

Agency Terms & Conditions

1. Definitions and Interpretation

1.1 Any terms defined in any provision of this Agreement shall have the meanings given to them in the relevant provision, and the following words and phrases shall have the following meanings:

Advertising:	all the Client's advertising for which the Agency performs Services for the Client under this Agreement;
Advertising Regulator:	Office of Communications ('Ofcom'), Advertising Standards Authority ('ASA') and any other regulator or statutory and regulatory body relevant to the Advertising and Services in the UK;
Advertising Regulation:	any present or future applicable advertising laws, regulations and code of practice applicable to any medium in the UK in which the Advertising appears, including but not limited to the Broadcast Code of Advertising Practice ('BCAP') and the Code of Advertising Practice ('CAP'), adjudication, decision, direction or rule of any Advertising Regulator and includes any modifications, amendments or extensions thereof in force from time to time;
Agency Commission:	a standard agency commission (also referred to as a 'discount') applied by the relevant Supplier to the Gross Media Cost;
Agency Materials:	any materials created, developed or licensed to the Agency prior to providing the Services or independently of the Services (including those which are otherwise authored, created, produced and/or developed by the Agency independently), and the technology and functionality underlying any materials created for the Client by the Agency (including any proprietary agency tools), but excluding Third Party Materials and the Client Materials;
Agency Terms:	these Agency Terms & Conditions;
Agreement:	the Front Sheet and any other relevant Scope of Work together with these Agency Terms and the Schedules;
Assigned Materials:	all of the Deliverables excluding any Deliverables or parts of them, which are Agency Materials or Third Party Materials;
Client Materials:	data, content, equipment, software, documents, Client Technology, brand and trading names and related materials, logo and any other materials or information (including Advertising) owned by or licensed to the Client that are provided by or on behalf of the Client to the Agency in connection with the Services;
Client Personal Data:	personal data: (i) supplied to the Agency by or on behalf of the Client; and/or (ii) otherwise obtained or created by the Agency on behalf of the Client in the course of delivery of the Services;
Client Technology:	any software or other electronic devices or interfaces provided or hosted by or on behalf of the Client or provided by a third party to the Client;
Commencement Date:	the date on which this Agreement takes effect, as set out on the attached Front Sheet or in the relevant Scope of Work;
Data Protection Agreement:	shall mean the data protection agreement set out at Schedule 1 to this Agreement;
Data Privacy Laws:	shall mean the following, as amended, extended, re-enacted or replaced

from time to time, as applicable: (a) the UK Data Protection Act 2018, the UK GDPR (as defined in the UK Data Protection Act 2018) and the UK Privacy and Electronic Communications Regulations 2003; (b) EC Regulation 2016/679 (the "EU GDPR") on the protection of natural persons with regard to the processing of personal data and on the free movement of such data; (c) EC Directive 2002/58/EC on Privacy and Electronic Communications; (d) all local laws or regulations implementing or supplementing the EU legislation mentioned in (b)-(c) above; and (e) all codes of practice and guidance issued by national supervisory authorities, regulators or EU or UK institutions relating to the laws, regulations, UK legislation and EU legislation mentioned in (a)-(d) above;

Deliverables:	any deliverables created or developed by the Agency in the course of providing the Services (including any content created, data and analytics reports and other data produced);
Front Sheet:	the front sheet to which these Agency Terms are attached;
Gross Media Cost:	the gross price (excluding VAT) negotiated and agreed between the Agency and the relevant Supplier in respect of media booked by the Agency on behalf of the Client before any deductions;
Intellectual Property Rights:	the following rights, wherever in the world enforceable including all reversions and renewals: (i) any patents including any applications for the same; (ii) any trade marks (whether or not registered) including any applications for registration; (iii) inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration; (iv) copyright or design rights; (v) database rights; (vi) any goodwill in any trade or service name, trading style or get-up; and (vii) any and all other intellectual property or proprietary rights;
Losses	any losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses;
Media Plan:	the Agency's detailed written description of its proposed plans for the provision of the Services, including all associated media costs and Remuneration;
Net Media Cost:	the cost to the Client for media after deduction of any Agency Commission from the Gross Media Cost (not including Remuneration);
Remuneration:	the sums receivable by the Agency by way of fees in respect of the provision of the Services as set out in the Front Sheet, other relevant Scope of Work and/or Media Plan;
Schedules:	the Schedules to these Agency Terms & Conditions (if any);
Services:	the services to be provided by the Agency to the Client as set out in the relevant Scope of Work;
Scope of Work:	a description of the scope of the Services to be provided by the Agency to the Client and the Remuneration payable for those Services which may take the form: (i) of a purchase order; (ii) as set out in Schedule 2; or (iii) of any other written document, provided it is signed for and on behalf of

