

AIRTIME ADVERTISING STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

In this Agreement, the following words and expressions shall have the following meanings unless the context otherwise requires:

“Act” or “Acts”	means the Broadcasting Acts 1990 and 1996 and the Communications Act 2003 as amended or superseded from time to time;
“Advance Booking Deadline” or “AB Deadline”	means the relevant date from the list of dates published by Sky from time to time on a website at www.skymedia.co.uk or such other deadline as is agreed between the Advertiser or Agency and Sky, by which the Agency or Advertiser is required to confirm the Booking;
“Advertisement”	means the Creative in respect of which Airtime has been sold for transmission in the manner prescribed in a Contract;
“Advertiser”	means the advertiser specified in the Booking;
“Affiliate”	means in relation to any body corporate, any Holding Company or Subsidiary of such body corporate or any Subsidiary of a Holding Company of such body corporate;
“Agency”	means the media buying agency (if there is one) acting on behalf of the Advertiser, as specified;
“Agreement”	means these Terms and Conditions and the Booking and (where relevant) any Deal Agreement;
“Airtime”	means broadcast spot advertising within a commercial break available to an Advertiser for the transmission of its Creative;
“Audience” or “Target Audience”	means a demographic audience recognised and reported by BARB;
“BACS”	means Bankers Automated Clearing Service;
“BARB”	means the Broadcasters’ Audience Research Bureau and any successor or replacement;
“Barter”	means any advertising airtime that is to be traded and/or paid for (in full or in part) otherwise than in cash or Contra and booked through accredited barter companies (including without limitation Active International, Astus UK, Miroma, Orion Trading and any other such companies acceptable to Sky);
“BCAP Code”	means the Broadcast Committee of Advertising Practice Code and accompanying guidance (as amended or superseded from time to time);

“Booking”	means a commitment to Sky placed through the CARIA Service only (unless agreed otherwise in advance by Sky) from the Advertiser or Agency to buy Airtime at an agreed rate and on agreed terms and “Booked” shall be construed accordingly. A Booking becomes legally binding once accepted by Sky through the CARIA Service only (unless agreed otherwise in advance by Sky) or by the provision of actual Airtime to the Advertiser;
“Broadcast Revenue”	means all Gross Expenditure by the Client on Airtime in the United Kingdom. This covers all linear broadcast spot advertising in all commercial minutage but excludes all non-spot mediums (including without limitation Sky AdSmart, Sponsorship, VOD, online, or any advertising that is traded as impression based inventory). However, Airtime booked as part of an integrated campaign, where any non-spot medium is used, is to be calculated at normal prices for that Client and identified as part of Broadcast Revenue regardless of whether all expenditure is physically placed and billed through one or more of the above. This also applies where no value is obvious on any non-spot medium but where spot value is apparent and billing in any way exists on non-spot medium;
“Broadcast Share”	means the share of Broadcast Revenue which the Client commits to Sky under a Deal Agreement;
“Bribery Act”	means the Bribery Act 2010 (as amended or superseded from time to time);
“Campaign”	means the campaign specified in the Booking;
“Campaign End Date”	means the end date specified in the Booking for the Campaign;
“Campaign Instructions”	means an instruction placed through the CARIA Service only (unless agreed otherwise in advance by Sky) from an Advertiser or Agency authorising Sky to transmit its Advertisement and stating commercial reference numbers, durations, start dates, end dates and channels as appropriate;
“Campaign Start Date”	means the start date specified in the Booking for the Campaign;
“CAP Code”	means the Committee of Advertising Practice (Non-Broadcast) Code;
“CARIA Service”	means the electronic data transfer system for approval of advertising campaign booking details and approval of Creative Campaign Instructions administered by IMD Optimad (or any subsequent provider as agreed between the parties from time to time);
“CHAPS”	means Clearing House Automated Payments System;
“Clearcast”	means Clearcast Limited or any superseding body;
“Clear Working Day”	means a number of consecutive Working days excluding the first day and the last day;

“Client”	means (a) the Agency acting on behalf of the Advertiser; (b) where there is no Agency, the Advertiser; or (c) both the Agency and the Advertiser together;
“Client Commitments”	means the minimum commitments made by the Client in relation to Broadcast Share and/or volume as set out in any Deal Agreement;
“Code” or “Codes”	means the BCAP Code, the Ofcom Code on the Scheduling of Television Advertising, the Ofcom Broadcasting Code and accompanying guidance, all as amended or superseded by revised codes issued by Ofcom from time to time;
“Control” or “Controlling Interest”	has the meaning ascribed to it by Section 840 of the Income and Corporation Taxes Act 1988;
“Copy Clearance Secretariat”	means the body (currently Clearcast) which scrutinises the Creative against the BCAP Code issued by Ofcom following the submission of the Advertisement to ensure it is compliant. The Creative is then granted commercial/copy clearance for transmission;
“Copy Surcharges”	means a surcharge of £250 per Creative which can be imposed where commercial copy or Campaign Instructions are not supplied to Sky more than two Clear Working Days before the first transmission date;
“Creative”	means any material intended for transmission by Sky. Creative shall be deemed to have been delivered only when all of Sky’s technical requirements have been met and Sky has been given the Campaign Instructions;
“Creative Agency”	means a person, firm or company carrying on the business of creating and/or producing any Creative;
“Dayparts”	means the part or parts of the viewing day commencing and finishing at times expressly specified by Sky (agreed time segments) for the purposes of booking and monitoring Airtime;
“DDS”	means Donovan Data Systems airtime management system or any replacement airtime management system;
“Deal Agreement”	means any agreement entered into between the Client and Sky for the purchase of Airtime for a specific term, and includes any Letter of Variation;
“Devices”	means any device by which a viewer is able to access the content made available by Sky, including without limitation personal computers (including laptops and macs), iOS devices (including iPhones, iPod, iPod touch, iPads), games consoles (including Sony PS3, Xbox and Nintendo Wii); internet connected or smart televisions or connected Blu-ray or DVD players, LG Netcast devices (including connected TVs, BluRay players, Internet media players, connected sound bars and speaker bars), Humax and YouView set top boxes, Android operating system tablets

and mobile phones, Roku set top boxes (including the Roku set top box branded "Now TV"), a smartphone, tablet or personal computer running a version of Microsoft's Windows 8 operating system (Desktop and Metro and Windows RT, Windows Phone 8 and Windows 8 Pro), and the Now TV box;

