

## TERMS AND CONDITIONS FOR DIGITAL ADVERTISING

These terms set out the terms on which Bauer has agreed to deliver, and (if applicable) create Content for, the Buyer's digital advertising Campaign, as more particularly described in the IO.

### 1. INTERPRETATION

1.1 In these terms:

**"Ad Impression"** means the metric used to describe when an Advertisement is actually displayed on a Publication;

**"Ad-Server"** the technology and service that enables the placement of Advertisements on the Publications which the Buyer accepts is owned and controlled by a third party contracted to Bauer;

**"Advertisement"** means Content that is delivered via the Ad-Server for publication on the Publications in accordance with the IO and may include a Microsite, display advertising, banners, home-page takeovers and any other type of placement available on a desk-top or mobile optimised website, mobile application, email or other digital platform;

**"Advertising Specifications"** means Bauer's advertising specifications from time to time in force, available at [www.bauermedia.co.uk/adspecs](http://www.bauermedia.co.uk/adspecs);

**"Agreement"** means these terms and conditions together with the relevant IO for the Campaign;

**"Applicable Law"** means all laws and regulations (including subordinate legislation and the law of the European Economic Community), advertising codes, practices and guidance and all applicable industry standards for the time being in force or applicable in any territory in which the Advertisements comprising the Campaign will be distributed or accessible;

**"Assets"** means any artwork, materials, colour and mono copy, fonts, and other creative supplied by the Buyer, including all photographs, product, brand or other information which is either incorporated with other Content to create the Advertisement or which, by itself, comprises the whole Advertisement(s) served for the Campaign;

**"Audience Profile"** means a designated category of User with similarities in preferences as determined and identified through their internet browsing habits through the use of cookies, tags, or other forms of identification mechanism;

**"Bauer"** means either: (i) Bauer Consumer Media Limited, and/or (ii) Bauer Radio Limited;

**"Bauer Publications"** means Publications owned and controlled by Bauer;

**"Buyer"** means the person placing the order with Bauer for the delivery of the Campaign, whether such person be the manufacturer, supplier or distributor of the product, brand or service promoted via the Campaign (the **"Advertiser"**) or their advertising agency or media buyer;

**"Campaign"** means a digital advertising campaign comprising the delivery of a series of Advertisements to the Publications and / or to a specified Audience Profile, in accordance with the IO;

**"Campaign Delivery Report"** means the report which Bauer provides to the Buyer which confirms either: (i) the number of Impressions served via the Ad-Server to a particular Publication or Audience Profile; or (ii) such other agreed statistics (as specified in the IO). The Campaign Delivery Report will normally reveal the number of times a User has clicked on the Advertisement(s) and the click through rate (calculated by taking the number of 'click-throughs divided by the recorded number of Impressions x 100);

**“Campaign Start Date”** means the start date of the Campaign as detailed in the IO or (if not detailed in the IO) the date on which the first Advertisement for the Campaign is delivered;

**“Cancellation Deadline”** shall have the meaning given in clause 10;

**“Content”** means the content included in Advertisements which may comprise Rich Media Creative or Standard Creative and may involve the Assets on their own or a combination of Assets together with artwork, materials, colour and mono copy, fonts, and other creative developed by Bauer;

**“Content Deadline”** means the latest date by which the Buyer must give Bauer full instructions and all Assets required for delivery if the Campaign, such date being: (i) for Standard Creative, at least two (2) Working Days before the Campaign Start Date; and (ii) for all other Advertisements, five (5) Working Days before the Campaign Start Date, unless otherwise agreed in writing;

**“Impressions”** means both Ad Impressions and Page Impressions;

**“Intellectual Property”** means any and all patents, service marks, designs, utility models, unregistered or registered trade marks, business or trade names, copyright, design rights, know-how and all other similar rights of a corresponding nature, existing anywhere in the world;

**“IO”** means the document (in electronic or other form) generated by Bauer’s booking system, provided to the Buyer, confirming the specific details of a Campaign (including dates, charges, Publications, and/or Audience Profile, as applicable) and Bauer’s acceptance of the Buyer’s order for this Campaign;

**“in writing”** means an agreement reached between the parties and conformed by email or other written communication;

**“Microsite”** means the page or multi-page advertisements or promotions developed by Bauer for the Buyer and accessed via an Advertisement (and where the context allows, any reference to an Advertisement shall include a reference to any Microsite accessed via an advertisement);