	each of the Agency and the Client;
Supplier:	any third party supplier engaged by the Agency in the provision of the Services, including, without limitation, media owners, publishers, exchanges, platform providers, search engines, ad-servers, campaign partners, production partners, technology providers, hosting providers, data providers and data processors, content providers and influencers;
Term:	the period from the Commencement Date until the termination or expiry of this Agreement;
Third Party Materials:	any materials incorporated in the Deliverables, the Intellectual Property Rights of which are owned by a third party (which may be a Supplier);
Working Day:	a day (other than a Saturday or a Sunday) on which the clearing banks in the City of London are open for business.

1.2 In this Agreement (except where the context otherwise requires) the clause headings are included for convenience only and shall not affect the interpretation of this Agreement, use of the singular includes the plural and vice versa, the words "include" and "including" shall be construed without limitation and the use of any gender includes the other genders.

1.3 References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, re-enacted, replaced or superseded and to any subordinate legislation made from time to time under that provision.

2. The Services

2.1 The Agency shall provide the Services to the Client as may be set out in a Scope of Work and/or Media Plan (if applicable). Each Scope of Work shall document the scope of the Services and the Remuneration and, once signed by both parties, the Scope of Work shall form a binding contract between the Client and the Agency and shall incorporate these Agency Terms.

2.2 In the event of any conflict, a term contained in a document higher in the following list shall have priority over one contained in a document lower in the list:

2.2.1 Schedule 1 (Data Protection Agreement);

2.2.2 Scope of Work(s);

2.2.3 Front Sheet;

2.2.4 Agency Terms; and

2.2.5 other Schedules.

2.3 Except as specifically agreed and set out in a Scope of Work, the Agency shall not in any way be responsible for:

2.3.1 the preparation, content, production or supply of copy for any of the Client's Advertising or advising the Client about compliance issues;

- 2.3.2 late delivery of the Advertising provided by a third party;
 - 2.3.3 any terms of use, privacy policies or other terms or conditions (or their preparation) of, or on behalf of, the Client;
 - 2.3.4 the implementation or administration of any promotions, competitions or prize fulfilment or moderation, including compliance with applicable laws and Advertising Regulation; or
 - 2.3.5 user generated content, moderation or review.
- 2.4 Any additional services identified in a Scope of Work or any other services that may be requested by the Client from time to time (“**Additional Services**”) are not included in the Fees and will be subject to negotiation and agreement between the Client and the Agency on the terms and conditions on which those Additional Services are provided.
- 3. Co-operation**
- 3.1 The Client shall give the Agency full and complete instructions and shall co-operate (and ensure that its other service providers co-operate) with the Agency, including participating in meetings and following any agreed agenda, timescales, and ways of working processes. Client shall provide any relevant approvals as required by the Agency or otherwise by this Agreement, on a timely basis.
- 3.2 The Client shall provide the Agency with the relevant Client Materials and Client warrants and represents that such Client Materials are:
- 3.2.1 accurate and up to date;
 - 3.2.2 compliant with applicable law and Advertising Regulation; and
 - 3.2.3 do not infringe any third party rights (including any Intellectual Property Rights).
- 3.3 To the extent that the Client or any third party acting on its behalf delays or does not fulfil its obligations under this Agreement, then (without prejudice to the Agency’s rights and remedies under this Agreement or otherwise in law) the Agency will be relieved of its obligations to provide the Services to the extent that it is prevented from providing the Services in accordance with this Agreement and the Agency shall not be liable for any Losses incurred or sustained by the Client arising out of or in connection with any such failure of the Client or any third party acting on its behalf.
- 3.4 In the event that the Client requires the Agency to use Client Technology in order to provide any part of the Services, the Client shall provide the Agency with all necessary access and permissions and at the Client’s cost. The Client shall ensure that any vendor of Client Technology that has access to any data originating from or residing with the Agency or any Supplier shall only use such data to provide services to the Client, and that both the vendor and the Client shall treat such data as strictly confidential, in accordance with Clause 12.
- 3.5 The Client shall inform the Agency without delay if the Client is made aware that any Advertising is false or misleading or in any way contrary to law or to any applicable Advertising Regulation.

