controller and shall be entitled to withhold its permission for such audit and/or provide the relevant Services until the Controller amends its instruction so as not to be infringing.
- 28.15 The Processor shall adhere to any relevant approved code of conduct and approved certification mechanism, if and when this has been adopted and implemented by the Information Commissioner's Office.
- 28.16 To the extent that the Controller collects and passes Personal Data to the Processor pursuant to this Agreement, it represents, warrants and undertakes that:
- (a) it has obtained appropriate authority from all Data Subjects to whom it relates, or has provided them with the requisite information required under the Data Protection Law, to pass their Personal Data to the Processor for the purposes for which the Controller intends to use it and/or as specified by the Controller in writing; and
 - (b) it is accurate and up to date.
- 28.17 Each party (the "**indemnifying party**") shall indemnify the other party (the "**indemnified party**") against:
- (a) any fines imposed on the indemnified party by the Information Commissioner or any regulator that may replace it from time to time or any equivalent as a result of the indemnifying party's breach of its obligations under this Agreement; and
 - (b) subject to clause 28.18, all amounts paid or payable by the indemnified party to a third party which would not have been paid or payable if the indemnifying party's breach of this clause 28 had not occurred; and
 - (c) all other losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs (calculated on a full indemnity basis) arising out of or in connection with any breach by the indemnifying party of its obligations under this clause,
- up to the maximum aggregate value in respect of each Data Protection Liability of two hundred and fifty thousand pounds (£250,000); in each year of the Term and provided that such breach amounts to £10,000 or above.
- 28.18 The indemnifying party shall not be liable under clause 31.17(b):
- (a) if it proves that it was not in any way responsible for the event giving rise to the damage in accordance with Article 82(3) of the GDPR; or
 - (b) to the extent that the indemnified party is responsible for the damage in accordance with Article 82(5) of the GDPR.
- 28.19 Notwithstanding the provisions of this clause 28, the Client as Data Controller acknowledges that it has authorised the Agency as Data Processor to obtain and collect certain personal information relating to the Client's customers through the provision of the Services. This includes but is not

limited to the use of cookies, tracking technologies and tracking code. The Client warrants that it has fully complied with the Data Protection Legislation in authorising the Agency to collect and make such Controller Personal Data available to the Client. The Client further warrants that it makes available a privacy policy/privacy on the Client Platforms as required by the Data Protection Legislation which informs its customers that the Agency is collecting the Controller Personal Data on its behalf and how the Client will use that information. The Client further warrants that it will include a cookie policy on its Client Platforms which informs its customers about the cookies which will be placed on the Client Platforms by the Agency during the provision of the Services.

29. Anti Bribery

29.1 Both parties:

- (a) shall comply with the Bribery Act 2010 and any guidance issued by any governmental department relating to such legislation ("**Bribery Act**")
- (b) shall not engage in any activity, practice or conduct anywhere in the world which would constitute an offence under the Bribery Act if such activity, practice or conduct had been carried out in the UK;
- (c) shall maintain in place throughout the Term (and enforce where appropriate) its own policies and procedures to ensure compliance with the Bribery Act;
- (d) shall promptly report to the other any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement;
- (e) shall ensure that it imposes written terms on any sub-contractor connected with the matters arising under this Agreement which are at least equivalent to those imposed on the Agency in this clause.

30. General

- 30.1 The failure of either party to enforce or exercise at any time any term or any right under this Agreement does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect that party's later right to enforce or to exercise it.
- 30.2 The Client shall not either on its own account or in partnership or association with any person, firm, company or organisation or otherwise, whether directly or indirectly, for a period of 12 months from the end of the Term solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such action by any other person) any Key Individual or other individual of the Agency who has worked on the Campaign at any time during the last 12 months of the Term.
- 30.3 If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms provided that if any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid.
- 30.4 This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. Each of the parties acknowledges and agrees that:

- (a) in entering into this Agreement it has not relied on, and shall have no remedy in respect of, any statement, representation, warranty or understanding other than the statements, representations, warranties and understandings expressly set out in this Agreement; and
- (b) its only remedies in connection with any statements, representations, warranties and understandings expressly set out in this Agreement shall be for breach of contract as provided in this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

30.5 No modification or variation of this Agreement shall be valid unless it is in writing and signed by each of the parties to this Agreement. Unless expressly set out in this Agreement, no modification or variation of this Agreement shall:

- (a) be valid if made by e-mail;
- (b) be construed as a general waiver of any provisions of this Agreement; or
- (c) affect any rights, obligations or liabilities under this Agreement which have already accrued up to the date of such modification or waiver. The rights and obligations of the parties under this Agreement shall remain in full force and effect, except and only to the extent that they are so modified or varied.

