



Channel Four Television Corporation
Airtime Terms and Conditions

Effective for Transmissions made on or after 1st October 2020

Table of Contents

1 DEFINITIONS AND INTERPRETATION	4
2 STATUS OF THE BUYER	10
3 CREDIT	11
4 COMMISSION	12
5 AIRTIME BOOKINGS	12
6 COPY REQUIREMENTS	12
7 DATES AND TIMES OF TRANSMISSION	13
8 PRICE	14
9 SPECIAL RATES	16
10 WARRANTIES AND INDEMNITIES	16
11 PUBLICITY AND INFORMATION CONCERNING ADVERTISEMENTS	17
12 CANCELLATION AND POSTPONEMENT	17
13 SUSPENSION OR TERMINATION	18
14 LIABILITY	19
15 FINANCE	20
16 CLIENT PORTFOLIO	21
17 CALCULATION OF BUYER COMMITMENTS	21
18 EXCLUSIONS	23
19 DEAL MEMORANDUM	23
20 TREATMENT OF VALUE UNDER DELIVERY	24
21 AUDITING AND REPORTING	24
22 CONFIDENTIALITY	26
23 CHANGES TO TERMS AND CONDITIONS	26
24 DATA PROTECTION	26
25 FORCE MAJEURE	26
26 ASSIGNMENT	27
27 NO PARTNERSHIP OR AGENCY RELATIONSHIP	27

28 ENTIRE AGREEMENT	27
29 NO WAIVER	27
30 SEVERABILITY	27
31 RIGHTS CUMULATIVE	28
32 RIGHTS OF THIRD PARTIES	28
33 NOTICES	28
34 GOVERNING LAW	28

INTRODUCTION

The agreement between Channel Four Television Corporation (“Channel 4”, “C4” or the “Corporation”) and each Buyer relating to the purchase of Airtime is contained in these terms and conditions (“**Terms and Conditions**”) together with any corresponding Deal Memorandum and Booking (“**Agreement**”).

These Terms and Conditions apply to the purchase of all Airtime on the Channels on or after 1st May 2017.

The Buyer signifies that it accepts and agrees to be bound by the Agreement by placing a Booking with Channel 4 for Airtime on the Channels and confirming that Booking verbally, in writing, electronically or otherwise. No amendment to the Agreement will be binding or effective unless agreed in writing by Channel 4 by way of a formal Variation Letter. Any inclusion within a Booking of additional terms and conditions by the Buyer and/or reference within a Booking to the Buyer’s terms and conditions applying, shall be invalid.

For the avoidance of doubt, these Terms and Conditions apply in relation to the transmission of all Airtime sold by Channel 4 for and/or on behalf of itself and all of its Media Partners on any of the Channels.

In the event of any conflict between these Terms and Conditions, the Deal Memorandum and the Booking, the Deal Memorandum will prevail, then the Terms and Conditions and then the Booking.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions: In these Terms and Conditions, the Deal Memorandum and the Booking, words and expressions shall have their ordinary meaning unless otherwise defined therein. In addition, the following words and expressions shall have the meanings set against them, whether they are used in the Terms and Conditions or any Deal Memorandum or any Booking:

ABD or Advance Booking Deadline means in relation to a calendar month the date(s) notified by Channel 4 to the Buyer as the ABD(s) or Advance Booking Deadline(s) for that month;

Advertiser means a person, firm or company purchasing Airtime (either as a Direct Advertiser or through an Agency) with Channel 4 under the Agreement;

Affiliate means in respect of a company, a company which is its subsidiary or holding company or a company which is a subsidiary of that holding company, and the terms ‘subsidiary’ and ‘holding company’ shall have the meaning given to them by section 1159 and Schedule 6 of the Companies Act 2006;

Agency means an advertising agent, agency or Agency Buying Group buying advertising with Channel 4 on behalf of one or more Clients;

Agency Buying Group means, in relation to any Agency, its Buying Agencies, Affiliates and trading divisions and ‘part’ of an Agency Buying Group shall be construed accordingly;

Agency Commission has the meaning given in clause 4.1;

Agreement has the meaning given to it in the first paragraph of these Terms and Conditions;

Agreement Period or **Term** means the specific term specified in any Deal Memorandum during which a Buyer Commitment is given;

Airtime means any advertising falling within Broadcast Expenditure;

Applicable Laws includes all Legislation, BCAP's UK Code of Broadcast Advertising ("**BCAP Code**"), rules of common law, ASA adjudications, bulletins, codes, guidance notes, rules, regulations, requirements, rulings, restrictions, standards, directions and OFCOM licence obligations (including those contained in all OFCOM licences relating to each of the Channels), the OFCOM Broadcasting Code, and Clearcast guidance in each case as amended, varied or replaced from time to time;

ASA means the Advertising Standards Authority and the Advertising Standards Authority for Ireland, including the Advertising Standards Authority (Broadcast) Limited and in each case includes any successor or replacement body;

Audience means Demographics recognised and reported by BARB;

Audience Exclusion means Gross Expenditure relating to any target Audience that Channel 4 and the Buyer have agreed to exclude from the calculation of delivery of the Buyer Commitment(s);

Auditors has the meaning given in clause 21.2;

Audit Report has the meaning given in clause 21.2;

BACS means Bankers Automated Clearing Service;

BARB means the Broadcasters' Audience Research Board Limited and any successor or replacement;

Barter means any Airtime that is paid for in a form other than cash or Contra;

BCAP means the Broadcast Committee of Advertising Practice Limited and any successor or replacement body;

Booking means a request by a Buyer to book advertising on a Channel represented by Channel 4;

Brand means an Advertiser's product, service or brand;

Brand Exclusion means Gross Expenditure relating to any Brand that Channel 4 and the Buyer have agreed to exclude from the calculation of delivery of the Buyer Commitment(s);

Broadcast Expenditure or **Broadcast** means all Gross Expenditure with Channel 4 under the Agreement in respect of the Term (or such other period specified in the Deal Memorandum) together with all Gross

Expenditure incurred by or on behalf of the Client and its Affiliates and its Agency Buying Group with other Broadcasting Sales Houses during the same period in relation to the transmission (whether via cable, satellite, the internet, broadband, broadband simulcast or wireless or other technology for the conveyance of signals by the use of electrical, magnetic or electro-magnetic energy, or whether via any other means) of any Spot advertising capable of being received in the UK;

Broadcasting Sales Houses means the broadcasting sales houses which sell Airtime and include but are not limited to ITV, Channel 4 and Sky;

Buyer means the person identified in the Deal Memorandum, being either an Agency or a Direct Advertiser. Where the person is not a distinct legal entity (for example, where the person named is a trading division) it shall be deemed to be the legal entity or entities which operates such person;

Buyer Commitment(s) means the minimum commitment(s) made by the Buyer to Channel 4 in relation to share of Broadcast Expenditure and/or Volume Expenditure and/or other buyer commitment as set out in the Deal Memorandum;

Buying Agency means a trading division or Affiliate of an Agency Buying Group which buys Airtime on behalf of a Client Portfolio;

C4 Macros means the advertising regions on the Channel 4 main service being Scotland, North, Midlands, South, Northern Ireland and London;

Campaign means all or part of the Airtime within a Booking which relates to a single burst of activity for a single Brand or service for a single promotional purpose;

CARIA means the web based campaign approval communications vehicle of that name which is used by the advertising industry;

Categoric Exclusion means Gross Expenditure relating to any category of Airtime that Channel 4 and the Buyer have agreed to exclude from the calculation of delivery of the Buyer Commitment(s);

Channel(s) means one or more television channel(s) represented by Channel 4 in respect of the sale of Airtime;

Channel 4 Sales House means Channel 4 in its capacity as the sales representative for all of the Channels;

Channel 4 Pricing Terms means the pricing terms available to a Buyer as set out in the Deal Memorandum;

Channel 4 Channel Sets means the channel sets as described in the Deal Memorandum;

CHAPS means Clearing House Automated Payments System;

Clearcast means the industry recognised copy clearance system of that name and any successor or replacement;

Client or **Clients** means the Advertisers and other clients, as appropriate, of an Agency;

Client Exclusion means Gross Expenditure relating to a specific Client that Channel 4 and the Buyer have agreed to exclude from the calculation of delivery of the Buyer Commitment(s);