"DRTV" or "Direct Response TV"

means advertisements which include a direct call to action by a viewer which in turn facilitates a direct response by way of but not restricted to telephone, email and/or text message;

"Exclusion"

means any category of airtime expenditure that Sky and the Client have agreed to exclude from the calculation of delivery of Clients commitments;

"First Spot"

means the first advertisement transmitted on any Channel for any given campaign for a particular Advertiser;

"Force Majeure"

means any event beyond the reasonable control of either Sky or the Advertiser or Agency, as applicable, and shall include (but not by way of limitation) strikes, lockouts, riots, sabotage, acts of war, terrorism, hostilities or piracy, any law, destruction of essential equipment by fire, explosion, storm, flood, earthquake, satellite and/or transmission failure and delay caused by failure of power supplies or transport;

"Gross Expenditure"

means gross expenditure whether in cash or otherwise, before Agency commission or discount but net of VAT;

"Holding Company"

means a holding company within the meaning ascribed to such expression by section 1159 of the Companies Act 2006;

"Impacts"

means the impacts measured by BARB for each reported commercial spot in the relevant target audience, converted to a 30 second equivalent using the Sky published rate card factors;

"Kids"

means all expenditure that buys the Audience of children (kids) and/or any other children demographic;

"Late Monies"

means any advertising expenditure that is agreed to be placed after the AB Deadlines;

"Letter of Variation"

means the formal documentation produced and communicated to the Client as a result of an amendment to an existing Deal Agreement;

"New Business"

means an Advertiser not listed as a Client of an Agency at the time a deal is agreed who subsequently appoints that particular Agency to handle its advertising expenditure;

"Ofcom"

means the Office of Communications (or any superseding body);

"Prepayment"

means an approved campaign, paid for at the time of approval, for which transmission is deferred to a later date;

“Regional Macro Exclusions”	means the exclusion of advertiser or campaign activity on the basis that it is solely regional spend throughout the deal term (i.e. it is transmitted on three or less ITV1 regions (or no more than two ITV1), Channel 4 Macros or one Channel Five Macro as defined on those broadcasters’ websites;
“Relevant Laws”	means any applicable laws, statutes, regulations and relevant industry codes of practice (including without limitation, the CAP code, BCAP Code, the Ofcom Codes, and Bribery Act) as may be updated from time to time;
“Set Top Box”	means a set top box, decoder or other equivalent device (whether or not integrated into a television set or other audio-visual monitor) which is installed at a place of reception and is capable of receiving and decoding (i) satellite transmissions received via a satellite dish at the place of reception (including, for the avoidance of doubt, a place of multiple occupation and any device used as part of any satellite master antennae systems (known as “SMATV”)) and/or (ii) electronic transmissions using internet protocol or equivalent for the purpose of viewing the content contained in those transmissions at that place of reception;
“Sky”	means Sky UK Limited and includes their successors and assigns;
“Sky Channels”	means those channels in respect of which Sky provides airtime sales representation (which includes, for the avoidance of doubt, Sky’s wholly-owned channels as well as third party channels).
“Sky Platforms”	means any platform by which Sky makes its content available to viewers, including but not limited to satellite, cable, online, internet and video on demand (VOD);
“Specials” or “Special Programming”	means programmes covering televised events of such a nature as to fall outside the normal rates at the discretion of Sky;
“Standard Timelengths”	are 10 seconds or a multiple of 10 seconds;
“Strikeweight”	means the amount of TVR’s by reference to an agreed period;
“Subsidiary”	means a subsidiary within the meaning ascribed to such expression in section 1159 of the Companies Act 2006;
“Term”	means the period specified in the Agreement;
“Terms and Conditions”	means these standard terms and conditions;
“Territory”	means the territories into which Advertisements are transmitted and of which the Agency is fully aware;
“TVR”	means a television rating, which is expressed as a percentage of the potential TV Audience viewing at any given time and which measures the Audience watching

content by comparing the number of Audience viewers who watched against the total available Audience as a whole. One TVR is equivalent to 1% of an Audience;

“Under Delivery”

means the Gross Expenditure money value calculated by the auditors as being the amount by which the Broadcast Share, Volume or other Client Commitment actually delivered to Sky across the Agreement is less than the Broadcast Share, Volume or other Client Commitment expressly set out in the Deal Agreement;

“VOD”

means video on demand;

“Volume”

means the volume of Gross Expenditure set out in the Deal Agreement and which the Client guarantees to Sky will be the minimum Gross Expenditure under the Deal Agreement;

“Working Day”

means Monday to Friday inclusive in each week except any bank or public holiday. Creative delivered after 5pm on a Working Day shall be deemed to have been received on the next Working Day.

2. INTERPRETATION

- 2.1 Headings are for ease of reference and shall not affect the construction or interpretation of these Clauses;
- 2.2 References to “person” shall include any individual, firm, government, state or agency of a state or any joint venture or association (whether corporate or incorporate);
- 2.3 References to a statute or regulation shall be deemed to extend to any statute or regulation passed in substitution therefore or substantially re-enacting or consolidating the same;
- 2.4 Words in the singular shall include the plural, and vice versa.

