

Advertising Partnership – Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

- 1.1 The words and expressions set out below shall, unless the context requires otherwise, have the following meanings. Capitalised terms not defined in these Advertising T&Cs shall have the meanings given to them in the SOW or the Data T&Cs:

Ad means any type of advertising material, such as text messaging, audio files, video files, rich media, content, text and graphic files and/or anything analogous to the foregoing as part of the Campaign;

Ad Impression means any instance when a website page is downloaded by a user and that page includes an Ad;

Client Materials means the materials created by or on behalf of the Client and supplied to Immediate for inclusion in the Content, including any branding, logos and/or trade marks;

Code of Conduct means Immediate's Code of Business Conduct (available at <https://www.immediate.co.uk/code-of-conduct/>) and Ethical Policy (available at <https://www.immediate.co.uk/ethical-policy/>) each as updated from time to time;

Confidential Information means all information relating to a Party's customers and prospective customers (including the Personal Data), current or projected financial or trading situations, the terms of the Agreement, business plans, business strategies, developments, information relating to its business affairs and all other information of a confidential nature (whether or not it is marked "confidential") imparted by one Party to another Party during the term of the Agreement or coming into existence as a result of any Party's obligations;

Content means the advertising, promotional and/or other content to be created by or on behalf of Immediate in association with the Campaign as detailed in the Media Plan;

Group means, in relation to a company, that company, any subsidiary or any holding company from time to time of that company (as those terms are defined in section 1159 of the Companies Act 2006) and any subsidiary from time to time of a holding company of that company;

Licensed Content means the Content licensed to the Client by Immediate in accordance with the Usage Rights and the Usage Terms as set in the SOW;

Media Plan means the media plan that forms part of the SOW as may be amended from time to time by written agreement (which shall include email) between the Parties;

Publication(s) means the Immediate publication(s), brands and/or the Immediate platform(s) hosting the Campaign as set out in the Media Plan;

SOW means the Statement of Work entered into between the Parties, detailing the Campaign;

SOW Term means the term from the Commencement Date to the later of the last day of (i) the Campaign Dates; or (ii) the Usage Term; and

Working Day means any day other than a Saturday, Sunday or public holiday on which banks in London are open for business.

- 1.2 In the Agreement, unless the context requires otherwise:

- 1.2.1 words in the singular include the plural and vice versa;
- 1.2.2 words denoting any particular gender include any other gender;
- 1.2.3 a reference to a person includes any individual, firm, company, corporation, partnership, government, or unincorporated body;
- 1.2.4 references to a Party will include their successors in title and permitted assigns;
- 1.2.5 any reference to legislation or a legislative provision should be construed as referring to that legislation or legislative provision as it may from time to time be amended, modified, extended, re-enacted or replaced and include all subordinate legislation made under it from time to time;
- 1.2.6 references to clauses are to the clauses, paragraphs or schedules of the Agreement except where otherwise expressly stated; and
- 1.2.7 the terms "including", "in particular", "for example" or any words of similar effect should be construed as illustrative and will not be taken to limit the meaning of the preceding words.

- 1.3 Headings should be ignored in construing the Agreement.

- 1.4 If there is inconsistency between any clause and any schedule in the Agreement, the schedule will prevail.

- 1.5 Where any Publication is BBC branded, the BBC Terms shall apply.

2. CAMPAIGN

- 2.1 Subject to the Client providing Immediate with the Client Materials in accordance with any given specifications and deadlines, Immediate shall deliver the Campaign in accordance with the Media Plan.

- 2.2 The Client hereby grants Immediate a worldwide, royalty-free, non-exclusive licence during the SOW Term to use the Client's name and the Client Materials in connection with the Campaign.

- 2.3 All Client employees, agents, consultant and individual contractors who are involved in the provision of the Campaign are suitably skilled, experienced and qualified to carry out the duties and tasks assigned to them in connection with the performance of the Agreement.

- 2.4 Neither the Client or the Agent may use the Content or any other material or property provided by, owned by, licensed to, or controlled by Immediate for any reason other than as set out herein unless otherwise agreed in writing by Immediate.

- 2.5 Immediate is not obliged to include in the Publication(s) any Content and/or Client Materials that the Immediate Representative deems not suitable or appropriate for inclusion.

- 2.6 Immediate may use the Content and/or the Campaign results as a case study. These case studies may be shared in any way Immediate sees fit, including on a corporate website, on social media and with current or future clients.

3. LICENSED CONTENT

- 3.1 Subject to Clauses 3.2 and 3.3, and where specified in the SOW, Immediate hereby grants the Client a non-exclusive, non-transferable, non-sub-licensable licence during the Usage Term to use the Licensed Content in accordance with the Usage Rights.

- 3.2 The Client agrees and acknowledges that it shall not disassemble, adapt, modify or repurpose the Licensed Content in any manner.

- 3.3 During the Campaign Dates, the grant of any Usage Rights to the Client may be withdrawn by Immediate where, in Immediate's reasonable opinion, the exercise of such rights may be detrimental to Immediate's ability to fulfil its obligations under the Agreement.

- 3.4 Immediate may require the Client to remove the Licensed Content (in whole or in part) from its channels if Immediate becomes aware of any actual or alleged infringement of third party rights relating to use of the Licensed Content. In such event, the Client shall remove and/or take down all specified Licensed Content from the relevant channels immediately, or in any event, within 24 hours from receipt of such request from Immediate.