4. Dealings with Suppliers

- 4.1 The Agency acts as principal at law and not as an agent of the Client in respect of all its dealings with Suppliers, unless required by the applicable Supplier Terms and Conditions (as defined below) and shall obtain the Client's written approval (including by way of a Media Plan or Scope of Work) prior to engaging any Supplier specifically for the Services.
- 4.2 Unless otherwise stated, the Agency's contracts with Suppliers are made in accordance with media rate cards and/or standard or individual terms and conditions ("**Supplier Terms and Conditions**") which may include restrictions on usage rights, limitations and exclusions of the Supplier's liability, cancellation charges, indemnities and other Supplier requirements, and the Client agrees that all contracts entered into by the Agency with Suppliers for the benefit of the Client shall be subject to such Supplier Terms and Conditions and the Client hereby acknowledges that its right to use or otherwise benefit from any Services provided under such contracts shall be subject to such Supplier Terms and Conditions. The rights and liabilities between the Client and the Agency shall correspond to those between the Agency and the various Suppliers under the Supplier Terms and Conditions.
- 4.3 The Agency shall carry out appropriate due diligence on its Suppliers in order to assess their suitability to provide any Services, but the Client hereby acknowledges that the Agency shall not be responsible for acts or omissions of Suppliers. If the Client suffers loss or damage as a result of the act or omission of a Supplier, the Agency shall take such action to recover the loss or damage for the Client to the extent that it is reasonably able to do so under the relevant Supplier Terms and Conditions, but the Agency does not accept any liability and shall not be liable for any sums which it is unable to recover from the Supplier.
- 4.4 The Client acknowledges that Suppliers may have specific approvals or other requirements, or may otherwise restrict customers from engaging in certain activities and/or displaying certain content on or through the Suppliers' services and/or require certain specific privacy disclosures. The Client shall comply with any such requirements that are notified to it by the Agency and Client hereby acknowledges that the Agency is not responsible for any activities undertaken by the Client, or that are approved by the Client, that violate such requirements or any applicable law or Advertising Regulation.
- 4.5 The Client hereby acknowledges that Advertising may be adjusted for technical reasons, and/or campaigns may be cancelled, and/or Supplier services may be suspended by Suppliers in the event of the Client's non-compliance with any Supplier requirements, and neither the Supplier nor the Agency shall be liable for any such adjustment, cancellation or suspension.
- 4.6 The Client hereby indemnifies and shall keep the Agency indemnified against any/all Losses and liabilities to the extent caused by any act or omission of the Client which puts the Agency in breach of any Supplier Terms and Conditions.

5. Approvals and Authority

- 5.1 The Agency shall not make any media bookings on behalf of the Client, nor shall it incur any third party expenses for which the Client shall be billed (except courier or delivery costs), without first obtaining the Client's written approval in accordance with Clause 5.2.
- 5.2 Approval may be obtained and received by email or writing (including purchase order) and both methods shall be recognised as "written approvals". Where given in writing, such approval request shall be deemed approved following signature by a representative of the Client.

- 5.3 The Client's written approval of Media Plans, estimates and other deliverables will be the Agency's authority to make reservations and contracts (including those for space, time and other facilities, where applicable), and to invoice the Client in respect of all costs and Remuneration detailed in the Media Plan or estimate.
- 5.4 Where the Client operates a purchase order system, the Client shall provide the Agency with a valid purchase order number prior to or within 24 hours of instructions to make any financial commitment on the Client's behalf. If the Client fails to provide a purchase order but gives approval to any Media Plan or expenditure as set out in this Clause 5, the Client shall nevertheless make payment in full of the relevant invoice by the due date.
- 5.5 The Client shall not unreasonably withhold, condition or delay any approval it is required to give under this Agreement.