3. AGREEMENT

- 3.1 These Terms and Conditions shall apply to all advertising purchased by a Client and together with Sky's Booking shall constitute the Agreement made between Sky and the Client in relation to the Campaign.
- 3.2 By placing a Booking with Sky, the Client accepts in full these Terms and Conditions. Unless the Booking expressly states otherwise, in the event of any conflict between these Terms and Conditions and the Booking, these Terms and Conditions shall prevail.
- 3.3 Where the Client is an Agency, the Agency warrants that:
 - 3.3.1 it contracts with Sky as principal notwithstanding that it may be acting as an advertising agency or media Client or in some other representative capacity; and
 - 3.3.2 it is authorised to represent and bind the Advertiser(s) named in the Booking;
 - 3.3.3 the Advertiser(s) agree to be jointly and severally bound by the Agreement as if it was the Client;
 - 3.3.4 it undertakes to indemnify Sky against any loss arising from any claim by the Advertiser that it should not be bound; and
 - 3.3.5 it shall be responsible for the payment of accounts, unless other arrangements are agreed in writing.

3.4 The parties acknowledge that agency commission may be payable under the Agreement and the Agency warrants that it shall comply with any disclosure obligations to the Advertiser in respect of Agency commission under the Agreement.

4. DELIVERY OF CREATIVE

4.1 The Creative (including the material specified in Clause 5.12) must be delivered to and received by Sky not less than two Clear Working Days before the date of the intended transmission. Where possible, Campaign Instructions should be delivered ahead of this deadline. This is irrespective of the delivery method.

4.2 If Sky decides that Creative is unsuitable, Sky shall notify the Client who must supply alternative Creative at its own cost as soon as possible and in any case not later than two Clear Working Days prior to the intended transmission.

4.3 Where Creative is not delivered at least two Clear Working Days before the intended transmission date, the Client shall at the discretion of Sky be liable for the Copy Surcharges; and/or be liable to pay in full for the Airtime booked whether or not any Advertisement is in fact transmitted.

4.4 Where Creative (or replacement Creative) or Campaign Instructions (or newly submitted Campaign Instructions) are accepted at the absolute discretion of Sky less than two Clear Working Days before the intended transmission date, the Client shall be liable to Sky for the Copy Surcharge of £250 plus VAT per Creative and shall pay any invoice issued by Sky for such Copy Surcharge within 30 days of the date of invoice.

4.5 The provisions of Clauses 4.1 to 4.4 above shall be without prejudice to any special arrangements for Bookings made at shorter notice and agreed in writing by Sky. In exceptional cases Sky will, at its sole discretion, accept Creative delivered less than two Clear Working Days before the date of transmission. In such cases Sky is not obliged to notify the Client in accordance with Clause 4.2 above if it decides the Creative is unsuitable.

4.6 Unless otherwise instructed Creative may be destroyed by Sky if not transmitted for a period of 90 days without further reference to the respective Client.

5. TRANSMISSION OF CREATIVE

5.1 The Client hereby authorises Sky to transmit all Creative delivered pursuant to the Agreement. For the avoidance of doubt, the use of the term "transmit" under these Terms and Conditions includes all forms and methods of transmission across all Sky Platforms.

5.2 Advertisements will only be transmitted if they are approved by Sky, satisfy all of Sky's technical requirements as may be notified by Sky to the Client from time to time and comply with the Acts, the Codes and all Relevant Laws. Sky acknowledges that for VOD Creative, there are no legal or regulatory requirements to comply with the BCAP Code or the Ofcom Code, however for the purposes of consistency and quality, Sky requires that any Creative delivered under the Agreement must comply with the BCAP Code and the Ofcom Code as if it constituted linear advertising.

5.3 The Client agrees that it is fully responsible for the content of the Creative and is responsible for the actions of any person, including but not limited to any Creative Agency, in relation to the creation, authenticity and delivery of Creative.

5.4 Creative must also comply with the Clearcast Notes of Guidance for Television Advertising and the Copy Clearance Secretariat notes of guidance and copy clearance bulletins in force at the time of transmission and in addition:

5.4.1 scripts and/or storyboards, along with consignment notes for all spot Advertisements must be submitted in advance to the Copy Clearance Secretariat for provisional approval before transmission;

- 5.4.2 all finished clocked Creative must be submitted to the Copy Clearance Secretariat for approval before transmission;
- 5.4.3 the Creative provided to Sky for transmission must be the same Creative (and with the same clock number) as the Creative approved by the Copy Clearance Secretariat; and
- 5.4.4 approval by the Copy Clearance Secretariat of any Creative and/or compliance with the terms set out in Clauses 5.1, 5.2 and 5.3 shall not in any way prejudice Sky's right to reject any Advertisement as provided under Clause 4 above.
- 5.5 The Client shall procure the compliance of the Creative Agency with the obligations set out in Clauses 5.4 and 14, as if the Creative Agency were a party to the Agreement. The Client will indemnify and hold Sky harmless against any loss or damage caused by a Creative Agency's breach of Clauses 5.4 and/or 14.
- 5.6 The Client hereby acknowledges and agrees that, unless agreed otherwise in writing with Sky, all Creative provided under this Agreement will be cleared for transmission across all of the Sky Platforms and Sky may transmit the Creative across any or all of the Sky Platforms (whether on a simultaneous basis or any other basis) without providing prior notice to the Client.
- 5.7 Sky reserves the right at its absolute discretion to do any act or thing in respect of the transmission of any Advertisement or part thereof (including the fading, editing, or cutting thereof), where such Advertisement or part thereof is considered by Sky to be unsuitable for transmission and Sky shall not thereby incur any liability to the Client who shall have no claim whatsoever for damages or otherwise in respect of any non-transmission of any such Advertisement or part thereof but the Client shall remain liable in full to Sky for the charges payable hereunder for such Advertisement.
- 5.8 Sky reserves the right at its absolute discretion and without incurring any liability to decline to transmit any Advertisement without giving any reason in writing for so declining but the Client shall not be liable to pay for any Advertisement which Sky so declines to transmit provided such Creative has been delivered on time as provided for in Clause 4 above.
- 5.9 All programmes are subject to suspension or cancellation or placement at the absolute discretion of Sky.
- 5.10 Sky reserves the right at its absolute discretion to restrict any repeat transmission of the same Advertisement.
- 5.11 Subject to the provisions of Clause 20 all Bookings are accepted on the understanding that they will be paid in accordance with the accounting dates as specified in Clause 20 in force on the date of transmission.
- 5.12 Sky will use reasonable endeavours to adhere to Advertisement Campaign Instructions but shall not be liable for any failure to comply with those instructions. Sky also reserves the right not to transmit the Advertisement if Campaign Instructions are not received by Sky two Clear Working Days before the first transmission date of the Advertisement.
- 5.13 The Client shall deliver the Creative digitally in the 16:9 full height widescreen anormorphic format (or any other format agreed between the parties from time to time), and its script, consignment notes and Campaign Instructions (as applicable) to Sky well in advance of the first transmission date of the Advertisement (but in no event later than the timeframes specified in Clause 4.1).
- 5.14 Sky reserves the right at its absolute discretion to refuse Advertisements advertising more than one product.