Client Portfolio means all of the Clients on whose behalf the Buyer (or a Buying Agency) purchases Airtime from Broadcasting Sales Houses;

Competent Authority means any national court, the European courts, any governmental authority, any other person exercising powers pursuant to any Legislation or any other official person (including OFCOM, the ASA and BCAP) and any relevant industry body;

Confidential Information means any information marked as such and any other information which might reasonably be assumed to be confidential in any form emanating from either Party at any time and shall include any compilation of otherwise public information in a form not publicly known and the existence and contents of any Agreement in respect of Airtime to which Channel 4 is a Party and any information, materials or data in any form produced by, for or on behalf of either Party during the term of or pursuant to such an Agreement but shall not include:

(a) information which at the time of disclosure is publicly known or information which after disclosure becomes publicly known other than as a result of any breach of such Agreement;

(b) information which can be shown to be known to the other Party, other than under a subsisting obligation of confidentiality, or restricted use, prior to the disclosure; and

(c) information made available to the other Party by a third party having a right to do so and who has not imposed on that Party any subsisting obligation of confidentiality or restricted use in respect thereof;

Contra means Airtime exchanged by a Broadcasting Sales House for equivalent media value rather than cash (for example where Airtime is exchanged for another form of advertising such as press, radio or outdoor or for programming);

Copy means Airtime material provided to Channel 4 for the purpose of broadcast whether finished or in preparation;

Copy Requirements means Channel 4's technical specification requirements for Copy from time to time in force and available upon request;

Copy Rotation Instructions means the instructions provided to Channel 4 regarding Copy to be broadcast, such instructions to be delivered through CARIA except in the case of Spot-specific requests;

CPT or Cost Per Thousand means the cost per 1000 (one thousand) Impacts, for a target Audience, in respect of Airtime;

Credit Buyer means a Buyer which at the relevant time has been granted credit by Channel 4 and includes a Buyer in relation to which at the relevant time Channel 4 has been granted credit insurance subject to any limit or other conditions but only to the extent such credit insurance limit has not at the relevant time been exceeded or such conditions are at the relevant time satisfied;

Credit Information means information about the Buyer's financial position to evidence its credit worthiness pursuant to clause 3.1;

Credit Insurers means any credit insurance company and any other entity to which Channel 4 may reasonably require Credit Information to be supplied for the purposes of granting credit pursuant to clause 3.1;

Data Protection Rules means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, 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, Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) (as and when it comes into force) and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

Daypart means the part or parts of the viewing day commencing and finishing at times expressly specified by Channel 4;

Deal Memorandum means any agreement (other than these Terms and Conditions and the Booking) entered into by a Buyer with Channel 4 for the purchase of Airtime during the Term and as further described in clause 19;

Demograph means an audience type defined by age or social classification as defined by BARB;

Direct Advertiser means a person buying Airtime with Channel 4 other than through an Agency;

DRTV means advertisements which include a direct call to action to viewers which in turn facilitates a direct response by way of, but not restricted to, telephone, email and/or text message typically but not exclusively broadcast pre 1800 and post 2430;

Exclusion(s) means any exclusion(s) that Channel 4 and the Buyer have agreed to exclude from the calculation of delivery of the Buyer Commitment(s) including a Client Exclusion, Brand Exclusion, Audience Exclusion and Categorical Exclusion;

Gross Expenditure means gross expenditure, whether in cash or otherwise, before any Agency Commission but net of VAT;

Impact means a measure of viewing with one Impact being one viewing of one advertisement by one person;

Late Booking Fee means an additional fee applicable to any Booking accepted after the Advance Booking Deadline;

Legislation means all laws, Acts of Parliament, all provisions of the Treaties constituting the European Community, the European Union and the European Economic Area, all Data Protection Rules and all orders, regulations, directives, conventions and subordinate legislation made pursuant to such an Act or Treaty or otherwise having the force of law, in each case as amended, varied or replaced from time to time;

Loss means all losses, claims, liabilities, costs, expenses and damages;

Macro means an advertising region of the UK as sold by a Broadcasting Sales House;

Market Rates means Channel 4's discretionary pricing and qualitative terms for Airtime in relation to Campaigns booked after the ABD;

Media Booking System means any Buyer media booking system such as the Donovan Data Systems media booking system;

Media Partner means any broadcaster or person other than Channel 4, on whose behalf Channel 4 sells Airtime;

Non Congruent Macro Expenditure means Gross Expenditure with a Broadcasting Sales House for a Campaign that only requires a particular Macro or Macros (for example a single ITV Macro) that cannot be materially replicated by a Channel 4 Macro or Macros;

OFCOM means the Office of Communications as defined in the Office of Communications Act 2002 and, to the extent applicable to television channels in Wales, the Welsh Authority (as defined in the Communications Act) and in each case includes any successor or replacement body;

OFCOM Broadcasting Code means OFCOM's code for television and privacy from time to time;

Parties means Channel 4 and the Buyer and **Party** means one of them;

Payment Date has the meaning given in clause 15;

Platforms means all relevant platforms on which Spots will be broadcast, published, transmitted or otherwise communicated to the public;

Principal means the Buyer identified as such in the Deal Memorandum;

Pro-Forma Buyer means a Buyer which at the relevant time has not been granted credit by Channel 4;

Records has the meaning given in clause 21;

Spend Check Letters has the meaning given in clause 15;

Spot means a slot for an advertisement (within an advertising break) on a channel operated by any person appearing on any platform but for the avoidance of doubt shall not include advertisements relating to video on demand content;

Strikeweight means the amount of TVRs by reference to Dayparts;

Timeshifted Channel means a Channel that shows content that is originally shown on another Channel at an earlier time;

Third Party Representative means any separate individual or company that is contracted by the Buyer or the Buyer's Clients to provide services and empowered to act on behalf of any part of a Buyer's Client Portfolio. For the avoidance of doubt this includes Barter companies;

Trading Credit has the meaning given in clause 8.3;

Trading Debt has the meaning given in clause 8.3;

Trading Balance has the meaning given in clause 8.3;

TVR means a television rating being one percent of a given audience universe;

Under Delivery means the Gross Expenditure money value calculated by the Auditors as being the amount by which the share of Broadcast Expenditure, Volume Expenditure or other Buyer Commitment(s) actually delivered to Channel 4 is less than the share of Broadcast Expenditure, Volume Expenditure or other Buyer Commitment(s) expressly set out in the Deal Memorandum;

Under Delivery Compensation has the meaning given in clause 20.1;

UK means the United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Bailiwicks of Jersey and Guernsey;

Variation Letter means the formal documentation produced and communicated to the Buyer as a result of an amendment to an existing Deal Memorandum or any other component of the Agreement entered into by a Buyer and Channel 4 for the purchase of Airtime for a specific term;

Volume Expenditure means the volume of Gross Expenditure set out in the Deal Memorandum or Variation Letter and which the Buyer guarantees to Channel 4 will be the minimum Gross Expenditure under the Agreement; and

Working Day means a day, except a Saturday or Sunday, which is not a public holiday, religious holiday, or bank holiday in the UK.

- 1.2 **Interpretation:** In these Terms and Conditions, the Deal Memorandum and the Booking, unless the context otherwise requires:
- 1.2.1 a reference to a clause is a reference to a clause of these Terms and Conditions unless in the context the reference is clearly to a clause of the Deal Memorandum or the Booking;
- 1.2.2 a reference to a person includes an individual, firm, partnership, business division, joint venture, agency, trust, association, body corporate, corporation, company, committee, organisation and any other entity whether or not having a separate legal personality;
- 1.2.3 references to abbreviations for audience demographics will have the same meaning as currently attributed to such abbreviations by BARB;
- 1.2.4 the headings are for convenience only and will not affect its interpretation; and
- 1.2.5 the terms "**include**", "**including**" and "**in particular**" are to be construed without limiting the generality of the words that precede them.