**“Page Impression”** means a file or a combination of files sent to a User as a result of the User’s request being received by Bauer or its content server or such other measurement of delivery of a Campaign as is agreed in writing between the parties;

**“Publication”** means any webpage, website (including desk-top and mobile optimised sites), mobile application, or email on which the Advertisement is to be delivered in accordance with the IO;

**“Rich Media Creative”** means non "gif" or "jpeg" formats, typically Html 5 Advertisements and similar;

**“Standard Creative”** means “gif” or “jpeg” formats;

**“User”** means a person who accesses, or otherwise is a user of a Publication;

**“Working Day”** means 9am to 5pm any day Monday to Friday inclusive other than Christmas Day, Good Friday, bank and other public holidays in England;

1.2 Where the context so admits, words importing the one gender shall include all other genders and words importing the singular shall include the plural and vice versa.

## **2. TERM**

This Agreement commences on the date Bauer sends the IO to the Buyer, confirming Bauer’s acceptance of the Buyer’s order for the Campaign, and shall continue until delivery of the final Advertisement of the Campaign (the **“Term”**). However, all terms which are expressly stated or are by their nature, clearly intended to continue, shall continue beyond expiry or earlier termination of the Term.

### 3. THE CAMPAIGN

- 3.1 Bauer shall upload the Advertisements to the Ad-Server in order to deliver the Campaign in accordance with the IO. In addition, if detailed in the IO, Bauer shall develop Content to be included within Advertisements delivered as part of this Campaign.
- 3.2 To the extent that Bauer is responsible for the development, design and creation of Content for the Campaign, the parties shall liaise, in good faith, to determine the concept and detail of the same prior to the Campaign Start Date. The parties shall reasonably cooperate to ensure the Campaign is developed and delivered in accordance with the specification and deadlines detailed in the IO. Bauer will create all Content in accordance with the applicable style relevant to any specified Bauer Publication or Audience Profile chosen for delivery (as applicable). The Buyer's reasonable suggestions with respect to the style of Content will, however, be considered by Bauer acting reasonably. Draft Content will be provided to the Buyer for approval (such approval not to be unreasonably withheld or delayed) and the Buyer must communicate its approval or disapproval within 48 hours of receiving the draft Content from Bauer. If the Buyer does not approve, it shall provide Bauer with details of all reasonably required changes which, if made, would mean its approval will be given. Failure to communicate within 48 hours shall be interpreted as the Buyer's approval. Bauer reserves the right to charge the Buyer additional production charges for excessive changes to draft Content or for any requested changes which are materially different to a previously agreed concept, and the Buyer accepts that material changes or excessive changes may require a postponement of the Campaign Start Date. Notwithstanding the foregoing, Bauer shall use its reasonable commercial endeavours (subject to restrictions imposed by Applicable Law or any reason set out in clause 4.5, below) to comply with the Buyer's requested changes in time for the Campaign Start Date. Once approved, Bauer shall make no changes to the Content without seeking further approval from the Buyer in accordance with this clause 3.2.
- 3.3 Notwithstanding clause 3.2, above, the Buyer shall only be entitled to reject any Microsite developed by Bauer if the Microsite fails to materially comply with the agreed specification set out in the IO or otherwise agreed between the parties, in writing. In such circumstances, the Buyer shall communicate its disapproval of the Microsite within 48 hours of receipt from Bauer and shall also provide written details of the reasons for its disapproval in sufficient detail to enable Bauer to identify and rectify such non-compliance and deliver the Microsite in accordance with the agreed Campaign Start Date. The Buyer shall also provide Bauer with all assistance required to identify and rectify the non-compliance prior to the Campaign Start Date.
- 3.4 The Buyer (on behalf of itself and on behalf of its Advertiser client, if applicable) accepts that Campaigns for delivery of a stated number of Impressions to a specified Audience Profile may be delivered (via the Ad-Server) on Bauer Publications and/or on Publications owned and controlled by 3<sup>rd</sup> parties. In such circumstances, Bauer does not pre-screen and cannot control the precise Publications on which Advertisements may be served. Consequently, Bauer accepts no liability or responsibility whatsoever if an Advertisement is served on a Publication which the Buyer is not expecting and / or to which it ultimately objects (unless such Publication is materially and demonstrably inconsistent with the Audience Profile specified by the Buyer, as set out in the IO).
- 3.5 Once the Campaign has ended, Bauer shall, if requested, provide the Buyer with a Campaign Delivery Report for all parts of the Campaign delivered via the Ad Server. Unless otherwise agreed, in writing, and the Buyer has accepted all conditions required by Bauer for carrying out its own reporting, the Buyer agrees that the Campaign Delivery Report will be the sole and definite measurement of the number of Impressions delivered through the Ad-Server for the Campaign and shall be binding on the parties. Notwithstanding the foregoing, in the case of a manifest error or if there is a disparity between the Campaign Delivery Report and the Buyer's own records (especially if the Buyer's report suggests that Bauer has under-delivered the agreed number of Impressions), Bauer may in its absolute discretion, choose to either: (i) extend the term of the Campaign to enable delivery of the agreed number of Impressions; or (ii) reduce the charges (on a pro-rata basis) so that they reflect the number of Impressions detailed in the Buyer's report. Discrepancies may be higher if the Assets do not comply with the Advertising Specifications and in such case, Bauer shall have no obligation to reconcile under-delivered Impressions. The Buyer may wish to contract with a third party to host the Campaign and in