- 5.15 No protection is given by Sky to the Client against the proximity of transmission of Advertisements featuring competitive products.
- 5.16 Sky shall not be held responsible for any addition to, changes in or deletions from any Creative required by Ofcom or delays resulting therefrom.
- 5.17 Sky reserves the right to refuse Creative that does not comply with Standard Timelengths requirements.
- 5.18 Sky reserves the right at its absolute discretion not to accept any Booking or any Creative, including but not limited to competitive channel advertisements that contain date, day or time specific or appointment to view references in either a verbal or visual context.

6. NON-STANDARD TIMELENGTHS

- 6.1 Advertisements which are not Standard Timelengths (“Non-Standard Timelengths”) will only be accepted by Sky at Sky’s sole discretion and only if they can be transmitted within the same break as the other Advertisements for the same Advertiser or Agency and the total length bought is a Standard Timelength. Rates for Standard Timelengths and Non-Standard Timelengths are set out on the Sky Media website (www.skymedia.co.uk) (and are subject to change at the sole discretion of Sky).
- 6.2 If in Sky’s opinion Creative contains advertising for more than one product as a consequence of editing two or more advertisements for the purpose of taking advantage of reduced rates for Airtime of a greater timelength, Sky reserves the right, at its absolute discretion, to charge such Airtime at a rate equivalent to that which Sky would have charged had the Creative for each product been submitted to it separately.

7. DATE OF TRANSMISSION

- 7.1 For the avoidance of doubt, adherence to the times and/or dates of transmission of a Booking will be at the absolute discretion of Sky.
- 7.2 Without prejudice to Clause 7.1 above, if Sky offers an alternative time and/or date of transmission to the Client and such Client does not accept such alternative:
 - 7.2.1 the original Booking shall be cancelled;
 - 7.2.2 the Client shall have no claim against Sky for any expenses or damage whatsoever incurred as a result of non-transmission; and
 - 7.2.3 Sky shall not charge the Client for such Booking save for any agreed amounts which Sky has incurred in connection with the Booking.

For the avoidance of doubt, this Clause 7.2 shall only apply where a material part of the Booking has been affected and it shall not apply where individual slots are affected.

- 7.3 Without prejudice to Clause 16, Sky shall incur no liability for any failure to transmit all or any part of any Advertisement transmitted or for any failure to adhere to advertisement Campaign Instructions, except that if a total failure to transmit shall be due to the fault of Sky the Advertisement shall not be charged for.

8. CANCELLATION OR POSTPONEMENT

- 8.1 Subject to the provisions of Clauses 13 and, 20 any Booking may be cancelled or postponed by either party provided that any such notice in writing of cancellation or postponement is received and acknowledged by Sky or the Client as the case may be not less than nine weeks before the first intended transmission date (the “First Spot”). Cancellation or postponement requests by the Client for campaigns within nine weeks before the First Spot shall be

considered by Sky and may be accepted at Sky's absolute discretion subject to the following cancellation charges that apply to the entire campaign:

Over 6 weeks before First Spot: 20% of the value of Booking at the time of cancellation

29 to 42 days before First Spot: 35% of the value of Booking at the time of cancellation

15 to 28 days before First Spot: 50% of the value of Booking at the time of cancellation

Within 14 days before First Spot: 100% of the value of Booking at the time of cancellation

Unless a Booking is cancelled in accordance with these Clauses, a Client who fails to deliver any Creative in accordance with Clause 4 will remain liable to pay for the Advertisement in full whether or not the Advertisement is transmitted. Sky reserves the right to retain all expenditure for any postponed campaign and to rebook the Airtime during a mutually agreed period.

- 8.2 Any request by a Client for the postponement of a campaign for which such Client has pre-paid must be made to Sky in writing. Any acceptance of such a request shall be at Sky's sole discretion. Any such postponed campaign must be recommitted at the time of postponement to a time as soon thereafter as reasonably possible and in any event not more than six calendar months after the First Spot of the campaign being postponed. Any postponed campaign not recommitted within six calendar months of the first intended transmission date shall be subject to Sky's cancellation charges of 100 percent that apply to the entire campaign.

9. PRICING

- 9.1 Sky's prices will be as agreed from time to time between Sky and the Client. The Client agrees that where an approval in relation to the transmission of Airtime is not received by Sky from the Client in writing prior to the AB Deadline, Sky reserves the right not to make such transmission. Where Sky agrees to transmit the Airtime, any price previously agreed may, at the absolute discretion of Sky, no longer apply and be subject to market rate amendments. Transmissions of an Advertisement which is a longer duration than 30 seconds will be charged pro rata to the rate charged in respect of a 30 second Advertisement. 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. Rates for Advertisements with a time length of under 30 seconds will be subject to negotiation and availability.