2 STATUS OF THE BUYER

- 2.1 **Agency as Principal:** It is acknowledged that the Buyer may be an Agency or a Direct Advertiser. Where the Buyer is an Agency, it is deemed for all purposes of the Agreement to contract with Channel 4 as principal in all respects and not in any circumstances as agent on behalf of its Clients. Accordingly, in that event, all rights and responsibilities under the Agreement shall exist solely between Channel 4 and the Agency and the Agency will be responsible for the payment of all amounts due to Channel 4 and the performance of all other obligations of the Buyer under the Agreement.
- 2.2 **Affiliates:** If any Affiliate of an Agency is entitled to the benefit of the Agreement under a relevant Deal Memorandum:
- 2.2.1 the Agency shall be responsible for the acts and/or omissions of its Affiliate in connection with the Agreement;
- 2.2.2 the Agency will be liable to Channel 4 for the acts or omissions of the Affiliate as if they were acts or omissions of the Agency to the extent they breach the Agency's obligations under the Agreement or are otherwise stated in the Agreement to apply to such Affiliates;
- 2.2.3 all claims arising out of or in connection with the Agreement from an Affiliate against Channel 4 in respect of a breach of contract, tort (including negligence), breach of statutory duty or otherwise however arising from

the Agreement shall be brought, to the extent permissible in the law, by the Agency itself on behalf of the Affiliate; and

2.2.4 where an Affiliate brings a claim against Channel 4 in breach of clause 2.2.3 the Agency will indemnify Channel 4 against all costs and expenses incurred by Channel 4 in defending such claim.

2.3 The Buyer shall not misrepresent to any Client the nature of the arrangements that the Buyer (or any part of its Agency Buying Group) has with Channel 4 and warrants that it shall not by: (i) entering into, or (ii) participating in the discharge of obligations under, or (iii) the receipt of any benefits conferred by the Agreement or otherwise (by either the Buyer or by any part of its Agency Buying Group), breach any contractual or legal obligations to its Clients.

3 CREDIT

3.1 **Credit and Information:** Channel 4 may in its absolute discretion at any time grant credit (with or without conditions and/or limits) to the Buyer and withdraw credit previously granted to the Buyer and/or vary any conditions and/or limits applying to any credit. For the purposes of Channel 4 considering whether or not to grant credit the Buyer will provide to Channel 4 and/or the Credit Insurers such information as Channel 4 or the Credit Insurers may require promptly upon request. The Buyer will comply with the obligations contained in any agreement between it and Channel 4 or any such third party relating to the granting of credit by Channel 4 (including specific terms of any guarantee that may be required to secure credit) and the Buyer acknowledges that no information or report made by Channel 4 or any third party will in any way oblige Channel 4 to grant credit (on particular terms or otherwise) to the Buyer.

3.2 **Disclosure of Credit Information:** The Buyer agrees that Channel 4 may disclose to Credit Insurers and its Media Partners any information provided by the Buyer to Channel 4 (and will ensure that any third parties may disclose to Channel 4 information provided by the Buyer to such third parties) or relating to Channel 4's dealings with the Buyer. The Buyer represents and warrants that all information provided by the Buyer to Channel 4, its Media Partners and Credit Insurers shall be true, accurate and not misleading and the Buyer undertakes to notify the recipients of such information promptly of any material change in such information.

4 COMMISSION

4.1 **Agency Commission:** Channel 4 may in its sole and absolute discretion apply Agency commission in respect of the purchase of Airtime by that Agency and for the avoidance of doubt this will not exceed 15% of the Gross Expenditure payable to Channel 4. A copy of Channel 4's policy on applying commission is available upon request. Channel 4 requires Buyers to comply with its Agency recognition criteria (as set out in Channel 4's policy) before it can be considered eligible for Agency Commission.

4.2 **Application:** Agency Commission is only applied to the actual cost of the Airtime and is not applied to any other charges such as late payment surcharges, cancellation fees, Late Booking Fees, late changes charges, alternative Copy surcharges or any deferment charges.

5 AIRTIME BOOKINGS

5.1 **Acceptance at Channel 4's Discretion:** Channel 4 shall have no obligation to accept any Bookings for Airtime submitted by the Buyer. Accordingly, all such Bookings are subject to acceptance by Channel 4. If Channel 4 wishes to accept any Booking, Channel 4 may do so either in writing, by the provision of Airtime to the Buyer or by the use of an electronic approval/Booking system such as, but not limited to, CARIA.

5.2 **Late Booking:** Channel 4 reserves the right, at its sole discretion, to decline any Booking made after the Advance Booking Deadline or offer to accept any such Booking at Market Rates.

6 COPY REQUIREMENTS

6.1 **Compliance:** Copy will only be transmitted by Channel 4 if it is approved by Channel 4 in its absolute discretion, satisfies all of Channel 4's Copy Requirements, complies with all Applicable Laws, reflects the spirit and complies with the letter of the BCAP Codes, and is approved by Clearcast to Channel 4's satisfaction unless, in Channel 4's sole discretion, such approval is not required; and is delivered to Channel 4 accompanied with Copy Rotation Instructions. Furthermore, the Buyer shall ensure that the Copy provided to Channel 4 for transmission is the same Copy (and with the same clock number) as the Copy approved by Clearcast. For the avoidance of doubt, any approval by Channel 4 of any Copy will not be deemed to constitute an acceptance by Channel 4 that such Copy is provided in accordance with this Agreement, nor will it constitute a waiver of Channel 4's rights hereunder.

6.2 **Timescale for Delivery of Copy:** Copy must be delivered to Channel 4 not less than 2 (two) clear Working Days before the date of the first intended transmission date of such Copy.

6.2.1 If Copy is delivered less than 2 (two) clear Working Days before the first intended transmission date, Channel 4 may decline to transmit such Copy and the Buyer shall, at the discretion of Channel 4, be liable to pay in full for the Airtime time booked, whether or not any Airtime is in fact transmitted, and the Buyer acknowledges and agrees that such payment is a genuine pre-estimate of Channel 4's Loss.

6.2.2 **Changes:** Application of Copy changes or changes in transmission instructions initiated by the Buyer and accepted less than 2 (two) clear Working Days before the first intended transmission date shall be at the sole discretion of Channel 4.

6.3 **Unsuitable Content:** Subject to clause 6.5, if Channel 4 decides that the Copy is unsuitable, Channel 4 shall notify the Buyer accordingly, who must supply alternative Copy as soon as practicable and in any case not later than 2 (two) clear Working Days prior to the first intended transmission date of such Copy. Alternative

Copy shall be accepted at shorter notice at the sole discretion of Channel 4. Should alternative Copy not be supplied, or not be accepted by Channel 4, Channel 4 may decline to transmit such Copy and shall be entitled to be paid by the Buyer in full for the Booking made, notwithstanding that no Airtime may have been transmitted and the Buyer acknowledges and agrees that such payment is a genuine pre-estimate of Channel 4's Loss.

- 6.4 **Regulation and Applicable Law:** Channel 4 shall not be liable for any addition to, changes in or deletions from any Copy required by OFCOM, Clearcast or as a consequence of any Applicable Law.
- 6.5 **Reservation of C4 right to reject Copy:** Channel 4 reserves the right in its absolute discretion and without incurring any liability, to decline to transmit any Copy without giving any reason in writing for so declining but the Buyer shall not be liable to pay for any such Airtime which Channel 4 so declines to transmit in accordance with this clause 6.5. For the avoidance of doubt, the Buyer shall be liable to pay for Airtime which Channel 4 declines to transmit in accordance with clauses 6.1, 6.2, 6.3 and/or 6.7.
- 6.6 **Repeats:** Channel 4 reserves the right to restrict or prevent any repeat transmission of the same Copy.
- 6.7 **Multiple Brands/Advertisers:** Channel 4 reserves the right at its discretion to refuse Copy advertising more than one Brand or Advertiser. If Copy advertises more than one Brand or Advertiser, Channel 4 will be entitled to charge the Buyer on the basis that it comprises separate Spots.
- 6.8 **Copy Rotation Instructions:** Channel 4 will use reasonable endeavours to follow any Copy Rotation Instructions but shall not be liable for any failure to do so.
- 6.9 **Licence:** The Buyer hereby grants to Channel 4 and its Affiliates and Media Partners a worldwide, freely assignable, non-exclusive, royalty-free licence to reproduce, use and display the Copy (including all content, trade marks and brand features contained therein) across any and all of the Platforms.
- 6.10 **Limit of liability:** For the avoidance of doubt, neither Channel 4 nor any of its Media Partners shall have any liability in respect of any Loss arising out of or in connection with the application of any of the provisions of this clause 6 including Channel 4's refusal to approve Copy for any reason.