such circumstances, the Buyer may receive a delivery report direct from this third party. Bauer shall have no obligation to obtain such report on the Buyer's behalf and the Buyer accepts that the third party report may show different statistics to the Campaign Delivery Report of about 10%. Bauer shall only reconcile under-delivered Impressions as suggested by a third party if the discrepancy is under 10%.

#### **4. ASSET DELIVERY AND DEADLINES**

- 4.1 The Buyer shall deliver the Assets to Bauer before the agreed Content Deadline.
- 4.2 All Assets delivered must comply with the Advertising Specifications.
- 4.3 Bauer shall have no obligation to deliver the Campaign if Assets are delivered after the Content Deadline or, if when delivered the Assets fail to comply with the Advertising Specification or with clause 5.2. However, Bauer shall remain entitled to be paid all agreed charges for the Campaign without deduction.
- 4.4 If Assets are delivered to Bauer after the Content Deadline but by midday on the day before the Campaign Start Date, Bauer may at its discretion (but without any obligation to do so) pro rata down the number of agreed Impressions to be delivered for each day that the Assets are later than the Content Deadline. For example, if a Campaign is scheduled to run for 20 days and the number of Impressions ordered is 100,000 then, if the Assets are delivered 2 days after the Content Deadline, then Bauer may deliver 90,000 Impressions rather than 100,000. However, the Buyer must still pay for the full 100,000 Impressions.
- 4.5 Bauer may, in its sole but reasonable discretion: (i) refuse to deliver any Assets, Advertisements, or the entire Campaign; or (ii) if the Campaign has already commenced, refuse to continue delivery of the Campaign or any Advertisement comprised therein, or require an amendment to Assets, Advertisements, or the entire Campaign, prior to any further delivery, if:
  - 4.5.1 reasonably required to comply with any ethical or moral obligations placed on Bauer; or
  - 4.5.2 reasonably required to avoid the infringement or potential infringement of Applicable Law or the rights of any third party in any part of the world; or
  - 4.5.3 reasonably required to avoid or remedy the risk of bringing Bauer into disrepute or harming its reputation;
  - 4.5.4 reasonably required to avoid breaching or potentially breaching any of the Advertising Specifications or any Bauer internal policies or brand guidelines; or
  - 4.5.5 the Buyer has failed to pay the charges for the Campaign in accordance with this Agreement.
- 4.6 Bauer also reserves the right to reject any Assets which contain a reference to a direct competitor of Bauer.
- 4.7 The rejection or refusal to deliver any Asset, Advertisement or Campaign pursuant to clauses 4.5 or 4.6 shall be without prejudice to Bauer's right to be paid, in full, for the Campaign in accordance with Agreement.
- 4.8 Notwithstanding any other provisions in this Agreement, if Bauer requires the Buyer to amend any Assets then the Buyer shall provide such amended Assets to Bauer within the agreed Content Deadline.
- 4.9 The Buyer shall retain sufficient quantity of its Assets. Bauer shall not be liable for the loss of any Assets and reserves the right to destroy all Assets in its possession 3 months following the date of their last use by Bauer unless written instructions have been received from the Buyer to the contrary.
- 4.10 Bauer reserves the right to charge the Buyer for extra production and processing costs reasonably incurred because of any omission by the Buyer to supply Assets of sufficient quantity to fill the space booked.