- 9.2 The Client acknowledges and agrees that:

9.2.1 prices agreed prior to transmission are estimates based on Sky's estimate of Gross Expenditure revenue and the number of Impacts over a specified period and as a result, Sky's prices will vary depending on Sky's actual Gross Expenditure revenue and Impacts over that specified period;

9.2.2 Sky reserves the right to adjust its prices at any time during the Term in order to reflect its revised estimate of Sky's likely Gross Expenditure revenue and/or Impacts;

9.2.3 Sky gives no guarantee as to the level of its Gross Expenditure revenue and/or Impacts.

- 9.3 Trading Balance: If the TVRs actually delivered for a Campaign are less than those estimated to be delivered and paid for by a Client, this will give rise to an airtime debt equal to the value of the difference between such estimated and actual delivery (a "**Trading Debt**"). If the TVRs actually delivered for a Campaign are more than those estimated to be delivered and paid for by a Client, this will give rise to an airtime credit equal to the value of the difference between such estimated and actual delivery ("**Trading Credit**"). The level of Trading Debt or Trading Credit is the Trading Balance. In respect of such Trading Balance, the parties shall discuss in

good faith how to reconcile the Trading Balance on a quarterly basis unless otherwise agreement in writing between the parties. The parties acknowledge and agree that (except as set out in Clause 9.4 below) in no event shall any Trading Credit or Trading Debt have any cash value or entitle either party to any cash payment from the other party.

- 9.4 Where the Client is insolvent or any of the other insolvency-related elements set out in Clause 18.2.3 apply, then Sky shall be entitled to require cash payment from the Client in relation to any Trading Credit.
- 9.5 Client Moves: In circumstances where an Advertiser moves any or all of its business from one Agency (the “**Existing Agency**”) to another Agency (the “**New Agency**”) it is the responsibility of the Existing Agency to notify Sky in writing prior to such move and to indicate in such notice whether it wishes any Trading Balance applicable to such Advertiser to be transferred to the New Agency. The Existing Agency agrees that any such transfer is subject to the prior written consent of Sky and Sky being satisfied that the New Agency has agreed to such transfer. It is the responsibility of the Existing Agency to obtain the New Agency’s written agreement (to the benefit of Sky) and the Existing Agency shall indemnify Sky and keep Sky indemnified both during and after the Term against all loss or other damages arising out of or in connection with any claim or dispute relating to any such transfer or purported transfer of such Trading Balance.

10. SCREEN FORMAT DISCLAIMER

- 10.1 Sky will use reasonable endeavours to ensure that Advertisements are transmitted in the screen format and/or resolution that is delivered by the Client, but it is understood and accepted by the Client that for technical reasons Sky cannot guarantee to do so and the Client will remain liable for all charges hereunder notwithstanding if for any reason including technical error, breakdown or Force Majeure the Advertisements are not transmitted in the intended format.
- 10.2 Sky makes no guarantee that a channel logo or identifier, or any interactive trigger, will not obscure text in an Advertisement, where that text is placed at the top of the screen.

11. TERMS OF PAYMENT

- 11.1 Accounts payable by a Client shall be paid not later than the twenty fifth day of the month following the month of transmission. Payment shall be made by the Client to Sky by BACS, CHAPS or cheque and must be received by Sky either as cleared funds or in the form of a cheque by the twenty fifth day of the appropriate month. If Sky receives notification that a cheque from a Client has failed to clear, all future payments by that Client shall be made by BACS or CHAPS. In months where the twenty fifth falls on a Sunday or a Bank Holiday, the last Working Day before the twenty fifth shall be regarded as the due date by which the payment must be received by Sky.

In the event of a Client not paying an account by the due date, Sky reserves the right without prejudice to all its other rights:

- 11.1.1 not to accept further bookings from the Client; and/or
- 11.1.2 to treat any amount due to Sky as a simple debt recoverable forthwith; and/or
- 11.1.3 to charge interest on all monies outstanding beyond the date for payment at a rate of two percent over the Barclays Bank plc base rate from time to time in force per month.
- 11.2 The existence of a query in any individual item in an account will only affect the due date of payment of that individual item. The Client must inform both the Sales and Credit Control Department of Sky in writing of any query within seven Working Days from receipt of the invoice. Any such query must note the invoice to which it refers together with full details of and justification for the query. No spots may be brought into dispute by the Client after this

time. In the event of a query being resolved in favour of Sky, the item in query will be subject to the full rate of interest as specified in Clause 11.1.3 above, subject only to Sky having dealt with the query within a reasonable time.

- 11.3 All payment accounts for advertising Airtime placed shall be made in full and it shall not be open to the Client to make any deduction retention or to claim any rights of set off or to make any counterclaim in any proceedings brought by Sky in respect thereof.
- 11.4 All amounts payable will be rounded up to the nearest pound.
- 11.5 All Bookings are accepted on the understanding that they will be paid for at the rates agreed and in accordance with this Clause 11.
- 11.6 Notwithstanding Clause 11.5 above, if Sky acting in good faith considers that the financial position of the Client does not justify accepting Bookings on the terms of payment set out herein, Sky may, with immediate effect, require such Client to make full payment on account or full payment in advance of each monthly Booking as a Clause of acceptance of Bookings.
- 11.7 The parties acknowledge that early payment discounts may be agreed between the Client and Sky on a case-by-case basis and the Client confirms to Sky that it will comply with any disclosure obligations it has to the Advertiser in respect of any such early payment discounts.
- 11.8 The parties acknowledge that Sky may make deal incentive payments to the Client in the form of volume rebates for over-delivery of Broadcast Share commitments by the Client, and the Client confirms to Sky that it will comply with any disclosure obligations it has to the Advertiser in respect of any such deal incentive payments.