6. Amendments to Work in Progress

- 6.1 The Client may request the Agency to cancel or amend any or all Media Plans or work in progress. The Agency will take reasonable steps to comply with any such request provided that the Agency is able to do so within its contractual obligations to Suppliers.
- 6.2 In the event of any such cancellation or amendment, the Client shall:
- 6.2.1 reimburse the Agency for any charges, costs (including applicable media costs and surcharges) or expenses incurred by the Agency to which the Agency is committed; and
 - 6.2.2 pay the Remuneration covering the cancelled or amended Services as if such Services had been provided without amendment, as well as any charges imposed on the Agency by Suppliers arising from the cancellation or amendment.
- 6.3 The Client recognises that the Agency must be the party to action any changes to any of the Services to be provided under the approved Media Plan, and shall not make changes to any aspect of the Services without the Agency's prior written approval.
- 6.4 If the Client makes any changes to any Services without the Agency's prior written approval as required under Clause 6.3, the Agency shall be relieved of its obligations to provide the relevant Services and shall not be liable for any adverse effects suffered by the Client, including any Losses incurred or sustained by the Client arising out of or in connection with any such changes.
- 6.5 The Client may, by giving written notice to the Agency at any time during the Term, request a change to the Services agreed under a Scope of Work. The Agency shall prepare for the Client a written estimate of any resulting increase or decrease in the Remuneration.
- 6.6 Within 14 working days of the date of the written estimate referred to in Clause 6.5, the Client shall inform the Agency in writing of whether or not the Client wishes the requested change to be made. If the change is required, the Agency shall not make or be obliged to make the requested change until the parties have agreed any changes to the Scope of Work and Remuneration in writing.

7. Costs and expenses

- 7.1 The Agency will invoice the Client in respect of the following approved costs incurred by the Agency in performing the Services and the Client shall pay any applicable:
- 7.1.1 media costs as set out in the Media Plan;
 - 7.1.2 trafficking, ad serving, reporting, data, technology, application program interfacing ('API') and production costs;
 - 7.1.3 licences or other consents necessary for the use of Third Party Materials in any Deliverables;
 - 7.1.4 travel and accommodation expenses;
 - 7.1.5 bank charges, currency conversion charges, foreign exchange losses, and similar expenses including any foreign government tax;
 - 7.1.6 a contribution equal to 0.25% of the Client's cost of all paid media in respect of the Agency's membership of bodies necessary to facilitate said media (e.g. ASBOF/BASBOF, BARB, Media Ocean, Credit Insurance);
 - 7.1.7 any service taxes passed on by suppliers e.g. digital service tax; and
 - 7.1.8 any other item agreed between the parties in writing.
- 7.2 The nature of ad serving means that targets may be under-delivered or over-delivered and as such, all quoted costs in respect of this are estimates only and are subject to reconciliation. Costs include routine reporting. Any additional non-routine reporting requirements will be subject to additional costs.
- 7.3 The terms of this Clause 7 shall survive the termination and/or expiry of this Agreement for any reason.

8. Remuneration

- 8.1 In addition to the costs and expenses set out in Clause 7 above, the Agency shall be entitled to receive the Remuneration in respect of the Services. For the avoidance of doubt, where the Scope of Work indicates that Remuneration will be received by way of Agency Commission, such Agency Commission shall be applied by the relevant Supplier, and the Agency shall be entitled to retain all such Agency Commission.
- 8.2 In the event that the Client requests the Agency to produce Media Plans in respect of media that the Client does not subsequently instruct the Agency to buy, the Client will pay the Agency in full in respect of the Remuneration that the Agency would have received had such media been bought by it for the Client.

9. Invoicing and payment

- 9.1 Subject to Clause 9.2, the Agency will usually invoice the Client in respect of all Remuneration, media and other costs and expenses monthly in arrears, and all invoices are payable within 30 days from the date of the invoice.
- 9.2 Where necessary to ensure that the Agency is in receipt of funds from the Client before it has to make payment to a Supplier, the Agency may invoice the Client in respect of media and other costs in advance of making a financial commitment to the relevant Supplier, and the Client shall pay such invoices by the due date as stated on such invoice, to enable the Agency to meet the payment terms imposed by the Supplier.
- 9.3 In the event of the Agency's credit insurers refusing, revising or withdrawing cover for the Client, or if the Agency is unable to obtain sufficient credit references in respect of the Client, the Client shall make payment to the Agency in advance of all media bookings and the Agency shall be under no obligation to make any booking on behalf of the Client until it is in receipt of cleared funds from the Client.
- 9.4 All sums quoted in this Agreement or any Scope of Work are exclusive of VAT or other applicable sales tax, which will be payable in addition and included and itemised separately on the Agency's invoices, where appropriate, at the rate prevailing from time to time. Where the Client notifies the Agency that it is not subject to VAT, the Client shall indemnify the Agency in respect of any claim against the Agency by HMRC in respect of VAT which HMRC determines should have been charged to the Client.
- 9.5 If, as a result of any currency devaluation or fluctuation, the sterling equivalent of the cost to the Agency incurred in respect of any overseas Advertising exceeds the cost anticipated at the date when the Client's approval of such costs was obtained, the Agency will invoice the Client at the rate which is in operation at the time that overseas payments were made by it.
- 9.6 In addition to the right to suspend all Services, in the event of late or non-payment of any invoice, the Agency reserves the right to charge interest on all invoices which are not paid by the relevant due date at the annual rate of 5% above the base rate from time to time of Barclays Bank PLC. Such interest will accrue on a daily basis from the date on which payment became due up to the date on which the Agency receives the full outstanding amount together with all accrued interest.
- 9.7 The Client shall reimburse the Agency for any late copy charges and for any charges imposed on the Agency in respect of any Advertising due to late payment by or on behalf of the Client.
- 9.8 Each party shall pay all monies which are payable by it to the other without any right of set off, abatement or withholding.
- 9.9 The Agency will not accept any responsibility and shall not be deemed to have received payment if the Client makes payments to the wrong bank account as a result of cyber-crime or otherwise. If the Client receives any indication that any of the Agency's bank details have changed it is the Client's responsibility to verify the new bank details with the Agency's finance director both in writing (not including email) and by telephone before making any payments.