#### **5. PARTIES OBLIGATIONS**

5.1 Each party confirms that:

- 5.1.1 it is entitled to enter into this Agreement and to perform its obligations as set out herein;
- 5.1.2 in the fulfilment of its obligations under this Agreement, it shall comply with Applicable Law, including those laws relating to anti-bribery, anti-corruption and anti-money laundering; and
- 5.1.3 it shall perform its obligations under this Agreement in accordance with reasonably accepted industry practice.

5.2 In addition, Buyer confirms on behalf of itself and where relevant (and applicable) on behalf of the Advertiser that:

- 5.2.1 it contracts with Bauer as principal (notwithstanding that it may acting as agent or media buyer for the Advertiser or in any other representative capacity) and is authorised by the Advertiser to do so, and will indemnify Bauer against any claim made by the Advertiser arising from not having such authorisation;
- 5.2.2 if it changes its name, trading style, identity or any other details disclosed to Bauer prior to entering into this Agreement, it shall give written notice to Bauer within 5 Working Days of such change and provide such further details as may be reasonably requested by Bauer;
- 5.2.3 all Assets will comply with Bauer's Advertising Specifications and no Assets shall be defamatory, offensive, indecent, or if published would promote discrimination based on sex, race, religion, disability or age or otherwise would bring Bauer into disrepute;
- 5.2.4 it has obtained or will obtain all clearances and permissions (and shall pay all associated costs) necessary for the full exploitation of the Assets by Bauer in the form originally submitted or otherwise specified by the Buyer pursuant to this Agreement and, therefore, Bauer's use and public communication of those Assets will not violate or infringe and third party Intellectual Property, privacy, moral, or other proprietary rights;
- 5.2.5 in the case of any Assets which contain the name, voice, or pictorial representation, whether photographic or otherwise, of any living person or any part of the anatomy of any living person or any material by which any living person may be identified, then the Buyer (or the Advertiser) has obtained the authority of that living person to make use of his name, identity, representation and/or copy;
- 5.2.6 in relation to any financial promotion (as defined under the Financial Services and Markets Act 2000), the Advertiser is, or the Advertisement has been approved by, an authorised person within the meaning of that Act, or is otherwise permitted under that Act or under the Financial Promotion Order 2001, or any other legislation subordinate to the Act;
- 5.2.7 if the Campaign is for gambling products or services, the Advertiser has obtained and will maintain during the Campaign term, all necessary licences or other permissions required from the appropriate regulatory authority to be an advertiser of such products and services;
- 5.2.8 the Assets comply (and the Campaign as a whole complies) with Applicable Law, and the Buyer shall comply with Applicable Law in the exercise of its obligations under this Agreement;
- 5.2.9 all information contained within the Assets or otherwise provided to Bauer in connection with the Campaign is accurate, complete and true and the Buyer shall notify Bauer immediately in the event of any change, or expected change, which could alter such accuracy, completeness or truth; and
- 5.2.10 the Assets do not contain viruses, bugs, worms, Trojan horses, harmful code or any other form of defect or contamination which could cause temporary or permanent damage to or will otherwise impair or harm or cause the malfunction of the software or hardware of the Publications or the systems associated with such Publications.

**6. TAGS, COOKIES AND DATA COLLECTION**

6.1 The Buyer shall be entitled to set (or allow to be set on its behalf) "cookies" or similar devices on any Publication, provided that:

- 6.1.1 Within the Assets, the Buyer is responsible for obtaining 'consent' for the use of such cookies as required by Applicable Law;

- 6.1.2 the Buyer ensures that its use of such cookies and the data collected adheres to any permissions, preferences or consents set by each User with respect to cookies and other data collection devices;
- 6.1.3 the Buyer ensures that its use of cookies complies with the privacy and /or cookie policies published on the Publications;
- 6.1.4 the Buyer provides Bauer with comprehensive information relating to such cookies in advance of setting them, including their name, type, purpose, whether they will be used for targeted advertising, what data they shall collect, whether they are linked to other data the Buyer already holds about the User, their expiry date, how to disable it, and such other information as Bauer may reasonably request;
- 6.1.5 the purpose of such cookies is not for measurement or analysis except to verify the delivery of the number of Impressions stated in the IO;
- 6.1.6 the Buyer ensures the cookies expire within 30 days of the end of the Campaign end date;
- 6.1.7 the cookies do not allow the Buyer to collect, have access to, or transfer any personally identifiable data (including where such personally identifiable data is in encrypted form); and
- 6.1.8 the Buyer accepts that Bauer may withdraw permission for the Buyer to set cookies at any time and without reason.