7 DATES AND TIMES OF TRANSMISSION

- 7.1 **Transmission:** Subject to clause 7.2 below, Channel 4 shall have the right to transmit Spots at the dates and times which it considers to be most efficient for the purposes of delivering the Buyer's Campaign objectives.
- 7.2 Where the parties do agree in advance any particular transmission times and/or dates for Spots, the Buyer agrees that it shall take into account any Timeshifted Channels when establishing transmission schedules with Channel 4 and, for the avoidance of doubt, the Buyer accepts that Channel 4 may fulfil its obligations under the Booking on the corresponding Timeshifted Channel. If any Copy is not transmitted on a particular agreed day and/or in an agreed segment of a day or a Daypart, Channel 4 will use reasonable endeavours to reinsert

such Copy in equivalent Airtime within the relevant Campaign period. Where such Copy was break or programme specific, Channel 4 will use reasonable endeavours to offer an alternative transmission at some other date. If such offer is not made or accepted by the Buyer, the Booking (in relation to the particular individual time/date specific Spot or Spots only) shall be cancelled and the Buyer shall have no claim against Channel 4 in respect of any Loss for such non-transmission save that Channel 4 shall make no charge to the Buyer for the cancelled Spot(s).

- 7.3 **Transmission Failure:** Notwithstanding any other applicable terms in these Terms and Conditions, if a failure to transmit any Spot is due solely to the fault of Channel 4, Channel 4 shall not charge the Buyer in respect of such Spot however Channel 4 shall incur no liability for any Loss howsoever arising including any failure to meet any agreed TVR target.
- 7.4 **Transmission Schedule Changes:** In the event that Channel 4 makes any significant alteration(s) to the transmission schedule of any Channel and notifies the same to the Buyer, Channel 4 reserves the right to re-establish the advertising breaks concerned as unsold time. In the case of an existing Booking in an affected break, Channel 4 will agree with the Buyer alternative transmission times for such Spots.
- 7.5 **Errors:** Channel 4 shall incur no liability for any error in any Copy transmitted except to the extent that such error is due solely to the fault of Channel 4 in which case Channel 4's sole liability to the Buyer shall be that Channel 4 shall not charge the Buyer for the Airtime in relation to such erroneously transmitted Copy.
- 7.6 **Daypart Segments and Impacts:** Spots appearing within 15 minutes of the relevant Daypart segment band will be regarded as appearing within that Daypart segment. Advertisements booked for transmission at a specific time will be transmitted in the commercial break nearest to that time. All Timeshifted Channel Impacts in a Campaign will be reconciled as if they were transmitted in the corresponding Daypart on the parent channel.
- 7.7 Channel 4 shall not be held responsible in any way for the content, nature or subject matter of any other Airtime or other programmes transmitted on the Channels and the effect or otherwise that any of the same may have on the effectiveness or otherwise of any Airtime transmitted by Channel 4 on behalf of the Buyer.
- 7.8 Channel 4 reserves the right to transmit additional Spots at no extra charge in order to achieve its Airtime objectives, in accordance with its internal procedures and policies.

8 PRICE

- 8.1 **Prices:** Channel 4's prices will be as agreed from time to time between Channel 4 and the Buyer. All prices are national unless otherwise agreed in writing by Channel 4. The Buyer agrees that where an approval in relation to the transmission of Airtime is not received by Channel 4 from the Buyer in writing prior to any applicable Advance Booking Deadline, Channel 4 reserves the right not to make such transmission, but if it agrees to make such transmission any price previously agreed in respect of such transmission may, at the absolute discretion of Channel 4, no longer apply and be subject to Market Rates. Transmissions of a longer

duration than 30 seconds will be charged pro rata to the 30 second rate. Shorter length advertisements of either 10 seconds or 20 seconds will be charged 50 per cent. and 85 per cent. respectively, of the 30 second rate and rates for other time lengths of under 30 seconds will be subject to negotiation and availability.

8.2. The Buyer acknowledges and agrees that:

8.2.1 prices agreed prior to transmission are estimates only, which are based on Channel 4's estimate of Gross Expenditure revenue and the likely number of Impacts over a specified period;

8.2.2 as a result, Channel 4's prices will vary depending on Channel 4's actual Gross Expenditure revenue and Impacts over that specified period;

8.2.3 Channel 4 reserves the right to adjust its prices at any time during the Term in order to reflect its revised estimate of Channel 4's likely Gross Expenditure revenue and/or Impacts over a specified period, meaning that if Channel 4's prices increase, the amount paid by a Buyer under a Booking (unless a fixed number of Spots or TVRs is purchased for an agreed price) will purchase fewer TVRs and if Channel 4's prices decrease, the amount paid by a Buyer under a Booking will purchase more TVRs; and

8.2.4 Channel 4 gives no guarantee as to the level of its Gross Expenditure revenue and/or Impacts and gives no guarantees with respect to any target Audience and/or TVRs for any Booking.

8.3 **Trading Balance:** The Buyer acknowledges and agrees that the number of TVRs stated in the Booking is an estimate of the number of TVRs to be delivered over the period of the Campaign or on a monthly basis (as applicable). If the TVRs actually delivered for a Campaign are less than those estimated to be delivered and paid for by a Buyer, this will give rise to an airtime debt equal to the value of the difference between such estimate and actual delivery (a '**Trading Debt**') and if the TVRs actually delivered are more than those estimated to be delivered and paid for by a Buyer, this will give rise to an airtime credit equal to the value of the difference between such estimate and actual delivery (a '**Trading Credit**'). The level of Trading Debt or Trading Credit is the **Trading Balance**. If the Trading Credits exceed the Trading Debts or vice versa, Channel 4 will, subject as provided below, from time to time use its reasonable endeavours to agree with the Buyer arrangements intended to deal with this. Channel 4 shall carry out a reconciliation of actual TVRs delivered by a Campaign against those estimated to be delivered by that Campaign which reconciliation shall take place quarterly unless otherwise agreed in writing between the parties. For the avoidance of doubt, in circumstances where there exists a trading relationship between the Buyer and Channel 4 (whether pursuant to this Agreement or otherwise) in relation to the sale of Airtime, at no time shall any Trading Credit or Trading Debt have any cash value or entitle either party to any cash payment from the other save as set out in clause 8.4 below. In the event that no such trading relationship exists and all agreements between Channel 4 and the Buyer relating to the sale of Airtime have terminated, Channel 4 will use its reasonable endeavours to agree a position with the Buyer in order to formally reconcile the Trading Balance.

- 8.4 Where (a) the parties are unable to agree a position in relation to the Trading Balance within 30 days from the date on which Channel 4 notifies the Buyer that it wishes to discuss the same; or (b) the Buyer is insolvent or any of the other insolvency-related elements set out in clause 13.2.5 apply to it; then Channel 4 shall be entitled to require payment from the Buyer in relation to any Trading Credit.
- 8.5 **Client Moves:** In circumstances where a Client of a Buyer moves any or all of its business to another Agency it is the responsibility of the Buyer to notify Channel 4 in writing prior to such move whether it wishes any Trading Balance applicable to such Client to be transferred to such other Agency. The Buyer agrees that any such transfer is subject to the prior written consent of Channel 4 and Channel 4 being satisfied that the other Agency has agreed to such transfer. It is the responsibility of the Buyer to obtain the other Agency's written agreement and the Buyer undertakes to Channel 4 that it will indemnify Channel 4 and keep Channel 4 indemnified both during and after the Term against all Loss arising out of or in connection with any claim or dispute with any third party relating to any such transfer or purported transfer of such Trading Balance.
- 8.6 For the avoidance of doubt, for pricing purposes, Channel 4 treats all bank, public and statutory holidays as weekends.

9 SPECIAL RATES

Special rates and conditions may be announced by Channel 4 from time to time for particular programmes. Any Spots relating to such programmes shall be subject to such special rates and conditions.