10. Intellectual Property Rights and Compliance/Non-Infringement

Client Materials

- 10.1 The Agency acknowledges that all Intellectual Property Rights in any Client Materials shall be owned by and remain the property of and vested in the Client or its licensors. The Client hereby grants the Agency a non-exclusive licence to use the Client Materials solely for the purpose of providing the Services.
- 10.2 The Agency shall not be responsible for the content, production and/or supply of the Client Materials.
- 10.3 Without prejudice to Clause 10.2 and Clause 3.2, the Client shall ensure that any/all advertising and marketing claims incorporated in any Deliverables and/or Client Materials in relation to its products and services comply with all applicable laws and Advertising Regulation.

Deliverables (all)

- 10.4 Subject to, and with effect from, payment of the Remuneration and other sums payable to it under this Agreement, the Agency hereby assigns to the Client, with full title guarantee, and without restriction, all right, title and interest in and to all existing and future Intellectual Property Rights (including future copyright and design right) subsisting in or relating to the Assigned Materials. The Client hereby grants the Agency a non-exclusive, perpetual licence to use the Assigned Materials.

Deliverables created as part of the development of creative content

- 10.5 Subject to Clause 10.6, the Agency shall ensure that the broadcast, publication or otherwise making available to the public of the Deliverables (excluding the Client Materials and any/all advertising and marketing claims for which the Client is responsible under Clause 10.3), in all material respects, as delivered by the Agency and in accordance with the terms of this Agreement and the applicable Scope of Work shall, in the Territory (where specified in a Scope of Work):
 - 10.5.1 comply with all applicable laws, regulations, and binding codes of practice;
 - 10.5.2 not infringe the copyright of any third party; and
 - 10.5.3 not be defamatory, obscene or otherwise offensive.
- 10.6 The Agency's obligations under Clause 10.5 shall not apply to the extent the Agency has notified the Client that there is risk that any particular Deliverable may not comply with the requirements in Clause 10.5 but the Client has nonetheless approved such Deliverable.
- 10.7 Subject to Clauses 10.6, 10.8 and 11, the Agency shall indemnify the Client against all liabilities, costs, expenses, damages and losses (including all reasonable professional costs and expenses) suffered or incurred by the Client arising out of or in connection with any third party claims or any action, adjudication or decision taken against the Client by an Advertising Regulator, in each case arising out of any breach by the Agency of Clause 10.5.
- 10.8 The indemnity in Clause 10.7 shall not apply to Client to the extent caused by:
 - 10.8.1 any breach of this Agreement by the Client;
 - 10.8.2 the negligence or fraud by Client;

- 10.8.3 the use of Client Materials in the development of, or the inclusion of the Client Materials in, any Deliverable;
 - 10.8.4 any modification of any Deliverable, other than by or on behalf of the Agency;
 - 10.8.5 the use of any Deliverable for any purpose other than as specified in the applicable Scope of Work; or
 - 10.8.6 the Agency's compliance with the Client's specifications or instructions.
- 10.9 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 applicable law and Advertising Regulation.