## **7. INDEMNITY**

- 7.1 The Buyer shall indemnify Bauer and shall keep Bauer fully and effectively indemnified and hold Bauer harmless from and against all costs (including all legal costs), losses, damages, expenses or liabilities whatsoever arising (whether directly or indirectly) as a result of or in connection with the Buyer's breach or non-performance (and if the Buyer has entered into this Agreement on behalf of its Advertiser client, any breach or non-performance by that Advertiser client) of any obligation, warranty or promise given under this Agreement.

## **8. CHARGES AND PAYMENTS.**

- 8.1 The charges payable by the Buyer for the Campaign shall be specified in the IO.
- 8.2 If the IO specifies that the Buyer shall pay Bauer directly, the Buyer shall normally be invoiced prior to the Campaign Start Date and payment shall, especially when a Buyer is placing a booking with Bauer for the first time, normally be due, in clear funds, before the Campaign Start Date. However, Bauer may (at its discretion) agree to allow credit to the Buyer, in which case, payment shall either be invoiced monthly during the Campaign term in accordance with the Impressions delivered across the previous month, or as otherwise specified in the IO. All invoices issued by Bauer shall be paid (by BACS or other electronic transfer to the account detailed on Bauer's invoice) within 30 days of the date stated on the invoice.
- 8.3 The IO may specify that the Buyer must pay charges for the Campaign to a nominated third party (not to Bauer). On such occasions, the nominated third party will be acting as Bauer's payment collection agent and shall be responsible for transferring monies to Bauer once received from the Buyer. Provided the Buyer pays the nominated third party in accordance with the payment terms specified by that third party, no further payment shall be due to Bauer in consideration for the Campaign. However, despite the fact that the Buyer may be paying a third party, the Buyer acknowledges and agrees that its payment obligations for the Campaign are ultimately to Bauer. Accordingly, if the Buyer fails to pay to the nominated third party pursuant to this clause 8.3, Bauer shall be fully entitled to take such action as may be necessary to enforce its right to be paid for the Campaign and the Buyer shall not assert a defence against Bauer on the basis that the Buyer should have made payment to the nominated third party, not to Bauer.
- 8.4 All charges specified in an IO are exclusive of Value Added Tax which shall be payable in addition at the rate from time to time in force.
- 8.5 If the Buyer fails to make payment in accordance with this clause 8, Bauer shall be entitled (at its discretion) to charge interest on the outstanding balance at the statutory rate from time to time in force.

Such interest shall accrue from day to day from and including the date that the invoice became due for payment until the date it is paid in full (whether before or after judgement).