12. CALCULATION OF CLIENT COMMITMENTS

- 12.1 Gross Expenditure: The Client undertakes to Sky to procure that the amount of Gross Expenditure committed under the Agreement with Sky during the Term (or such other period specified in the Deal Agreement) is not less than either:
 - 12.1.1 the Broadcast Share if it is set out in the Deal Agreement; or
 - 12.1.2 the Client Commitment if it is set out in the Deal Agreement; or
 - 12.1.3 the Volume specified in the Deal Agreement. In the case of any estimated minimum volume (as opposed to Volume) stated in the Deal Agreement, the Client acknowledges that Sky expects to receive not less than this amount of Gross Expenditure under the Agreement.
- 12.2 Under-Delivery: In the event that the Client fails to comply with its obligations in Clause 12.1. Sky reserves its right to demand that the Client pays to Sky the Under Delivery Compensation (as defined in Clause 13.3) for the services rendered by Sky to the Client during the Term.
- 12.3 Calculation of Gross Expenditure: For the purposes of determining whether or not the Client has complied with its obligation in Clause 12.1:
 - 12.3.1 Gross Expenditure with Sky (including Prepayments and postponements) under the Agreement will only be considered to have been spent with Sky when the relevant advertising has been transmitted during the Term;
 - 12.3.2 the Client acknowledges and agrees that if Sky reasonably declines any Gross Expenditure, such Gross Expenditure is still subject to the Broadcast Share obligations in this Deal Agreement;
 - 12.3.3 the amount of Gross Expenditure with third party broadcasters will include Gross Expenditure by or on behalf of the Advertiser and all of its Affiliates with all third party broadcasters from time to time and, for the avoidance of doubt, includes the Gross

Expenditure during the Term of (a) all of the Client's and its Affiliates' clients; (b) all of such Clients' and Affiliates' clients brands, products and services; and (c) any new Clients;

12.3.4 for the avoidance of doubt no Gross Expenditure with third party broadcasters shall be excluded from the calculation of Broadcast Revenue and/or Broadcast Share without the prior written Agreement of Sky.

13. AUDITING

- 13.1 Sky shall have the right to audit the Client's records (including any records of an associated barter agency) and Client's systems (including without limitation DDS, Media Explorer or similar system) at its own cost at any time on reasonable prior written notice to ensure that the terms and Clauses of the Agreement have been complied with and in particular that payments are being made in accordance with the Agreement. The auditors are to be permitted access to any information and make such enquiries as they consider relevant to the performance of their duties (including without limitation to both the finance and media buying departments of the relevant entity). Sky shall be entitled to receive details of all audited Gross Expenditures to establish that they fall within the terms of the Agreement. For the avoidance of doubt this will include all information on the underlying Gross Expenditure, whether the Deal Agreement has under-delivered or over-delivered, and include individual Client Gross Expenditure. The auditors will provide letters of confidentiality where requested.
- 13.2 If any such audit reveals that the Client has under-delivered to Sky any sums properly due, then the Advertiser or Client shall pay to Sky forthwith the cost of the audit, together with the amount of the shortfall and interest thereon accruing daily at a monthly rate of two percent over the Barclays Bank plc base rate from time to time in force from the date when the sums were due until the date of actual payment. The auditors' evaluation of the cost shall be final and binding on both parties.
- 13.3 Under Delivery Compensation: If any audited Broadcast Share, Volume or Client Commitment in the Agreement is not met by a Client, then Sky, at its sole discretion, shall be entitled to recover the full amount of Under Delivery from the Client ("**Under Delivery Compensation**").
- 13.4 Compensation Options: At its sole option Sky may agree with the Client to take Under Delivery Compensation in one or a combination of the following ways:
- 13.4.1 Withdrawal of rebate or discount given;
 - 13.4.2 Offset against any commitment under-delivered by Sky;
 - 13.4.3 Re-invoice Airtime billings under the Agreement with a revised pricing mechanism;
 - 13.4.4 Future enhanced Broadcast Share;
 - 13.4.5 Carry forward of the Gross Expenditure value of the Under Delivery as an incremental Gross Expenditure commitment in the following year(s).
- 13.5 Compensation Timescales: Sky will agree a timescale and formally identify to the Client a deadline by which Under Delivery Compensation must be agreed. If the options under Clause 13.4 are not negotiated and agreed in writing within 90 days of the filing of the Auditors report, Under Delivery Compensation under Clause 13.3 will become due
- 13.6 Where a Client contracts with Sky, that Client shall obtain all relevant consents (as required) from all Advertisers in respect of whom Bookings are made by that Client, to ensure that Sky has access to all relevant details about and records of any such Advertiser for the purposes of an audit carried out in accordance with this Clause 13. At Sky's reasonable request, the Client will provide written confirmation to Sky that such consents have been obtained together with any supporting evidence reasonably required by Sky.

