

## ITV COMMERCIAL

### STANDARD DEAL TERMS AND CONDITIONS

#### ("Deal Conditions")

#### **1. Interpretation**

In these Deal Conditions, words and expressions shall have their ordinary meaning unless otherwise defined in the Glossary of Airtime Contract Terms to be found at the following URL: <http://www.itvmedia.co.uk/legal/glossary2017> and unless the context otherwise requires:

- (a) any reference to a "party" or "parties" shall unless otherwise stated mean a party or the parties to this Deal Agreement; and
- (b) references to clauses are references to the clauses of these Deal Conditions; and
- (c) references to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended and any subordinate legislation made from time to time under it; and
- (d) headings are inserted for convenience only and shall be ignored in construing these Deal Conditions; and
- (e) the words "include", "including" and "in particular" shall not be interpreted as limiting the generality of any foregoing words; and
- (f) references to a "person" includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency, whether or not having a separate legal personality and references to the singular shall include the plural and vice versa.

#### **2. Buyer Commitments and Warranties**

- 2.1. The Buyer undertakes that its Buyer Spend during the Broadcast Revenue Period shall amount to not less than the Buyer Commitments set out in the Deal Arrangements.
- 2.2. Unless otherwise stated, the Buyer Commitments set out in the Deal Arrangements shall be met in respect of each Calendar Year of the Broadcast Revenue Period.
- 2.3. Where the Buyer is purchasing Airtime on both Channel 3 and one or more of ITV2, ITV3, ITV4, ITV Encore, ITV Be., CITV and ITV Breakfast, the Buyer warrants that: (i) the allocation of the Share of Broadcast Revenue and/or the Volume Commitment between Channel 3 and ITV2, ITV3, ITV4, ITV Encore, ITV Be., CITV and/or ITV Breakfast (as relevant) during the Broadcast Revenue Period; and (ii) the buyer spend profile set out in the Deal Arrangements, are as per the Buyer's requirements.
- 2.4. Where the Buyer: (i) is purchasing Airtime on Channel 3 only; and (ii) specifies a buyer spend profile in the Deal Arrangements, the Buyer warrants that the buyer spend profile is as per the Buyer's requirements.
- 2.5. The Buyer warrants and undertakes to ITV Commercial that it will:
  - 2.5.1. comply with all applicable laws and/or regulations relating to anti-bribery and anti-corruption, including (but not limited to) the Bribery Act 2010; and
  - 2.5.2. immediately notify ITV Commercial in writing if the Buyer or its employees, agents or other persons who perform or have performed services for or on behalf of the Buyer is investigated by any law enforcement agency or customer in relation to corrupt practices and any breach of anti-bribery and anti-corruption laws.

#### **3. Calculation of Buyer Commitments**

- 3.1. The Buyer Commitments shall be calculated by reference to all of the Buyer's Clients or a specific Client (if a line by line agreement), their/its brands and types of business other than any Excluded Clients, Excluded Brands, Excluded Business or new business which may be refused in accordance with Section 3 of the Deal Arrangements. In calculating the Buyer's Broadcast Revenue, all Airtime and Inhouse Channel expenditure shall be calculated at its full arm's length market value disregarding any discount or other arrangements.

3.2. The parties agree that Buyer Spend committed by the Buyer to satisfy the obligations set out in Section 4 of the Deal Arrangements shall not go towards fulfilling any other share or volume commitments set out in any other agreements entered into between ITV Commercial and the Buyer or the Buyer's agent or a media buying agency buying Airtime in which Advertisement Copy relating to the Named Client or Included Clients or Buyer is placed.

3.3. If during an audit conducted pursuant to clause 7 or otherwise, it is apparent that the Buyer has purchased Airtime from a third party broadcaster at an undervalue (whether the Airtime is purchased on a standalone basis or in a packaged sell of goods, advertising and/or services and the Airtime is attributed no value or less than market value) such Airtime shall be restated and deemed valued at a fair market value for the purposes of calculating Broadcast Revenue and the Broadcaster's Share of Broadcast Revenue under this Deal Agreement.

#### **4. Underspend**

4.1. If, at the end of the Broadcast Revenue Period, the Buyer has failed to meet any of the Buyer Commitments in full such that an Underspend has arisen, ITV Commercial will seek to agree terms under any new agreement for the purchase of Airtime by the Buyer for such Underspend to be carried forward and paid in full under the terms of such new Airtime agreement. In the absence of agreeing acceptable terms, ITV Commercial shall be entitled at any time forthwith after the end of the Broadcast Revenue Period to require that the Buyer pay ITV Commercial in cash the amount of any such Underspend.

4.2. Without prejudice to ITV Commercial's other rights, any payment due under this clause shall be payable within 14 days of request for payment by ITV Commercial.