10 WARRANTIES AND INDEMNITIES

- 10.1 The Buyer represents, warrants and undertakes to Channel 4, Channel 4's Affiliates and its Media Partners (as appropriate) that:
- 10.1.1 it has obtained, maintained and paid for all necessary permits, licenses, authorisations and any other consents (whether statutory or otherwise) required under the Agreement, including in respect of the transmission of any Airtime or copyright material contained in, or the appearances of any person in, the Copy including any music rights or performing rights in relation to all Platforms;
- 10.1.2 all Copy or use, recording, broadcasting, transmission, distribution or communication to the public thereof on any Platform does not breach the copyright or other rights (including intellectual property rights) of, or is not defamatory to, any third party;
- 10.1.3 all Copy is Clearcast approved (unless deemed unnecessary by Channel 4 and prior written agreement has been given by Channel 4 that it is not required) and complies with any OFCOM guidelines;
- 10.1.4 Copy is not in any way misleading, false, defamatory, obscene, indecent or otherwise offensive;
- 10.1.5 Copy does not constitute a financial promotion within the meaning of the Financial Services and Markets Act 2000 or other Applicable Law; and

10.1.6 all Copy complies with all Applicable Laws.

10.2 **Buyer Indemnity:** Notwithstanding anything to the contrary contained herein, the Buyer will indemnify and hold harmless and keep Channel 4, Channel 4's Affiliates and its Media Partners indemnified against all Loss arising from any breach or threatened or purported breach of the above warranties or any of its obligations contained herein.

10.3 **Co-operation with OFCOM:** In the event of any issues raised by OFCOM in connection with Channel 4's compliance with any Applicable Laws, the Buyer shall co-operate fully with Channel 4, Channel 4's Affiliates and its Media Partners and provide such assistance as may reasonably be required by any of the same in connection with such issue.

11 PUBLICITY AND INFORMATION CONCERNING ADVERTISEMENTS

No Buyer shall, without the prior written consent of Channel 4, publish any information in connection with any Copy which has been transmitted or is scheduled for transmission on any of the Channels. Channel 4 shall be entitled to refer to the Buyer's association with Channel 4 and the Airtime placed hereunder to promote Channel 4's business generally.

12 CANCELLATION AND POSTPONEMENT

12.1 **Campaign Booking Cancellation before the ABD:** A Campaign Booking may be cancelled by the Buyer prior to the applicable Advance Booking Deadline by giving written notice to Channel 4 and no charges will be due to Channel 4 in relation to such cancelled Booking. If a Campaign Booking is cancelled by the Buyer other than in accordance with this clause, the Buyer will remain liable to pay Channel 4's charges in full whether or not the transmission of any Spots in relation to such Campaign Booking takes place. A Campaign Booking may be cancelled by Channel 4 at any time prior to the applicable Advance Booking Deadline without any liability whatsoever on the part of Channel 4. Nothing in this clause 12.1 shall affect Channel 4's right to reject any Bookings made after the relevant ABD.

12.2 **Campaign Booking Cancellation after the ABD:** The Buyer shall be liable to pay the full amount of Gross Expenditure for a Booking where such Booking is cancelled after the Advance Booking Deadline. Channel 4 may in its absolute discretion be prepared to consider applications made in exceptional circumstances by the Buyer for the cancellation and/or variation of a Campaign Booking after the applicable Advance Booking Deadline subject always to the following conditions:

12.2.1 Channel 4 being supplied with full details of exceptional circumstances giving rise to the application by notice in writing at least 5 (five) Working Days before the scheduled commencement of transmission; and

12.2.2 the Buyer paying to Channel 4:

- 12.2.2.1 a cancellation fee of up to 20% of the corresponding agreed Gross Expenditure where the application for cancellation is received by Channel 4 after the Advance Booking Deadline but on or before the last Working Day 6 weeks prior to the first scheduled transmission date;
- 12.2.2.2 a cancellation fee of up to 25% of the corresponding agreed Gross Expenditure where the application for cancellation is received by Channel 4 on or before the last Working Day 5 weeks prior to the first scheduled transmission date;
- 12.2.2.3 a cancellation fee of up to 35% of the corresponding agreed Gross Expenditure where the application for cancellation is received by Channel 4 on or before the last Working Day 4 weeks prior to the first scheduled transmission date;
- 12.2.2.4 a cancellation fee of up to 50% of the corresponding agreed Gross Expenditure where the application for cancellation is received by Channel 4 on or before the last Working Day 2 weeks prior to the first scheduled transmission date;
- 12.2.2.5 a cancellation fee of up to 75% of the corresponding agreed Gross Expenditure where the application for cancellation is received by Channel 4 on or before the last Working Day 1 week prior to the first scheduled transmission date; and
- 12.2.2.6 a cancellation fee of up to 100% of the corresponding agreed Gross Expenditure where the application for cancellation is received by Channel 4 at any later time.
- 12.3 **Deferment of Campaigns after ABD:** Channel 4 may, in its absolute discretion, agree to allow a Buyer to defer a Campaign Booking after ABD subject to: (a) the payment of a deferment fee of 15% of the relevant agreed and approved Gross Expenditure for such Booking and (b) confirmation of a deferment date for the Campaign commencement which must be not more than three months (or as otherwise agreed between the Parties) after the first intended transmission date.
- 12.4 **Cancellation and Deferment at Channel 4's Discretion:** For the avoidance of doubt, the arrangements set out in clauses 12.2 and 12.3 will be agreed by Channel 4 in its absolute discretion and Channel 4 shall not be obliged to give reasons for accepting or declining to accept an application for cancellation or deferment made by the Buyer. The Buyer acknowledges and agrees that the fees referred to in clauses 12.2 and 12.3 are a genuine pre-estimate of Channel 4's Loss.

13 SUSPENSION OR TERMINATION

- 13.1 The Agreement will continue throughout the Term unless terminated earlier in accordance with the provisions in this clause.

- 13.2 **Suspension or Termination by Channel 4:** Channel 4 may, by notice in writing to the Buyer, suspend or terminate any accepted Campaign, Booking or this Agreement (as applicable) at any time if any of the following takes place:
- 13.2.1 if the Buyer fails to agree with Channel 4 express terms as to price and/or scheduling in respect of Airtime prior to the first scheduled transmission of the relevant Spots; or
 - 13.2.2 without prejudice to Channel 4's rights as set out in clauses 6 and 7, if the Buyer commits any material breach of any provision of the Agreement (and in the case of a remediable breach, fails to remedy such breach within 10 (ten) Working Days' from receipt of written notice from Channel 4 specifying the breach); or
 - 13.2.3 any changes in any Applicable Laws or Channel 4's status as an OFCOM-regulated entity prevent it from continuing or, in Channel 4's reasonable opinion, make it more onerous for Channel 4 to publish by way of broadcast or otherwise transmit the Copy or otherwise fulfill its obligations under the Agreement; or
 - 13.2.4 the activities or conduct of the Buyer or activities relating to its business are such that Channel 4 reasonably considers them to be detrimental to the reputation and/or goodwill and/or brands of Channel 4 or any of its Affiliates and/or Media Partners and/or any of the Channels; or
 - 13.2.5 if the Buyer ceases to carry on business, becomes insolvent, has a receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up; or
 - 13.2.6 if there is a material change in the ownership of or a change of control of the Buyer or if the Buyer disposes of all or a substantial part of its assets or undertaking; or
 - 13.2.7 in accordance with the provisions of clause 25 (Force Majeure).
- 13.3 **Termination by Channel 4:** If Channel 4 terminates any accepted Booking in accordance with clause 13.2 at any time after ABD, then the Gross Expenditure for all the Airtime booked in relation to the Campaign(s) shall become payable immediately on such termination in accordance with clause 12.2.
- 13.4 **Termination by the Buyer:** The Buyer may, by notice in writing to Channel 4, suspend or terminate any accepted Campaign, Booking or the Agreement (as applicable) at any time if any of the following takes place:
- 13.4.1 if Channel 4 commits any material breach of any provision of the Agreement (and in the case of a remediable breach, fails to remedy such breach within 10 (ten) Working Days' from receipt of written notice from the Buyer specifying the breach); or
 - 13.4.2 any changes in any Applicable Laws or Channel 4's status as an OFCOM-regulated entity prevent it from continuing to fulfill its obligations under the Agreement; or

- 13.4.3 if Channel 4 ceases to carry on business, becomes insolvent, has a receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up; or
- 13.4.4 in accordance with the provisions of clause 25 (Force Majeure).
- 13.5 **Consequences of Termination:** Upon termination, the rights and obligations of the Parties under these Terms and Conditions shall terminate and be of no future effect, except that:
- 13.5.1 any rights or obligations to which either of the Parties may be entitled (including Channel 4's right to be paid any Gross Expenditure due and owing by the Buyer) or be subject before such termination shall remain in full force and effect; and
- 13.5.2 clauses 1, 2, 3, 8.3, 8.4, 10, 11, 14, 22, 24, 32 and 34 shall remain in full force and effect.