14. LICENCE

- 14.1 Without prejudice to any rights Sky may have under law, the Client hereby grants to Sky a worldwide, non-exclusive, royalty-free licence to reproduce and display the Creative (including all contents, trade marks and brand features contained therein) across any and all of the Sky Platforms. The Client acknowledges that it will ensure such Creative is cleared for transmission and/ or access by viewers across all Sky Platforms in the manner permitted by Sky from time to time, including without limitation:
- 14.1.1 on a simultaneous or onward streamed basis from the Set Top Box or other technology to any Set Top Box or other Device within or outside of the home; and
 - 14.1.2 the streaming, downloading, side-loading or other form of access by a viewer of any recordings that have originated from the Set Top Box or other technology to any other Device or Set Top Box within or outside of the home;
- 14.2 The Client grants to Sky the express right to:
- 14.2.1 reproduce throughout the world screen shots of all or part of the Creative supplied by the Client to Sky on or in any promotional or advertising material or campaign promoting or advertising Sky Platforms;
 - 14.2.2 include the Creative within a channel (or programme) which is received by a viewer by VOD means, or by means of an onward simultaneous streams
- 14.3 Where the Client provides the material for the Creative, all intellectual property rights in such material provided by the Client and the Client's trade marks (excluding the Sky trade marks) shall remain the property of the Client.
- 14.4 Where Sky creates the material for the Creative, all legal and beneficial interest in any intellectual property rights relating to the materials, video, audio, graphics, text, data or software provided by or on behalf of Sky for the purposes of the Agreement (however excluding the Client's trade marks) and all templates, formats, documents, drawings and all other items produced, developed, utilised or supported by or on behalf of Sky remain the property of Sky. For the avoidance of doubt, where Sky pays a third party to develop any Creative, it shall be deemed to be supplied by or on behalf of Sky for the purposes of the Agreement.

15. REPRESENTATIONS AND WARRANTIES

- 15.1 The Client warrants and represent to Sky for the duration of the Term that:
- 15.1.1 it will be responsible for obtaining and paying for all necessary licenses and consents for the transmission of the Creative across all Sky Platforms in the manner described herein;
 - 15.1.2 it holds all necessary rights to permit the use, reproduction, display, transmission and distribution of the Creative in the manner specified in these Terms and can grant to Sky such rights (which, for the avoidance of doubt, in the event that any Creative contains a sound recording (the "Recording"), which shall include but not be limited to all consents and permissions from (i) the copyright owners of the musical and/or literary composition(s) reproduced on the Recording; and (ii) labour organisations including the Musicians' Union for which the Client shall pay all re use payments, royalties and other sums required for such consents and permissions);
 - 15.1.3 where the Client has provided the material for the Creative it has obtained all intellectual property rights and other third party rights, and all appropriate consents, clearances and licences for the Creative (including without limitation music rights and performance rights);

- 15.1.4 that the transmission of the Creative and access by viewers as described in these Terms will not infringe any intellectual property right or other third party right;
- 15.1.5 the Creative does not contain anything which is defamatory, obscene, false or misleading;
- 15.1.6 all Creative complies with the provisions of the BCAP Code and Ofcom Codes (and VOD Creative complies with the provisions of the BCAP Code and Ofcom Codes as if it constituted linear advertising);
- 15.1.7 the Creative complies with all Relevant Laws; and
- 15.1.8 any Creative pursuant to the Agreement either:
 - (A) does not constitute a financial promotion within the meaning of the FSMA or other applicable law; or
 - (B) has been approved by an 'authorised person' within the meaning of the Act or is otherwise permitted under the Act or an exemption order thereto and the Client has expressly notified Sky in writing of this.

16. INDEMNITY

- 16.1 In relation to third party claims, the Client agrees to indemnify and keep indemnified Sky, its Affiliates, officers and employees and hold Sky, its Affiliates, officers and employees harmless against any and all liabilities, costs, expenses, damages and losses of any kind (including legal fees and costs) incurred by Sky, its Affiliates, officers and/or employees and/or operator as a result of any claims actual or threatened, relating to trademark or copyright infringement, breach of confidentiality and breach of any Relevant Laws, arising from the Creative and/or any material (of the Client or otherwise).

17. LIMITATION OF LIABILITY

- 17.1 Sky's liability under the Agreement including without limitation any failure to provide the services specified under the Agreement or extending the term of the campaign period, will be limited to providing an alternative advertising or sponsorship opportunity, as soon as is reasonably practical, of a value equal to the shortfall using the relevant rates agreed between Sky and the relevant Client.
- 17.2 In no event shall Sky be liable to the Client for any direct or indirect economic loss of any kind including (without limitation) any direct or indirect loss of profits, business, contracts, revenues, goodwill, production and anticipated savings arising from any failure to publish in a timely manner or at all any Creative in accordance with the Agreement or any other breach by Sky of the terms of the Agreement.
- 17.3 Without prejudice to the provisions of Clauses 17.1 and 17.2, in the event that Sky is held liable for damages or losses suffered by the Client, the maximum liability that Sky shall have towards the Client in respect of any act or omission and any related series of acts or omissions shall be the Net Fee paid to Sky by the Client or on its behalf under the Agreement.
- 17.4 Notwithstanding any other provision of the Agreement, Sky does not limit or exclude liability for death or personal injury caused by its negligence or fraudulent misrepresentation.

18. TERM AND TERMINATION

- 18.1 The term of the Agreement shall commence when the Booking has been made by the Client and the Agreement shall continue in force and effect until the Campaign End Date unless terminated earlier pursuant to this Clause 18.