#### **5. Anticipated Underspend**

5.1. If, during the Broadcast Revenue Period, the Buyer is unable to demonstrate to ITV Commercial's reasonable satisfaction that it will fulfil the Buyer Commitments such that it appears to ITV Commercial that an Underspend may arise at the end of the Broadcast Revenue Period, ITV Commercial may at its discretion adjust the Prices set out in the schedules to the Deal Arrangements and/or any of the Deal Arrangements to take reasonable account of the likely Buyer Spend.

5.2. The Buyer shall at ITV Commercial's request provide on a monthly basis (commencing on the 14th day following such request), a detailed plan setting out its Broadcast Revenue to date and its anticipated Broadcast Revenue and Buyer Spend for the remainder of the Broadcast Revenue Period together with supporting details demonstrating how that Broadcast Revenue and Buyer Spend will be achieved and the Buyer warrants that any details of its Clients and its Broadcast Revenue which it provides to ITV Commercial will be true, complete and accurate.

#### **6. Airtime Credits**

6.1. Airtime Credits do not apply to Non-Approved Buyers.

6.2. In the event that any Buyer Airtime Credits or Broadcaster Airtime Credits become due under any Booking Agreement to which an Approved Buyer is a party, both parties agree that they shall carry forward and reconcile such Airtime Credits at the end of the Broadcast Revenue Period. In the event of any conflict between the provisions of a Booking Agreement and this clause 6.2, this clause 6.2 shall prevail.

6.3. The parties agree that once the reconciliation of Airtime Credits has been carried out, the parties will seek to agree terms in good faith under any new agreement for the purchase of Airtime by the Approved Buyer for the value of such Airtime Credits to be carried forward and reflected in full under the terms of such new Airtime agreement. Where it is not reasonably possible to roll over Buyer Airtime Credits or cash sums owing in respect of the Broadcaster Airtime Credits, such Airtime Credits shall be extinguished and neither party shall have any further liability to the other in respect of the same.

6.4. Subject to clause 6.3, if there are any Buyer Airtime Credits due to the Approved Buyer or Broadcaster Airtime Credits due to the Broadcaster(s) and the Advertiser to which such Airtime Credits applies has transferred its business from the Approved Buyer to another Agency (or other entity), the Approved Buyer shall nevertheless remain entitled to any Buyer Airtime Credits unless ITV Commercial receives agreement in writing that it may be transferred to the other new Agency (or entity) and liable for any Broadcaster Airtime

Credits unless ITV Commercial receives agreement in writing from the other Agency (or entity) that they shall assume liability for the same.

## **7. Audit**

- 7.1. ITV Commercial (or its nominated independent auditors) may at any time during the Term and for 2 years after the Term on 14 days' notice examine:
  - 7.1.1. all records and agreements of the Buyer relating directly or indirectly to the Buyer's purchase of Airtime and advertising space on Inhouse Channel; and
  - 7.1.2. any other materials which ITV Commercial reasonably deems relevant to ensure the Buyer's compliance with this Deal Agreement, and the Buyer will ensure that the relevant persons have access to all premises and/or media on which such materials are stored and/or kept. If such materials are stored and/or held on or in premises and/or media not owned or controlled by the Buyer, the Buyer will use its best endeavours to arrange such access.
- 7.2. The rights of inspection under this clause 7 shall include the right to take copies and excerpts of all materials examined for the purposes of the audit.
- 7.3. Any nominated auditors shall be entitled to report to ITV Commercial the full extent and findings of their investigations and the Buyer permits such disclosure.
- 7.4. The Buyer shall procure that, following an audit taking place pursuant to this clause 7, the Buyer's most senior qualified accountant shall provide to ITV Commercial a signed representation statement confirming that (i) ITV Commercial and/or its nominated auditor has been given full and complete access to all relevant information and documentation including but not limited to all information documentation relating to Broadcast Revenue; and (ii) the figures provided by the Buyer during the audit are a complete and accurate statement of the Buyer's Broadcast Revenue for the relevant period. The parties agree that failure to sign and return the representation statement is a material breach of this Deal Agreement for the purposes of clause 11.3.1 of these Deal Conditions.

## **8. Results of Audit**

- 8.1. If any audit (or other information) demonstrates that the Buyer's Broadcast Revenue has been understated, the Buyer's Broadcast Revenue shall be restated correctly and the Buyer will pay to ITV Commercial any additional amount which would have been payable had such Broadcast Revenue been correctly stated.
- 8.2. If any audit (or other information) demonstrates that the Buyer is otherwise in breach of its obligations under this Deal Agreement, the Buyer will pay to ITV Commercial any damages or compensation under clause 4 or otherwise.
- 8.3. All payments due under clause 8.1 or 8.2 shall be made within 14 days of the relevant conclusions being provided to the Buyer but shall be deemed to have been due when they should properly have been made.
- 8.4. ITV Commercial shall bear its own costs of conducting such audits, except that in the event that an audit shows that the Buyer's Broadcast Revenue has been understated by more than 3%, or the Buyer has underpaid by more than 3% of the sums properly due, or the Buyer is otherwise in material breach of this Deal Agreement, then the costs incurred by ITV Commercial in carrying out the audit shall be borne by the Buyer (and the Buyer shall pay such costs to ITV Commercial on demand).