14 LIABILITY

- 14.1 **Channel 4's Liability Excluded:** In no event will Channel 4 be liable for:
- 14.1.1 any indirect or consequential loss, claim or damage; nor
- 14.1.2 any direct or indirect loss of profits, reputation, data, business or opportunity, or other economic loss, in each case whether such claim is based on breach of contract, tort (including negligence) or otherwise, and whether or not the Buyer has been advised of the possibility of such damage.
- 14.1.3 To the fullest extent permitted by law, all warranties, conditions, terms or other provisions, express or implied and whether imposed by statute or otherwise are excluded.

14.2 **Maximum Liability:** Subject to clause 14.1 above the maximum liability that Channel 4 shall have towards the Buyer in respect of any Loss arising out of or in connection with the Agreement in the event that Channel 4 is held liable for damages or losses suffered by the Buyer shall not exceed the amount paid by the Buyer (less applicable VAT) to Channel 4 in respect of the transmission of the relevant Spots in connection with which the liability arises.

14.3 Nothing in the Agreement shall operate to exclude or limit the following: a) any Party's liability for death or personal injury caused by its negligence; or b) any Party's liability for any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or c) any Party's liability for fraud; or d) any Party's liability for any other liability which cannot be excluded or limited under Applicable Laws.

15 FINANCE

15.1 **Credit Buyer Charges:** Charges payable by a Credit Buyer will be paid not later than the 25th day of the month following the month of Campaign transmission (the "**Payment Date**"). If a Credit Buyer fails to comply with the provisions of this clause, without prejudice to its other rights and remedies, Channel 4 may at any time thereafter, without any liability to the Buyer, withdraw any credit granted to the Buyer and refuse to transmit any Spots scheduled to be transmitted in relation to any Campaigns on behalf of the Buyer.

15.2 **Pro-Forma Buyer Charges:** Charges payable by a Pro-Forma Buyer will be paid not later than 10 Working Days before the first scheduled transmission date of the relevant Campaign. If the Pro-Forma Buyer fails to comply with the provisions of this clause, without prejudice to its other rights and remedies, Channel 4 may at any time thereafter, without any liability to the Buyer, refuse to transmit any Spots in relation to any Campaigns for such Buyer.

15.3 **Late Payment by Credit Buyer:** Any charges not paid by a Credit Buyer on or before the Payment Date will be subject to an immediate surcharge of 2% of such amount payable immediately. A further surcharge of 1% payable immediately will apply in respect of the principal amount which is still outstanding on the 10th day of each subsequent month.

15.4 **Date of Payment:** For the purposes of this clause 15, payment will be deemed to have been made on or before the Payment Date if Channel 4 has received the full amount by BACS or CHAPS or e-payment, in each case prior to 12.30p.m. on the Payment Date (provided that where the 25th day of the relevant month falls on a day which is not a Working Day, the next Working Day will be regarded as the Payment Date) or such other date as Channel 4 may notify in writing to the Buyer. Payment by cheque will only be accepted with prior consent of Channel 4 and must be received by 12:30 p.m. on the Payment Date.

15.5 **Currency:** Channel 4 invoices are issued in Sterling with the exception of Bookings for Republic of Ireland feeds, which are issued in Euro. Payment from Buyers must be made in the currency which appears on the relevant invoice or be converted to Sterling at the relevant exchange rate displayed on the relevant invoice.

- 15.6 **Invoicing and Frequency:** Invoices will normally be rendered by way of weekly e-invoice by Channel 4, the e-invoices for a week being despatched in normal circumstances not later than 5 (five) Working Days from the end of that week. Failure by Channel 4 to render or dispatch e-invoices at the times referred to above will not affect the obligation of the Buyer to make payment as required in accordance with these Terms and Conditions.
- 15.7 **Spend Check Letters:** Each month, Channel 4 will confirm by way of a Gross Expenditure check letter to the Buyer, the Buyer's Gross Expenditure with Channel 4 for such month by Advertiser and Campaign (each a "Spend Check Letter").
- 15.8 **Spend Check Letter Queries:** The Buyer shall notify Channel 4 of any queries in relation to such Spend Check Letters within 7 Working Days of receipt of the same. If no Spend Check Letter queries are raised by the Buyer within these 7 Working Days, absent manifest error, the Parties shall treat these Spend Check Letters as an accurate record of the Buyer's monthly Gross Expenditure with Channel 4 (as broken down by Advertiser and Campaign) and may be relied upon by Channel 4 for invoicing purposes and the Auditors (in respect of calculating the Buyer's Gross Expenditure with Channel 4 over the relevant period). No invoice may be queried after this date. Notwithstanding any such query, the Credit Buyer will remain liable to pay the full amount of any invoice and all invoiced amounts will remain subject to the provisions of clause 15.1,15.2 and/or 15.3, as relevant, pending final resolution of the query. If the query is resolved in favour of the Buyer, Channel 4 will cancel any surcharge levied on the relevant amount, cancel any invoice and re-issue an invoice for the revised amount.
- 15.9 **Set Off:** All payments of accounts for Airtime shall be made in full and the Buyer shall have no right to claim any set off or to make any counterclaim in any proceedings brought by Channel 4 in respect of any such payment. Channel 4 is entitled to set off any monies due to it by the Buyer, against any monies due by Channel 4 to the Buyer (or any of such Buyer's Affiliates).
- 15.10 **VAT:** All payments are subject to VAT at the applicable rate.

16 CLIENT PORTFOLIO

Where the Buyer and Channel 4 agree to a percentage share of Broadcast Expenditure commitment, the Buyer (a) shall supply to Channel 4 (and, if requested by Channel 4, shall supply the same to the Auditors), a full Client Portfolio list on or before the Term commencement date and (b) during the Term, shall notify Channel 4 (and if requested by Channel 4, shall notify the Auditors), promptly of any new Clients which should be added to the Client Portfolio list or Clients which should be removed from such list.

17 CALCULATION OF BUYER COMMITMENTS

- 17.1 **Gross Expenditure:** The Buyer undertakes to Channel 4 that the amount of Gross Expenditure with Channel 4 in respect of Airtime during the Term is not less than either:

- 17.1.1 the percentage share of Broadcast Expenditure (and if agreed, any minimum Gross Expenditure volume guarantee) set out in the Deal Memorandum; or
 - 17.1.2 the Volume Expenditure set out in the Deal Memorandum; or
 - 17.1.3 any other Buyer Commitment(s) set out in the Deal Memorandum.
- 17.2 **Buyer share of Broadcast Expenditure:** Where the Buyer and Channel 4 agree to a percentage share of Broadcast Expenditure commitment, this is agreed to by Channel 4 on the Buyer's undertaking, representation and warranty that it is the sole and exclusive representative for purchasing Airtime (and placing Bookings in relation to the same) for all of its Clients in respect of all such Clients' Gross Expenditure.
- 17.3 **Calculation of Buyer Commitment:** In circumstances where a relevant Buyer Commitment has been agreed in the Deal Memorandum, (in particular where this relates to a share of Broadcast Expenditure), for the purposes of establishing the Buyer's Gross Expenditure with Channel 4 and the Buyer's total Broadcast Expenditure the Parties agree that:
- 17.3.1 the amount of Gross Expenditure with Channel 4 under the Agreement in respect of the Term will only include Gross Expenditure in respect of Airtime actually transmitted by Channel 4 during the Term;
 - 17.3.2 **Declined Gross Expenditure:** the amount of Gross Expenditure with Channel 4 under the Agreement in respect of the Term will not include any Gross Expenditure reasonably declined by Channel 4;
 - 17.3.3 the Broadcast Expenditure calculation for the Buyer will include Gross Expenditure incurred by or on behalf of the Buyer and all of its Affiliates and its Buying Agencies during the Term save to the extent agreed otherwise in the Deal Memorandum. In this regard, and by way of non-exhaustive examples only, the Parties note that (a) the Buyer may be an Agency Buying Group and the Buyer Commitment may only relate to one of its Buying Agency's Broadcast Expenditure (in relation to such Buying Agency's Client Portfolio) or (b) the Buyer may be an Agency Buying Group and the Buyer Commitment relates to the aggregate Gross Expenditure of a number of named Buying Agencies within such Agency Buying Group in relation to all such Buying Agency's Client Portfolio. Where either of these is the case, it will be clearly stipulated in the Deal Memorandum;
 - 17.3.4 the Broadcast Expenditure calculation for the Buyer will include Gross Expenditure incurred for or on behalf of the Buyer's Client Portfolio during the Term and in relation to all such Clients' Brands. Save where the Deal Memorandum states otherwise, the Buyer agrees that where any of the Buyer's Clients trade directly and as principal with any Broadcasting Sales House in relation to Airtime transmitted during the Term (regardless as to whether or not the Agency has assisted the Client in placing a Booking with a Broadcasting Sales House) the Gross Expenditure in relation to such direct trading shall be included within the calculation of the Buyer's Broadcast Expenditure;
 - 17.3.5 **Non cash and part cash transactions:** the Broadcast Expenditure calculation for the Buyer will include all non cash and part cash transactions including Barter and Contra transactions for or on behalf of the Buyer, its