- 18.2 Without prejudice to its other rights and remedies Sky shall be entitled to terminate the Agreement in whole or in part forthwith at any time by giving notice in writing to the Client if:
- 18.2.1 the Client fails to observe or perform any of its obligations hereunder and, where such failure is capable of remedy, does not remedy such failure within 7 days after being served notice to do so;
 - 18.2.2 the Client) fails to comply with its obligations to pay the fee as set out in Clause 11 of these Terms and Clauses;
 - 18.2.3 the Client becomes insolvent, a person passes a resolution for either of winding up or dissolution, an administration order is made against the Client or a receiver is appointed over, or takes possession of the assets of the Client;
 - 18.2.4 the activities or conduct of the Client or activities relating to the Client's business are of such a nature that Sky reasonably considers that the continued provision of advertising and/or sponsorship services would be detrimental to the reputation of Sky and/or the programme or otherwise damaging to the Sky brand; or
 - 18.2.5 the Client undergoes a change of control (for the purposes of this paragraph "change of control" shall occur where (i) a person who is not an Associate of the Client gains Control of the Client; or (ii) any person obtains any form of influence over the management of the Client and Sky reasonably believes such influence would be harmful to Sky's business or the business of any of its Associates),
 - 18.2.6 and on termination of the Agreement by reason of any of the foregoing, Sky shall be entitled without affecting any other rights which it may have, to charge, in addition to all other sums due under the Agreement, any costs associated with removing the Creative, from the relevant Sky Platforms or any broadcast or transmission on any platform; or
- 18.3 In the event that the Agreement is terminated for any reason then without prejudice to its rights and remedies:
- 18.3.1 Sky shall be under no obligation to transmit any Advertisement or to refund any Net Fee or other amounts paid by or on behalf of the Client to Sky in respect of such Advertisement;
 - 18.3.2 the Client shall remain liable for any amount due under a Booking and such an obligation to pay shall survive the termination of the Agreement; and
 - 18.3.3 at the request of Sky, the Client shall return all of Sky's statistics and measurement data from the Campaign provided under the Agreement.

19. CONFIDENTIALITY

- 19.1 Each party undertakes to the other party and subject to Clause 19.3 and 19.4 below, that it will treat as confidential the terms of this Agreement together with all information it obtains about the other party concerning the business, finances, revenues / prices, technology and affairs of the other party generally and each party's respective obligations hereunder or otherwise in connection with this Agreement and regardless of its nature ("**Confidential Information**"), and will not disclose such information to any person except in accordance with this Clause 19 or to the media and will not use such Confidential Information other than for the purposes of this Agreement subject always to any prior specific authorisation in writing by the party from whom such information originated to such disclosure or use.
- 19.2 Each party will only disclose Confidential Information to those of its employees and officers who (i) need to know it for the purpose of exercising or performing its rights and obligations under the Agreement (ii) are informed of the confidential nature of the information divulged and (iii) agree to act in compliance with the Agreement.

- 19.3 Neither party will disclose Confidential Information to any third party (other than its employees and officers in accordance with this Clause 19), except for information that is in the public domain other than by default of the recipient party and:
- 19.3.1 is obtained by the recipient party from a bona fide third party having no apparent restraint on its free right of disposal of such information;
 - 19.3.2 is or has already been independently generated by the recipient party;
 - 19.3.3 is reasonably passed on to third parties by Sky for the purposes of undertaking credit and risk management; or
 - 19.3.4 is required to be disclosed by law (or applicable regulation, including the Listing Rules of the Stock Exchange and the City Code on Takeovers and Mergers) or the valid order of a court of competent jurisdiction, or the request or direction of any governmental or other regulatory authority or agency provided that the recipient party shall notify the disclosing party promptly of any such potential requirement (and, if possible, prior to making any such disclosure) and shall use all reasonable endeavours to seek confidential treatment of any such information.
- 19.4 Notwithstanding any other provision of the Agreement it shall not be a breach of the Agreement for any party to disclose any information given to it in connection with the Agreement for statutory auditing purposes or pursuant to a court order or a binding request from a regulatory (or other analogous) authority with jurisdiction or from any other third party with statutory power to require the disclosure of such information, provided that the affected party gives all reasonable notice of such disclosure to the other party.
- 19.5 The provisions of this Clause 19 shall expressly survive any termination, completion or assignment of the Agreement.

20. CHANGE TO TERMS AND CONDITIONS

- 20.1 Sky's practice is to give two weeks' notice in respect of changes of terms and Clauses and Sky reserves the right to make such changes at shorter notice. Unless otherwise agreed between the parties in writing, in the event of such a change, the terms and Clauses applicable shall be those in force at the time of transmission. The Client shall (by serving written notice on Sky within one week of receiving notice of such a change) be entitled to cancel any order for an Advertisement to which the change of terms and Clauses would otherwise be applicable.

21. GENERAL

Assignment

- 21.1 Neither party may assign, resell or transfer any of its rights or obligations under the Agreement without the prior written consent of the other party.

Entire Agreement

- 21.2 The Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all other prior understandings, commitments, agreements and (unless made fraudulently) representations, whether written or oral, between the parties. Further, the Client acknowledges and agrees that it has not relied upon any representation or otherwise of Sky when entering into the Agreement.

Force Majeure

- 21.3 If any party (the "**Affected Party**") is prevented or delayed in whole or in part from complying with its obligations under the Agreement by reason of Force Majeure, it will notify the other parties giving details thereof. The Affected Party will be relieved of its obligations under these

Terms and Clauses to the extent that its performance is hindered or delayed by such Force Majeure event. If the event of Force Majeure continues for a period of more than 30 days, the other party shall be entitled to terminate the affected booking by notice in writing to the Affected Party. This termination will be subject to charges at Sky's discretion.

Terms and Conditions and Waiver

- 21.4 Terms or conditions other than those set forth herein or any variation thereof shall not be binding on Sky or the Client as applicable unless agreed to in writing and signed on behalf of both parties.
- 21.5 No waiver of any breach of the Agreement is effective unless in writing and signed by the parties to the Agreement.

Survive termination

- 21.6 There shall survive the expiry or termination of the Agreement any term of the Agreement which in order to give effect to its provision needs to survive the expiry or termination. The provisions of those clauses intended to have continuing effect shall continue in full force and effect following the termination for any reason or expiry of the Agreement.

Severability

- 21.7 Each of the provisions of the Agreement are to be construed separately and independently of the other and, if any provision or clause of the Agreement is found by any court or other judicial body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision or clause will not affect the other provisions of the Agreement or any other clause herein which will remain in full force and effect.

Third Party Exclusions

- 21.8 The Agreement does not create or infer any rights under the Contracts (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to the Agreement.

Governing Law

- 21.9 The Agreement shall be governed by and construed in accordance with the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.