- 8.6 If Bauer is forced to instruct external debt collection agents to recover any charges from the Buyer, the cost of doing so shall be reimbursed by the Buyer.
- 8.7 Bauer shall be entitled to withdraw or adjust (at its discretion), any discount agreed with the Buyer if the Campaign is not completed because of cancellation notice sent by the Buyer pursuant to clause 10, below or if Bauer is forced to terminate this Agreement due to default by the Buyer or Advertiser.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 All Intellectual Property rights belonging to Bauer or its licensors prior to the commencement of this Agreement (together with all Intellectual Property rights in and to any Content originated or developed by Bauer pursuant to this Agreement) will at all times remain its property and nothing in this Agreement shall be deemed or construed as an assignment by Bauer of such Intellectual Property rights. All goodwill and other rights arising in or generated by the use of such Intellectual Property pursuant to, and in accordance with, this Agreement will accrue to and inure to the benefit of Bauer or its licensors as the case may be.
- 9.2 All Intellectual Property rights in and to the Assets will at all times remain the property of the Buyer (or Advertiser, as applicable) or its licensors and nothing in this Agreement shall be construed as an assignment by the Buyer or Advertiser of such Intellectual Property rights. All goodwill and other rights arising in or generated by the use of such Intellectual Property pursuant to, and in accordance with, this Agreement will accrue to and inure to the benefit of the Buyer, Advertiser or their licensors as the case may be.
- 9.3 The Buyer (on behalf of itself or on behalf of the Advertiser as applicable) hereby grants to Bauer a non-exclusive, royalty-free licence, ending (subject to the provisions of this clause) on expiry of the Campaign term to reproduce, publish, communicate to the public and incorporate (with Bauer's Intellectual Property) the Assets for any purpose in connection with Bauer's fulfilment of its obligations under this Agreement. Bauer shall also have a perpetual, royalty-free licence, to store and reproduce those Assets included within Content for internal purposes and to enable the composition of case studies to promote its advertising services to potential clients. Aside from the rights granted pursuant to the foregoing sentence, on expiry of the Campaign term, Bauer shall not be entitled to retain, use or publicly communicate the Assets.
- 9.4 Bauer grants to the Buyer (strictly for the benefit of the Advertiser) the right to retain one copy of the completed Advertisement(s) for their own internal and non-commercial purposes, subject to any restrictions imposed by third parties engaged by Bauer who have contributed to the Content.

## **10. CANCELLATION**

- 10.1 If the Buyer wishes to cancel the Campaign or the delivery of a single Advertisement within the Campaign, the Buyer shall provide Bauer with notice, in writing, 28 working days, prior to the Campaign Start Date (the "**Cancellation Deadline**"). Any instruction received after the Cancellation Deadline shall not (even if it is followed by Bauer) affect the Buyer's liability to pay all media and production charges for the Campaign or the particular Advertisement (as the case may be). If an instruction is received before the Cancellation Deadline then the Buyer shall be entitled to a refund for any proportion of the payment Bauer has already received in respect of the Advertisement or Campaign (as the case may be). If, pursuant to clause 8.3, above, the Buyer has paid the charges due for this Campaign to a third party payment collection agent, as opposed to Bauer, Bauer shall endeavour to provide commercially reasonable and appropriate assistance to the Buyer to recover any amounts paid to such third party on cancellation of the Campaign of Advertisement pursuant to this clause 10.1. However, the Buyer accepts that Bauer is not responsible for and does not guarantee the recovery of such amounts.

10.2 Bauer is entitled to treat the fact that either the Buyer or Advertiser is deemed unable to pay its debts within the meaning of the Insolvency Act 1986 as a cancellation of the Campaign for the purposes of this clause 10.

## **11. LIABILITY**

11.1 It is the responsibility of the Buyer (during the approval processed followed pursuant to clause 3.2, above or if the Assets comprise the entire Advertisement) to check the correctness and factual accuracy of the Advertisement, that it complies with its requirements, and Applicable Law, especially but without limitation, such Applicable Laws which may be specific to the Advertiser's industry.

11.2 Bauer shall not be liable to the Buyer or Advertiser for loss of anticipated profits, loss of business, loss of anticipated savings, loss of goods, loss of contract, loss of / or corruption of data or information or any special, indirect, consequential or pure economic loss, damages, charges or expenses.

11.3 Nothing in this Agreement limits or excludes a party's liability for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation, or any other liability which cannot be lawfully excluded or limited.

11.4 Bauer will not be liable to the Buyer or Advertiser if the success of the Campaign is less than anticipated.

11.5 If any Content, delivery, or the Campaign as a whole, contains or is conducted in error and such error is wholly and directly caused by Bauer, provided the Buyer notifies Bauer within the appropriate timeframe as specified in clause 12.2, Bauer's liability shall be limited at its sole discretion to either:

11.5.1 reducing the overall charges for the Campaign by an amount equal to the applicable media charge payable for delivering the Advertisement containing the error or which was not delivered (as applicable); or

11.5.2 if the Buyer has already paid for the charges associated with the affected part of the Campaign: (i) delivering a corrected Advertisement(s) without charge, extending the term of the Campaign (if necessary) to enable delivery of the agreed number of Impressions of the correct Advertisement(s); or (ii) crediting the Buyer an amount equal to the applicable media charge payable for delivering the Advertisement containing the error or which was not delivered (as applicable).