## **9. Interest**

All outstanding sums payable by the Buyer under clauses 4, 8 or otherwise shall be subject to a base charge of interest of 2% above LIBOR and a composite daily charge of 2% above LIBOR for every day that the amount remains unpaid following the due date for payment.

## **10. Dispute Resolution**

- 10.1. This clause 10 shall only apply to agreements relating to ITV Broadcasters.

- 10.2. As regards any dispute between the parties arising out of the interpretation or exercise of the rights given to or obligations upon Advertisers, Buyers, Carlton Communications Plc and Granada Plc in relation to contracts for the sale of Airtime pursuant to the Undertakings, including any dispute relating to the interpretation, termination or enforcement of such contracts to the extent referable to the Undertakings, the interpretation of any provision of the CRRRA Rules, the CRRRA Scheme, or the Adjudicator's jurisdiction to determine the dispute, the Buyer may refer the dispute to the Adjudicator for determination in accordance with the CRRRA Rules and the CRRRA Scheme annexed to the Undertakings and as amended from time to time.

## **11. Term and Termination**

- 11.1. The Term of this Deal Agreement shall be the period set out in the Deal Arrangements unless terminated sooner in accordance with this clause 11 or clause 14.3.
- 11.2. The parties' rights under this clause 11 and clause 14.3 shall be their only rights to terminate this Deal Agreement.
- 11.3. Without prejudice to its other rights and remedies, either party may terminate this Deal Agreement forthwith at any time by giving notice in writing to the other party if:
- 11.3.1. the other party commits a material breach of any provision of this Deal Agreement (including, without limitation, a failure to pay any amount of an Underspend pursuant to clause 4 above) and provided that such breach is capable of remedy, fails to remedy the same within 10 Working Days after receipt of a written notice from the other party giving full particulars of the breach and requiring it to be remedied; or
  - 11.3.2. a petition is presented or a meeting convened for the purpose of considering a resolution for the making of an administration order or to put the other party into administration, the winding up, bankruptcy or dissolution of the other party or if the other party stops payment or ceases or threatens to cease to carry on its business or is or shall become unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
  - 11.3.3. the other party compounds with or enters into a scheme of arrangement for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) or if a receiver is appointed over the other party or its assets or any part thereof or a resolution is passed for such appointment or if an administration order is made in relation to the other party.
- 11.4. Termination or expiry of this Deal Agreement shall not affect any rights of either party in respect of any antecedent breach of this Deal Agreement by the other party nor shall it affect any accrued rights or liabilities (or the coming into force of any accrued rights or liabilities) of either party.

## **12. ITV Commercial Group**

- 12.1. ITV Commercial is a member of the ITV Group. ITV Commercial may assign or otherwise transfer its rights and obligations under this Deal Agreement to any other member of the ITV Group and may perform any of its obligations or exercise any of its rights under this Deal Agreement by itself or through any other member of the ITV Group acting as its agent without any consent from the Buyer. If ITV Commercial wishes to assign or otherwise transfer its rights and obligations under this Deal Agreement to a third party outside of the ITV Group it shall first obtain the written consent of the Buyer (such consent not to be unreasonably withheld or delayed).
- 12.2. ITV Commercial may set off any sums claimed or owed to it or other members of the ITV Group by the Buyer against any sum due to the Buyer under this or any other agreement with the Buyer, without prejudice to any other rights ITV Commercial may have.

## **13. Liability**

- 13.1. Subject to clause 13.3 neither party shall be liable to the other, whether in tort, contract or otherwise, for any anticipated or actual loss of profit, loss of opportunity, loss of goodwill and/or any loss which is indirect, consequential or economic or which, whether or not in practice arises as a direct and natural result of a breach of this Deal Agreement, was not at the time this Deal Agreement was made, a reasonably foreseeable result of such a breach. For the avoidance of doubt, nothing in this clause 13.1 shall exclude or

limit the Buyer's liability to make payments contractually due to ITV Commercial or any Broadcaster under this Deal Agreement or otherwise.