Affiliates or any of the Buyer's Clients (whether transacted through the Buyer or a Third Party Representative) and all Gross Expenditure with all Broadcasting Sales Houses in this regard will be valued at the full arm's length market value of the relevant Airtime;

17.3.6 **Non UK Gross Expenditure:** where Gross Expenditure with Broadcasting Sales Houses comprises Gross Expenditure in relation to Airtime both inside and outside the UK (for example Gross Expenditure on European transmissions), for the purposes of the Agreement, Broadcast Expenditure will comprise that part of such Gross Expenditure which is attributable to the UK which will be valued at the full arm's length market value of the relevant Airtime;

17.3.7 for the avoidance of doubt no Gross Expenditure which would otherwise fall within the definition of "Broadcast Expenditure" shall be excluded without the prior written agreement of Channel 4; and

17.3.8 **Material Undervalue:** if Channel 4 and/or the Auditors reasonably believe that any Airtime has been purchased by a Buyer from any other Broadcasting Sales House for any of its Clients at a material undervalue (in relation to the CPT if applicable), the Buyer's Broadcast Expenditure shall be deemed to include the full arms' length market value of such Airtime (always considering any relevant discounts which may reasonably apply in relation to the value of such Airtime).

17.4 **Valuation:** In the event that Channel 4 and the Buyer fail to agree the full arm's length market value of any Airtime (or any part thereof) for the purposes of clause 17.3 within 21 days of the date of either or both Parties first commencing to seek such an agreement, Channel 4 may request the Auditors to determine such value whose determination will be final and binding upon the Parties.

17.5 For the avoidance of doubt, the Buyer Commitment set out in the Deal Memorandum is agreed on the basis of the status quo of the Agency Buying Group (where relevant) and the Clients of the Buyer which exist at the beginning of the Term. To the extent that during the course of the Term the Buyer and/or Agency Buying Group of which the Buyer is part acquires other Affiliates which results in new Clients, Channel 4 shall have the right but not the obligation to increase the Buyer Commitment proportionately.

18. EXCLUSIONS

18.1 There shall be no exclusions from the calculation of Broadcast Expenditure unless agreed by the Parties in the Deal Memorandum.

18.2 **Exclusions:** If any Exclusions are to be effective they must be specifically detailed and individually listed in the Deal Memorandum. In the case of Audience Exclusions they must be expressly documented by Advertiser and by Brand.

18.3 **Categoric Exclusion Requirements:** Where a Deal Memorandum includes any Categoric Exclusion (for example, in relation to DRTV and/or Non Congruent Macro Expenditure), that Exclusion shall only apply where (a) written notice of such activity is given by the Buyer to Channel 4 prior to the ABD and (b) the Buyer

provides the relevant Media Booking Systems codes for such activity to Channel 4 and the Auditors and (c) Channel 4 agrees that the Gross Expenditure in relation to such activity may be excluded.

19 DEAL MEMORANDUM

The Deal Memorandum:

- 19.1 will set out specific terms agreed between Channel 4 and the Buyer to be applied during the course of the Term in relation to all Campaign Bookings including, for example, in relation to the Channel 4 Pricing Terms, the quality of the Airtime to be sold and the Buyer Commitment; and
- 19.2 may be split into part A and part B. Where this is the case, part A will set out a number of material terms between the Parties. Part B shall contain a number of specific terms which shall, for the avoidance of any doubt, also be binding on the Parties. For the avoidance of doubt, both part A and part B shall be binding on the Parties and shall be capable of being audited by the Auditors (pursuant to clause 21).

20 TREATMENT OF VALUE UNDER DELIVERY

- 20.1 **Under Delivery:** In the event that the Buyer fails to comply with its Buyer Commitment obligations and such failure is evidenced in the Audit Report, Channel 4 reserves its right to require the Buyer to pay to Channel 4 forthwith (together with any applicable VAT) the amount of any Under Delivery (as identified in the Audit Report) (the “**Under Delivery Compensation**”).
- 20.2 In its sole discretion, and without any obligations in this regard, Channel 4 may agree with the Buyer an enhanced Buyer Commitment in a subsequent Term (for example without limitation an increased share of Broadcast commitment or an agreement to guarantee a level of volume of Gross Expenditure to Channel 4 over and above its share of Broadcast commitment) in lieu of requiring payment of any Under Delivery as stipulated in clause 20.1 above. For the avoidance of doubt, if the Parties fail to reach agreement on any enhanced Buyer Commitment (for a subsequent Term) within 90 days of the filing of the Audit Report, Channel 4 reserves the right to require payment of the Under Delivery Compensation in accordance with clause 20.1.
- 20.3 **Costs:** Where Under Delivery Compensation is due in accordance with clause 20.1 the Buyer shall also be liable to pay to Channel 4 forthwith the cost of the Audit Report.

21 AUDITING AND REPORTING

- 21.1 **Records:** The Buyer will, and will procure that all of its Buying Agencies, relevant Affiliates, Third Party Representatives (to include Barter/Contra companies), other relevant third parties (including outdoor companies, production companies and other content rights holders) and Clients will, on its behalf, maintain accurate financial, accounting and media records of all Broadcast Expenditure and any other expenditure to the extent such expenditure will assist in establishing whether or not the Buyer has complied or will comply

with any Buyer Commitment (and any obligation in relation to Under Delivery Compensation) (“**Records**”). For the avoidance of doubt, such accurate financial, accounting and media records include:

21.1.1 all information (including all media codes and media streams) contained within the Media Booking System (e.g. DDS and/or other media booking system) of the Buyer, its Buying Agencies, Affiliates, Third Party Representatives and any other relevant third parties (including outdoor companies, production companies and other content rights holders); and

21.1.2 all information, without any limitation, held within the financial, accounts or media departments of the Buyer, its trading divisions, Affiliates, Third Party Representatives, its Clients and any other relevant third parties.

21.2 **Audit Rights:** Channel 4 has the right to appoint a firm of auditors (the “**Auditors**”) to audit the Records and produce a report (the “**Audit Report**”) in order to establish whether or not the Buyer has complied or will comply with the Agreement and, in particular, the Buyer Commitment (and any obligation in relation to Under Delivery Compensation) at any time during the course of the Agreement and after the Agreement has expired. The Buyer will and will procure that the Auditors will have unrestricted access to (a) all Records and (b) all other information which the Auditors consider (in their sole discretion) to be relevant to establishing whether or not the Buyer has complied or will comply with any Buyer Commitment (and any obligation in relation to Under Delivery Compensation) and ensure that (a) and (b) are provided promptly so as to enable the Auditors to audit the Records and endeavour to produce the Audit Report within 6 months of the end of the Agreement Period (without prejudice to Channel 4’s right to have the Auditors carry out an audit at any time during the course of the Agreement and after the Agreement has expired)..

21.3 **The Buyer to supply the Auditors with information requested:** In addition to procuring unrestricted access to the Records and all other information that the Auditors consider (in their sole discretion) to be relevant for the purpose of this clause 21, the Buyer will provide all such assistance to the Auditors as required by the Auditors including but not limited to supplying the Auditors with any information to support the information extrapolated from the Media Booking Systems or to support any calculations provided by the Buyer as being an accurate representation of the position in respect of its compliance with the Buyer Commitment. Furthermore, the Buyer shall obtain all relevant consents (as required) from all Clients in respect of whom Bookings are made by that Buyer, to ensure that Channel 4 has access to all relevant details about and Records of any such Client for the purposes of an audit carried out pursuant to this clause 21. At Channel 4’s reasonable request, the Buyer will provide written confirmation to Channel 4 that such consents have been obtained together with any supporting evidence reasonably required by Channel 4.