11.6 Subject to clause 11.3 and without prejudice to any other limitation on liability set out in this Agreement, Bauer's total liability in contract, tort (including negligence or breach of statutory duty), or otherwise arising in connection with the performance or contemplated performance of this Agreement shall not under any circumstances exceed an amount equal to 1.5 x (one and a half times) the total charges paid or payable for the Campaign (as stated in the IO).

11.7 The Buyer acknowledges that Bauer Consumer Media Limited and Bauer Radio Limited are jointly and severally liable for the fulfilment of Bauer's obligations under this Agreement.

## **12. COMPLAINTS AND ERRORS**

12.1 Bauer is not responsible for:

12.1.1 checking the correctness of the Advertisement or that it fulfils the Buyer's requirements or expectations, this is the Buyer's responsibility;

12.1.2 any error (or the repetition of any error) in an Advertisement that has been approved by the Buyer or which remains in the form it is received by Bauer from the Buyer;

12.1.3 the actual positioning of the Advertisement on a Publication or (if a Campaign is for delivery of Impressions to a specified Audience Profile) the precise Publications on which the Campaign will be delivered; or



- 12.1.4 any failure by Bauer to comply with its obligations herein to the extent that such failure is a direct result of the act or omission (whether wilful or negligent) of the Buyer.
- 12.2 Any complaint, claim or query (whether in relation to Content, delivery, the Campaign as a whole, or otherwise) shall be raised by the Buyer with Bauer, in writing, within 30 working days of the following (as the case may be) the:
- 12.2.1 date of first publication of the Advertisement containing the error; or
  - 12.2.2 date on which it is claimed the Advertisement should have been delivered; or
  - 12.2.3 receipt by the Buyer of an invoice from Bauer giving rise to the complaint, claim or query.
- 12.3 Bauer is not responsible for any invoicing queries in connection with invoices raised by a third party, pursuant to the provisions of clause 8.3, above.
- 12.4 The raising of a complaint, claim or query, pursuant to this clause 12, shall not relieve the Buyer of its obligation for pay charges due for the Campaign. The Buyer may only withhold payment of media charges to the extent that it reasonably and in good faith believes such amount is not payable and this will only apply to payment due for the particular Advertisement(s) which the Buyer, in good faith, believes has been delivered in error. The Buyer's obligation to pay all other charges for the Campaign will remain in full force and effect. If the Buyer withholds payment of any part of the charges due for a Campaign, it shall make itself available to engage in prompt discussions with Bauer with a view to resolving the issue giving rise to the withheld payment.

### 13. FORCE MAJEURE

A Party shall not be liable to the other for failure or a delay in the performance of its obligations hereunder, to the extent that such failure arises directly from or is attributable to acts, events, omissions or accidents beyond its reasonable control including but not limited to any of the following: fires, Acts of God, flood, earthquake, windstorm or other natural disaster, strikes, interruption or failure of a utility service, failure of the internet, terrorism, key employees not being available to perform the services through death, illness or departure, or Governmental restriction. Bauer shall not be liable to the Buyer or Advertiser for the failure to deliver the Campaign on account of: corruption, interruption, virus or malfunction of a website or other digital platform, advertising exchange or ad-server.

### 13 TERMINATION

- 13.1 Without prejudice to any rights that have accrued under this Agreement or any other right or remedy which may be available, a party (the "**terminating party**") may terminate this Agreement, immediately by giving written notice to the other (the "**defaulting party**") if the defaulting party:
- 13.1.1 suspends, or threatens to suspend, payment of its debts or is unable or admits an inability to pay its debts as they fall due within the meaning of the Insolvency Act 1986; or
  - 13.1.2 commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation or reconstruction; or
  - 13.1.3 files a petition, gives a notice, passes a resolution or makes an order, for or in connection with its winding up other than for the purpose of a scheme for a solvent amalgamation; or
  - 13.1.4 applies to court or makes an order for the appointment of an administrator or receives notice of a intention to appoint an administrator or if an administrator is appointed; or
  - 13.1.5 has anyone who becomes entitled to appoint an administrative receiver over its assets;
  - 13.1.6 being an individual, is the subject of a bankruptcy petition or order; or
  - 13.1.7 suffers any event in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 13.1.1 to 13.1.6 (inclusive); or
  - 13.1.8 suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