- 13.2. Subject to clause 13.3 ITV Commercial's maximum aggregate liability for any loss or damage in respect of any claims arising out of this Deal Agreement whether in contract, tort or otherwise shall not exceed the total amount received by ITV Commercial on behalf of the relevant Broadcaster(s) from the Buyer in cleared funds (excluding VAT) for the relevant purchase of Airtime pursuant to any Booking Agreements completed during the Broadcast Revenue Period. The Buyer acknowledges and accepts that Broadcasters shall have no liability to the Buyer under this Deal Agreement. In addition, the Buyer acknowledges and accepts that ITV Commercial shall have no liability under any Booking Agreement.
- 13.3. Nothing in this Deal Agreement shall exclude or restrict either party's liability for death or personal injury resulting from the negligence of that party or of its employees while acting in the course of their employment or shall exclude or restrict a party's rights, remedies or liability under the law governing this Deal Agreement in respect of any fraud or fraudulent misrepresentation.
- 13.4. Except as expressly set out in this Deal Agreement, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the obligations of the parties under this Deal Agreement are excluded insofar as it is possible to do so in law.
- 13.5. If ITV Commercial ceases to be authorised to sell Airtime in respect of any Broadcaster, the parties will discuss in good faith appropriate adjustments to this Deal Agreement to reflect that change but ITV Commercial will have no liability for any failure to meet its obligations under this Deal Agreement in respect of any such Broadcaster.

#### **14. Miscellaneous**

- 14.1. No waiver by either party of any breach of the other's obligations shall constitute a waiver of any other prior or subsequent breach and neither party shall be affected by any delay, failure or omission to enforce or express forbearance granted in respect of any such obligation.
- 14.2. If the whole or any part of any provision of this Deal Agreement is or becomes invalid, void or unenforceable for any reason the same shall to the extent required be severed from this Deal Agreement and rendered ineffective so far as is possible without modifying the remaining provisions of this Deal Agreement and shall in no way affect the validity or enforceability of any other provisions.
- 14.3. Neither party shall be liable in any way for any losses arising directly or indirectly from any failure or delay in performing any of its obligations under this Deal Agreement caused by any Force Majeure Event. If a party (the "**Affected Party**") is unable to perform any of its material obligations under this Deal Agreement as a result of a Force Majeure Event for more than 90 Working Days then the other party may terminate this Deal Agreement at any time and without further liability, upon giving written notice to the Affected Party.
- 14.4. The Buyer shall not assign or sub-contract or otherwise transfer or sublicense any of its rights or obligations under this Deal Agreement without the prior written consent of ITV Commercial (such consent not to be unreasonably withheld or delayed).
- 14.5. Unless otherwise stated, any notice or other communication to be given under this Deal Agreement shall be in writing, shall be deemed to have been duly served on, given to or made in relation to a party if it is left at the authorised address of that party or posted by pre-paid first class post addressed to that party at such address and shall if:
  - 14.5.1. personally delivered, be deemed to have been received at the time of delivery; or
  - 14.5.2. posted to an inland address in the United Kingdom, be deemed to have been received on the second Working Day after the date of posting;

PROVIDED THAT where, in the case of delivery by hand, delivery occurs after 6.00pm on a Working Day or on a day which is not a Working Day, receipt shall be deemed to occur at 9.00am on the next following Working Day.

- 14.6. The provisions of those clauses intended to have continuing effect shall continue in full force and effect following the termination or expiry of this Deal Agreement.
- 14.7. No person other than a party to this Deal Agreement or a Broadcaster may enforce this Deal Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999. Notwithstanding the foregoing, this Deal Agreement may be rescinded or varied in any way and at any time by the parties to this Deal Agreement without the consent of the Broadcasters.
- 14.8. In the event of any conflict between any provision in the Deal Arrangements and any provision in these Deal Conditions, the Deal Arrangements shall prevail.
- 14.9. The relationship between the parties is that of independent contractors.
- 14.10. This Deal Agreement comprises the entire agreement between the parties in respect of its subject matter and supersedes all (whether oral or written) previous statements made by either party and all previous agreements, understandings and arrangements in respect thereof.
- 14.11. Neither party shall either during or for a period of 3 years after the expiry of this Deal Agreement duplicate or disclose, or permit the duplication or disclosure of, any Confidential Information, or use it in any way other than to enjoy its rights or perform its obligations under this Deal Agreement unless authorised in writing by the other or it is requested to disclose such information by law (including but not limited to the obligations set out in the Undertakings).
- 14.12. This Deal Agreement may be executed in counterpart but the counterparts shall together constitute one and the same instrument.
- 14.13. The parties acknowledge and agree that the execution of this Deal Agreement by ITV Commercial by way of an electronic representation of the authorised signatory's signature shall be a valid execution of this Deal Agreement.
- 14.14. This Deal Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including any non-contractual disputes or claims) shall be interpreted under and governed by English law under the exclusive jurisdiction of the English courts and may not be varied unless agreed between the parties.