21.4 **Period of Records subject to Audit:** The Auditors shall have access to all Records only in respect of the Agreement Period, but also for a reasonable period (a) prior to the start of; and (b) following the expiry of such Agreement Period. The Auditors shall establish whether any Gross Expenditure has been appropriately allocated across any Campaign period (where part of but not all of any Campaign period falls within the

Agreement Period). In the event that the Auditors determine that there has been a misallocation of Gross Expenditure across any Campaign period (for example, on the basis that there is an artificial reduction in the amount of Gross Expenditure relevant to the Agreement Period), the Auditors will establish any amounts of Gross Expenditure which, had these been appropriately allocated across a Campaign, would have led to the inclusion of additional Gross Expenditure in respect of the Agreement Period over and above that indicated in the Buyer's Records and certified by the Buyer. Any such additional amounts of Gross Expenditure established by the Auditors shall then be included within the calculation of Broadcast Expenditure.

21.5 **Remedies:** In the event that the terms of the Agreement have not been complied with Channel 4 will be compensated in accordance with clause 20 of these Terms and Conditions and Channel 4 shall have the right to require the Buyer to pay immediately on demand to Channel 4 the whole or any part of the fees and expenses (including VAT) of the Auditors including in connection with any requirement for the Auditors to value Airtime in accordance with clause 17.4. For the avoidance of doubt, the Buyer acknowledges and agrees that Channel 4 is entitled to see all the results of any audit carried out pursuant to this clause 21, including but not limited to: (i) the Auditors' assessment of the Broadcast Expenditure, (ii) the Auditors' assessment of the amount of Gross Expenditure with Channel 4 in respect of Airtime during the Term, (iii) Channel 4's actual percentage share of Broadcast Expenditure as calculated by the Auditors, (iv) the pass/fail result of the audit and (v) the monetary amount by which the Buyer passed or failed the audit as calculated by the Auditors against the target figure, together with any comments by the Auditors that are required to explain the result.

21.6 **Letter of Representation:** The Buyer shall procure that, within one month of an audit taking place pursuant to this clause 21, the Buyer's most qualified accountant shall provide to Channel 4 a signed representation statement confirming that: (i) Channel 4 and/or the Auditors have been given full and complete access to all relevant information and documentation including but not limited to all information and documentation relating to Broadcast Expenditure; and (ii) the figures provided by the Buyer during the audit are a complete and accurate statement of the Buyer's Broadcast Expenditure for the relevant period. The Parties agree that failure to sign and return the representation statement is a material breach of this Agreement for the purposes of clause 13.2.2 of these Terms and Conditions.

22 CONFIDENTIALITY

22.1 **Confidential Obligations:** Each Party shall keep confidential all Confidential Information relating to the other Party, its Affiliates and/or any third party (including any Confidential Information of any Media Partner) which is obtained by it as a result of it entering into or performing its obligations under the Agreement. Each Party will only disclose Confidential Information to those of its employees, officers, professional advisors, approved sub-contractors and agents who:

22.1.1 need to know it for the purpose of exercising or performing its rights and obligations under the Agreement;

22.1.2 are informed of the confidential nature of the information divulged; and

22.1.3 agree to act in compliance with the Agreement.

22.2 The Buyer shall treat any information, not already in the public domain, about Channel 4, its Affiliates or its Media Partners (including, for the avoidance of doubt, in respect of programmes or other content and Spots and Channel 4's transmission schedules) as Confidential Information.

23 CHANGES TO TERMS AND CONDITIONS

Channel 4 reserves the right to change these Terms and Conditions on not less than 4 weeks' notice, and in the event of such change, the terms and conditions applicable shall be those in force at the time of transmission, provided that the Buyer shall (by serving written notice on the Corporation within two weeks of receiving such notice of change) be entitled to cancel any Booking for any Airtime affected by such change.

24 DATA PROTECTION

The Buyer warrants, undertakes and represents that it will comply with all applicable Data Protection Rules including ensuring compliance with principle 7 of the Data Protection Act 1998 (taking appropriate measures against unauthorised or unlawful processing of Personal Data (as defined in the Data Protection Act 1998)) and will procure that any third party to whom the Buyer discloses Personal Data collected pursuant to the Agreement (or to which it directs Channel 4 to disclose such Personal Data) shall so comply.

25 FORCE MAJEURE

25.1 **Termination for Force Majeure:** Notwithstanding the provisions of clause 25.2, if Channel 4's transmission activities are restricted, curtailed or prevented by any law, act, matter or thing beyond its reasonable control ("**Force Majeure Event**"), Channel 4 may, notwithstanding any other provision of the Agreement terminate any contract between Channel 4 and the Buyer without prejudice to Channel 4's right to be paid by the Buyer any monies due and owing by the Buyer to Channel 4 at the time of such termination.

25.2 **Notification and Relief:** Without affecting the scope or effect of clause 25.1, if either Party (the "**Affected Party**") is prevented or delayed in whole or in part from complying with its obligations under the Agreement by reason of a Force Majeure Event, it will notify the other Party, giving details thereof. The Affected Party will be relieved of its obligations under these Terms and Conditions to the extent that its performance is hindered or delayed by such Force Majeure Event, although the Affected Party shall be required to use all reasonable endeavours to minimise the effect of the Force Majeure Event on the performance of its obligations. If the Force Majeure Event continues for a period of more than six (6) months, the other Party shall be entitled to terminate the affected Booking by notice in writing to the Affected Party.

26 ASSIGNMENT

26.1 **Buyer:** The Buyer may not re-sell, assign, dispose of, hold on trust or part with the benefit or burden of any part of the Agreement without the prior written consent of Channel 4. For the avoidance of doubt, if Channel

4 grants such consent the Buyer shall nonetheless remain responsible for the performance of its obligations under the Agreement.

26.2 **Channel 4:** Channel 4 shall be free to assign, sub-contract and otherwise deal freely with the Agreement including all or part of its rights and/or obligations under the Agreement to any third party without the other Party's consent by providing written notice to the Buyer.

27 NO PARTNERSHIP OR AGENCY RELATIONSHIP

Nothing in this Agreement will create, or be deemed to create, a partnership, or the relationship of principal and agent, between the Buyer and Channel 4. For the avoidance of doubt this Agreement does not impose any obligations on any Affiliate of Channel 4 or on any Media Partner.

28 ENTIRE AGREEMENT

This Agreement together with any documents referred to in it contains to the fullest extent permitted by law the entire agreement between the Parties with respect to its subject matter and supersedes all previous statements made by either Party and all previous agreements in relation thereto.

29 NO WAIVER

No failure or delay by any Party in exercising any of its rights under this Agreement will be deemed to be a waiver of those rights and no waiver of a breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of the same or any other provision.

30 SEVERABILITY

If any provision of the Agreement is held to be illegal, invalid, or otherwise unenforceable, such provision will be enforced to the extent possible consistent with the stated intention of the Parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from the Agreement, while the remainder of the Agreement will continue in full force and effect.

31 RIGHTS CUMULATIVE

The rights, powers, privileges and remedies provided in the Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under other provisions of the Agreement, by law or otherwise.

32 RIGHTS OF THIRD PARTIES

Except as otherwise provided in the Agreement, a person who is not a Party to the Agreement may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999, except that any Affiliate of Channel 4 shall be entitled to enforce any provision of the Agreement as if the Affiliate was Channel 4 under

the Agreement. Notwithstanding the foregoing, Channel 4 may enforce this Agreement as trustee for the benefit of its Media Partners.

33 NOTICES

- 33.1 Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next Working Day delivery service providing proof of postage or proof of delivery, at its registered office or (in any other case) its principal place of business and marked for the attention of the Channel 4 Director of Sales with a copy to the Director of Commercial Affairs.
- 33.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or otherwise at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
- 33.3 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.

34 GOVERNING LAW

These Terms and Conditions and the Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with its subject matter or formation shall be governed by and construed in accordance with the law of England and the Parties submit to the exclusive jurisdiction of the English courts.