Agency Materials

- 10.10 The Client acknowledges that all Intellectual Property Rights in the Agency Materials shall be owned by and remain the property of and vested in the Agency. Subject to the Agency receiving payment of all Remuneration and other sums payable to it under this Agreement, the Agency hereby grants the Client a non-exclusive, non-transferable, royalty-free licence to use the Agency Materials solely to the extent the Agency Materials are incorporated in the Deliverables (and not independently of the Deliverables) to the extent necessary for Client to use the Deliverables as set out in the applicable Scope of Work and/or as otherwise agreed between the parties. In the event of non-payment of any amount due to the Agency under this Agreement, or termination and/or expiry of this Agreement for any reason, this licence shall terminate immediately.

Third Party Materials

- 10.11 The Client hereby acknowledges that all Intellectual Property Rights in any Third Party Materials shall be owned by and remain the property of and vested in the relevant third party (including Suppliers). The Agency shall obtain such licences or consents in respect of any Third Party Materials as shall be necessary in order for the Client to be able to use the Deliverables for the purposes anticipated by the relevant Scope of Work, or the Agency shall notify the Client that the Client must obtain its own licences or consents directly from the relevant third party. Where the Agency enters into a licence for the use of Third Party Materials for the benefit of the Client, the Client shall indemnify the Agency in respect of any Losses incurred or sustained by the Agency arising out of or in connection with the use by or on behalf of the Client of such Third Party Materials outside the scope of any such licence terms.
- 10.12 Notwithstanding the Client's rights as set out in this Clause 10, the Agency shall:
- 10.12.1 be able during and after the Term to use any Deliverables which have been broadcast, published, distributed or otherwise made available to the public, and the Client's name and logo for the purposes of promoting its work and its business including on the Agency's website, in credentials pitches and in its showreel. Any other use by the Agency shall be subject to the Client's prior approval; and
 - 10.12.2 retain all know-how obtained in connection with providing the Services, and nothing in this Agreement shall prevent the Agency from using any know-how, methodologies, strategic

data, ideas or concepts acquired by it before or during the performance of the Services for any purpose.

11. Conduct of Claims

11.1 If either party (the “**Indemnifying Party**”) is required to indemnify the other party (“**Indemnified Party**”) under this Agreement, the Indemnified Party shall:

- 11.1.1 notify the Indemnifying Party in writing of the applicable claim, action, adjudication or decision against it in respect of which it wishes to rely on the applicable indemnity (“**Indemnified Claim**”);
- 11.1.2 allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the Indemnified Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party’s prior approval of any settlement terms, such approval not to be unreasonably withheld, conditioned or delayed;
- 11.1.3 provide the Indemnifying Party with such reasonable assistance regarding the Indemnified Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party’s reasonable costs so incurred; and
- 11.1.4 not, without prior consultation with the Indemnifying Party, make any admission relating to the Indemnified Claim or attempt to settle it without the Indemnifying Party’s prior written consent, provided that the Indemnifying Party considers and defends any Indemnified Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

12. Confidential Information

12.1 Neither party shall, during or after the Term, disclose to any third party without the other’s prior written permission any confidential information concerning the other’s (including the other’s associated companies’) business, affairs, business plans, customers or clients or its (or their) rates or pricing (“**Confidential Information**”) except as permitted by Clause 12.2. For the avoidance of doubt, information concerning the Agency’s rates, Remuneration and pricing in Media Plans and the methodologies used to create its Media Plans shall be regarded as Confidential Information.

12.2 Each party may disclose the other’s Confidential Information:

- 12.2.1 to its employees, officers, representatives, contractors, subcontractors or 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. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party’s Confidential Information comply with this Clause 12;
- 12.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; or
- 12.2.3 to the extent that such Confidential Information has come into the public domain except where through unauthorised disclosure.

12.3 Neither party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

12.4 The Client hereby acknowledges that nothing in this Agreement shall affect the Agency's right to use as it sees fit any general marketing or advertising intelligence or other data gained or collected by or made available to the Agency in connection with the Services in the Agency's business in order to develop and enhance its products and services for the collective benefit of all of its clients (including in connection with the Agency Materials and to enable the Agency to carry out sector-specific performance benchmarking), provided that in doing so, the Agency does not disclose any Confidential Information of the Client.

13. Warranties and Indemnities

13.1 The Agency warrants that:

13.1.1 it has full power and authority to enter into this Agreement and that by doing so it will not be in breach of any contractual obligation to a third party; and

13.1.2 the personnel who perform the Services are and shall be competent and suitable, whether as to qualifications, experience or otherwise, to provide the Services.