- 13.1.9 being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
  - 13.1.10 undergoes a change of control; or
  - 13.1.11 commits a breach of any payment or other material obligation under this Agreement which is not capable of remedy or, if capable of remedy, is not remedied within 15 days of being given written notice by the Terminating Party identifying the breach and requiring its remedy.
- 13.2 If Bauer is the Terminating Party, it shall be entitled, at its sole discretion, to either: (i) suspend delivery of the Campaign until the default or breach (if applicable) is remedied to Bauer's satisfaction, acting reasonably; or (ii) terminate this Agreement, in which case, all production and media charges for the Campaign which are outstanding shall become due and payable immediately.
- 13.3 If the Buyer is the Terminating Party, the Buyer shall be entitled to terminate this Agreement and all charges for production and delivery of the Campaign shall become due and payable immediately.
- 13.4 In addition to the termination rights detailed at clause 13.1, Bauer shall also have the right to terminate this Agreement if it reasonably suspects that the Buyer no longer has authority to enter into and perform this Agreement on behalf of the Advertiser. If such circumstances arise, the Buyer shall notify Bauer as soon as possible, providing at least thirty (30) days' notice before the Buyer's authority is removed and this Agreement shall terminate on a date reasonably agreed between the parties but which is prior to the Buyer's loss of authority. In addition, if at the date of such termination, the Campaign has not been delivered in full, the Buyer shall use its reasonable commercial endeavours to procure that the Advertiser shall sign a new agreement with Bauer for delivery of the remainder of the Campaign, on analogous terms and set out herein. The Buyer shall also endeavour to procure compliance of such arrangement from any new media buyer the Advertiser engages.
- 13.5 A party's termination rights under this clause 13 are without prejudice to any other right or remedy which may be available to a party on termination or expiry of this Agreement or with respect to the matters giving rise to termination of this Agreement.
- 13.6 On termination or expiry of this Agreement, all licences granted herein shall come to an end save for those which are expressed or are clearly intended to continue beyond expiry or termination.

#### **14. CONFIDENTIALITY**

Each party agrees that it will not: (a) disclose Confidential Information to any third party; (b) use or disclose any Confidential Information aside from as strictly necessary for the fulfilment of its obligations under this Agreement or as expressly permitted in this Agreement; and (c) that it will take all commercially reasonable measures to maintain the confidentiality of such Confidential Information in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own confidential information of similar importance. "**Confidential Information**" means the detail included in the Campaign Delivery Report, the terms of this Agreement (but not its existence) together with any information disclosed to a party by the other, which is either marked as confidential or is disclosed in such a manner that it is reasonable to assume that the party disclosing it, expects the other party to keep it a secret. The obligations of this clause 14 do not apply to Confidential Information that: (i) is in or enters the public domain without breach of this Agreement; (ii) the receiving party lawfully receives from a third party who is not restricted, through a non-disclosure agreement or otherwise, from disclosing it; or (iii) the receiving party develops independently as evidenced by written documentation; or (iv) such Confidential Information that a party is compelled to disclose to a court or regulatory body. Bauer is permitted to disclose Confidential Information to its auditors, provided that such auditors agree to keep it confidential on the same or more restricted terms as set out in this clause 14.

#### **15. MISCELLANEOUS**

- 15.1 The placing of an order, in writing (email being sufficient), for a Campaign shall amount to an acceptance of this Agreement and any stipulations or any other terms and conditions contained in an order given or otherwise sought to be imposed by the Buyer or Advertiser are expressly excluded.
- 15.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 15.3 These terms and conditions, together with any additional terms contained in the IO, contain the whole agreement between the parties and supersede any prior written or oral agreement between them. No variation or addition to this Agreement shall be effective unless specifically agreed to in writing, evidenced by separate written document signed by each of the parties.
- 15.4 The parties confirm that they have not entered into this agreement on the basis of any representations that are not expressly incorporated in this contract. In the event of any conflict or inconsistency between these terms and the IO, the IO will prevail.
- 15.5 The Buyer may not assign or sub-contract this Agreement, in whole or in part without Bauer's prior written consent.
- 15.6 A person who is not a party to this Agreement shall have no rights to enforce any of its terms whether under the Contracts (Rights of Third Parties) Act 1999, or otherwise.
- 15.7 This Agreement shall be governed by and construed according to English law and the parties submit to the exclusive jurisdiction of the English courts.

LAST UPDATED JANUARY 2017