30.6 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

31. Governing Law and Jurisdiction

31.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

31.2 Each Party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales to resolve any dispute between them arising under or in connection with this Agreement (save in respect of enforcement of judgments where their jurisdiction shall be non-exclusive)

Schedule 1 Services

The Agency provides the following services:

- (i) Analytics, Insights and Data Services including Google analytics health check; Google analytics account setup; Google analytics training and consultancy; and Data insight, analysis and reporting.
- (ii) Broadcast Media Services including: Campaign planning and management across all TV, radio and cinema networks, on all digital platforms and on newer channels such as Video On Demand (VOD) and Sky Adsmart.; Local and national coverage; Sponsorship/ promotions; and Radio creative production.
- (iii) Conversion Rate Optimisation Services including: Full website conversion optimisation testing; Tag implementation; 1 on 1 usability testing; A/B and multivariate testing; Research and recommendation reports; and CRO training and consultancy.
- (iv) Direct Marketing Services including: B2C data; B2B data; Data profiling; and Data deduping.
- (v) Innovation Media Services including: Artificial Intelligence; Virtual Reality; Augmented Reality; 360-degree Video; Wearable Technology; Touch Panels; and Web Beacons.
- (vi) Leaflet Marketing Services including: Leaflet fulfilment; Full post campaign reporting; and Local, regional or national coverage.
- (vii) Online Display Advertising Services including: Direct, network and programmatic buying; Mobile app and mobile web specialists; Native advertising; Ad-serving and campaign measurement; Rich media; Video advertising including VOD, programmatic video, Facebook and YouTube; and Online display training and consultancy.
- (viii) Outdoor Media Services including: Traditional and digital formats; Static panels and mobile solutions; Single locations or regional/ national coverage; Travel point/commuter targeting.
- (ix) Pay-Per-Click Services including: PPC management and optimisation of accounts across all major search networks; PPC account audits and enhanced performance recommendations; PPC training and consultancy; and Multilingual keyword generation and ad copy writing.
- (x) Print Media Services including: Display and classified advertising; Advertorial, competitions and promotions; Local, regional and national press; Magazines; and Loose leaf inserts.
- (xi) Programmatic Advertising services including: Programmatic buying; Mobile app and web; Native; Rich Media; Video advertising including VOD and YouTube; Campaign measurement, insight and analytics; and Programmatic display training and consultancy.
- (xii) Search Engine Optimisation Services including: Technical SEO site audits; External audits (inbound links and visibility); SEO management and optimisation; Local SEO management and optimisation; Outreach and citation campaigns;

Google penalty assessment and recovery; External reviews management; Competitor analysis and profiling; and SEO training and consultancy.

- (xiii) Social Media Marketing Services including: Paid social advertising; Social media management; Community engagement; Social media profile creation and monitoring; Competition creation and management; Influencer marketing and blogger outreach; Analysis and reporting; and Social media training and consultancy.
- (xiv) Training and Consultancy Services including: Search engine optimisation (SEO); Pay per click (PPC); Conversion rate optimisation (CRO); Social media; Online display; Google analytics; and Direct marketing.

Schedule 2 – Campaign Cancellation

After approval has been obtained from the Client for any campaign or project the Client may only change or cancel its instruction if notice is given in line with the terms and conditions of the third party supplier (in particular, third party Media Owners) as notified to the Client by the Agency sufficiently in advance.

Indicative notice periods are set out below.

- Broadcast TV (e.g. ITV, Channel 4): Up to 2 months
- Direct Mail (Royal Mail): 6 weeks to avoid any charge and 3 weeks is liable for a 50% charge.
- Direct Mail (other): 2 weeks
- Press: Up to 3 weeks with specific national publishers. 1 week for local publishers.
- OOH: Up to 2 months with specific contractors and iconic panels.
- In-house Digital (e.g. Programmatic, social, PPC): Up to 24 hours to pause the campaign.
- Third party digital: Up to 4 weeks for a content partnership with a national publisher.
- Radio: 4 weeks for larger sponsorship campaigns. 1 week for standard airtime.

It is worth noting that where an earlier cancellation deadline is required, the Agency will try (without obligation) to achieve this with the third party Media Owner/supplier on behalf of the Client, but this cannot be guaranteed.