13.2 The Client warrants that:

13.2.1 it has full power and authority to enter into this Agreement and that by doing so it will not be in breach of any contractual obligation to a third party;

13.2.2 all Advertising has been appropriately cleared for use;

13.2.3 all Advertising will comply with all applicable law and Advertising Regulations and will not infringe the rights (including any Intellectual Property Rights) or be defamatory of any third parties; and

13.2.4 it has all necessary rights, consents and permissions to allow the Agency to use the Client Materials and to access and interact with the Client Technology in order to comply with its obligations under this Agreement.

13.3 The Client shall indemnify the Agency from and against all Losses suffered or incurred by the Agency arising out of or in connection with:

13.3.1 the Agency's use of the Client Materials in accordance with the Client's instructions;

13.3.2 any breach of Clause 3.2 and/or Clause 13.2;

13.3.3 any third party claim in relation to the Client's Advertising, Client Materials, products and services;

13.3.4 any use or misuse by the Client or any third party acting on its behalf, including any vendor of Client Technology, of the Agency Materials, the Agency's data or any Supplier's data; and

13.3.5 any actions, proceedings (actual or threatened), or regulatory investigations, whether of a civil or a criminal nature that may be brought against or involve the Agency in respect of the Advertising or the Client Materials.

14. Limitation of Liability

14.1 Nothing in this Agreement shall exclude or in any way limit either party's liability for fraud, or for 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.

14.2 Subject to Clause 14.1:

14.2.1 the Agency's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, will in no circumstances exceed an amount equal to the Remuneration (which, for the avoidance of doubt, excludes all media and other costs) paid or payable to the Agency under the relevant Scope of Work during the 12 months immediately preceding the event giving rise to the liability; and

14.2.2 neither party will be liable to the other under this Agreement for any:

- (a) loss of actual or anticipated income, revenue or profits;
- (b) loss of contracts or business;
- (c) loss of or corruption to data;
- (d) loss of or depletion of goodwill or reputation;
- (e) pure economic loss or fines; or
- (f) special, indirect or consequential loss or damage of any kind,

in each case, however 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.

14.3 The Agency gives no warranties in respect of, and does not accept any liability for, the following matters which are subject to change or otherwise beyond its control:

14.3.1 the accuracy of, or reliance placed on, estimates or targets as to the number, proportion or type of people likely to be exposed to the Advertising, the number of exposures each person is likely to receive, or the cost of achieving such exposures;

14.3.2 any delay in or omission of publication or transmission of any error in any advertisement in the absence of default and neglect on the Agency's part;

14.3.3 the use or interpretation of, or reliance on, survey and ratings data, and data supplied by third parties; and

14.3.4 the implementation by the Client of any business strategy based on reports or information provided to it by the Agency.

14.4 This Agreement states the full extent of the Agency's obligations and liabilities in respect of the Advertising and the performance of the Services. The parties agree that any condition, warranty, representation or other term concerning the Advertising and/or the performance of the Services which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.

15. Termination

15.1 Either party may terminate this Agreement or a Scope of Work or any part of this Agreement or a Scope of Work with immediate effect by giving notice in writing to the other if the other:

15.1.1 is in material breach of any of the terms of this Agreement and, in the case of a breach capable of remedy, fails to remedy such breach within 30 days of receipt of written notice setting out full details of the breach and the steps required to remedy it;

15.1.2 an order is made or a resolution is passed for the winding up of the other party or the other party has a receiver or administrator appointed of the whole or any part of its assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or which entitles the Court to make a winding up or administration order or if the other party is unable to pay its debts; or

15.1.3 ceases, or threatens to cease, to carry on business.

15.2 Termination of a Scope of Work in accordance with the terms of this Agreement shall not serve to terminate this Agreement which shall continue in full force and effect, but on termination of this Agreement in accordance with its terms, all Scope of Work(s) shall also be terminated without the need for separate notice.

15.3 The Agency shall be entitled to terminate this Agreement with immediate effect by giving notice in writing to the Client if the Agency is unable to obtain standard credit insurance in respect of the Client and advance payments or guarantees acceptable to the Agency have not been made available by the Client within 30 days of the Agency's written request for them. From the date of the Agency's written request until the earlier of the Client either providing the advance payments or guarantees or the end of the Term, the Agency shall be entitled to suspend all of its obligations in relation to the booking of media for the Client together with any other obligations to enter into any commitments involving expenditure as principal on the Client's behalf.

15.4 Upon termination or expiry of this Agreement or a Scope of Work for any reason and irrespective of whether the Client requires the Agency to cease providing the Services earlier than the end of any applicable notice period:

15.4.1 the Client shall be responsible for all ongoing commitments entered into by the Agency with Suppliers as set out in any approved Media Plan and/or Scope of Work;

15.4.2 the Agency shall be entitled to invoice the Client immediately for, and the Client shall pay:

(a) all sums set out in any Media Plan and/or Scope of Work which was approved prior to the date of termination or expiry; and

- (b) all Remuneration due to the Agency up to the date of termination or expiry, and, where Remuneration is calculated by reference to a percentage of Gross Media Cost and the Client's actual media spend falls below any projected media spend set out in the relevant Scope of Work and/or Media Plan during any applicable notice period, the Client shall pay the Agency an amount equal to the total Remuneration it would have received had the actual media spend during the notice period been as projected in the relevant Scope of Work and/or Media Plan, or, if no projected media spend was set out in the Scope of Work and/or Media Plan, an amount for each month of the notice period equal to the monthly average of the total Remuneration received by the Agency in the 6 months immediately preceding the start of the relevant notice period;

15.4.3 the Agency shall, after receipt of payment in full in accordance with Clause 15.4.2, use reasonable endeavours to transfer all current media bookings made by it in accordance with an approved Media Plan to the Client; and

15.4.4 if the Client wishes to use, after the Term and whether itself or through another agency, a Media Plan prepared by the Agency during the Term, the Client shall not do so without the Agency's prior written consent and agreement being reached regarding appropriate remuneration for the Agency. In the event that the Agency gives its written consent and agreement to such use, the Client shall be entitled to extract such raw data and information from the Media Plan that is specific to the Client's Advertising, but shall not be entitled to share the Media Plan with any third party in a manner which may result in the disclosure of the Agency Materials, methodologies or other Confidential Information of the Agency.

16. Data Protection and Privacy

16.1 Each party warrants to the other that it will comply with the obligations applicable to it under the Data Privacy Laws.

16.2 Without prejudice to the generality of Clause 16.1, in respect of the Agency's processing of Client Personal Data, the parties shall each comply with their respective obligations set out in the Data Protection Agreement in Schedule 1.

17. Anti-Bribery and Modern Slavery

Each party shall comply with the Bribery Act 2010 and the Modern Slavery Act 2015 and all other applicable legislation relating to anti-corruption and bribery, modern slavery and human trafficking and shall have and maintain in place throughout the Term, and comply with, its own relevant policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010.

18. Force Majeure

The Agency shall have no liability under this Agreement if the Agency is prevented from or hindered or delayed in performing its obligations under this Agreement, or from carrying on its business, by events beyond its reasonable control (even if foreseeable), including, industrial disputes involving the workforce of any third party, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood, storm, epidemic or pandemic (including Covid-19 or variants thereof) or any default of any suppliers or sub-contractors, and all media spend and other costs which were

approved by the Client prior to such event arising shall remain payable unless the Agency is reasonably able to mitigate them.

19. General

19.1 The failure of either party to enforce or to exercise at any time or for any period any term of or any right pursuant to this Agreement shall not be construed as a waiver of any such term or right and shall in no way affect that party's right to enforce or exercise it later.

19.2 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable then such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. The parties agree to attempt to substitute for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

19.3 Except as expressly set out in this Agreement, neither party shall assign (other than to an acquirer of all or substantially all of either party's business or assets), transfer, charge or deal in any other manner with this Agreement or any of its rights under it without the prior written consent of the other party, such consent not to be unreasonably conditioned, withheld or delayed, provided always that the Agency shall be entitled to sub-contract such elements of the Services as it may deem necessary.

19.4 A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

19.5 This Agreement and the documents referred to in it constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to its subject matter. No standard terms or conditions of purchase which may be purported to apply to the purchase of any Services under the terms of any Client purchase order or other document issued by the Client shall apply to the Services.

19.6 No variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

19.7 With regard to notices under this Agreement:

19.7.1 any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to elliott.muscant@open.partners and joe.procter@open.partners;

19.7.2 any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address;

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 20.7.2, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

19.7.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

19.8 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

19.9 Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement, whether contractual or not.