4. DIGITAL CAMPAIGNS

- 4.1 Where the Client has booked a fixed number of Ad Impressions:

- 4.1.1 if the number of Ad Impressions in any month appears likely to exceed the Ad Impressions booked, Immediate will notify the Client, or, if applicable, the Agent, and the Parties shall agree in good faith either to reduce the average number of pages of the Publication(s) which will include an Ad for the remainder of the month so that the number of Ad Impressions does not exceed the Ad Impressions booked or instead to permit the Ad Impressions booked to be exceeded with a pro rata increase in the Fees payable by the Client in respect of that month;

- 4.1.2 if the number of Ad Impressions in any month is less than the Ad Impressions booked, the deficit will be carried over to the next month and aggregated to the target number of Ad Impressions for that month;

- 4.1.3 if at the end of the Campaign Dates there is an aggregate deficit in the number of Ad Impressions compared with the Ad Impressions booked over the entire Campaign Dates, and such deficit is not due to any action taken or request made by the Client, Immediate and the Client will agree a mutually acceptable settlement and, if no other agreement is reached, Immediate will reimburse a portion of the Fees to the Client in

Advertising Partnership – Terms and Conditions

respect of the deficit pro-rated according to the basis of Fees. If any such deficit is due to any action taken or request made by the Client, any reduction of the Fees will be at Immediate's discretion; and

- 4.1.4 if there is disagreement between the Parties regarding the number of Ad Impressions served and the discrepancy is +/- 10%, Immediate's figures will be used. Any other discrepancy will be dealt with on a case by case basis.

5. FEES AND PAYMENT

- 5.1 In consideration of the performance by Immediate of its obligations under the Agreement, the Client shall pay Immediate the Fees. The Client may make this payment directly to Immediate or may instruct its Agent to make payment on its behalf, in accordance with Clause 5.2.

- 5.2 Unless otherwise agreed in writing between the Parties, Immediate shall invoice the Client or where applicable its Agent, monthly in arrears during the SOW Term, on or after the last calendar day of each month, covering the activity set out in the Media Plan that has taken place during that month. Invoices must be paid in full within 30 days of the date of the invoice.

- 5.3 Fees may be subject to a 0.1% Advertising Standards Board of Finance surcharge, payable by the Client, or where applicable the Agent.

- 5.4 If a payment due from the Client under the Agreement is subject to tax (whether by way of direct assessment or a withholding at its source), Immediate shall be entitled to receive from the Client such amounts as shall ensure that the net receipt, after tax, is the same as it would have been were the payment not subject to tax.

- 5.5 Immediate reserves the right to charge interest on any monies due which are in arrears and unpaid. Such interest will be calculated on the amount owing at a rate equivalent to 4% per annum above the then current base rate of Barclays Plc in the United Kingdom.

6. APPROVAL PROCESS

- 6.1 Prior to publication of the Content, the Client may request up to two (2) rounds of amendments to the Content. Any further amends may be subject to an additional charge.

- 6.2 Any request for approval will be sent to the representative of the Party, as set out in the SOW, who is required to give the approval.

- 6.3 Each Party will respond to any such request for approval within two (2) Working Days of receipt. If no response is received within two (2) Working Days, then approval shall be deemed given.

7. TERM AND TERMINATION

- 7.1 The Agreement shall remain in full force and effect for the SOW Term, unless terminated earlier in accordance with Clause 7.2.

- 7.2 Immediate may terminate the Agreement with immediate effect by giving notice in writing if Client and/or the Agent:

- 7.2.1 is in breach of any of the warranties contained in the Agreement;

- 7.2.2 is in breach of any obligation and fails to remedy such breach (if capable of remedy) within fourteen (14) days of receiving notice of the breach from Immediate;

- 7.2.3 does anything which may bring the business, goodwill or reputation of Immediate into disrepute;

- 7.2.4 where a Publication is BBC branded, does anything which may bring the business, goodwill or reputation of the BBC into disrepute;

- 7.2.5 closes or threatens to close;

- 7.2.6 undergoes or proposes to undergo a change of control within the meaning of section 1124 of the Corporation Tax Act 2010;

- 7.2.7 becomes insolvent;

- 7.2.8 is or becomes unable to pay its debts; or

- 7.2.9 makes or proposes to make an arrangement with any of its creditors.

- 7.3 The Client will promptly, upon becoming aware of the same, report to Immediate any breach of the Agreement by the Client, and any fact or matter that is reasonably likely to prevent the Client from complying with its obligations under the

Agreement.

8. EFFECT OF TERMINATION

- 8.1 Notwithstanding termination of the Agreement for whatever reason, Immediate shall not be obliged to withdraw any Content or Client Materials that have already been published by Immediate, or are scheduled for publication, in the Publication(s).

- 8.2 Upon termination of the Agreement, Immediate may invoice the Client for all outstanding Fees and any work undertaken up to the termination date.

- 8.3 Unpaid invoices that were issued to the Client, or if applicable the Agent, prior to termination shall become immediately due and payable on the termination date.

- 8.4 The Client must return to Immediate and make no further use of any equipment, property, data, Confidential Information, materials and other items (and all copies of them) belonging to Immediate.

- 8.5 Clauses 1, 8, 9, 11, 12, 14, 15 and 16 shall survive termination of the Agreement along with the Data T&Cs and the BBC Terms.

9. WARRANTIES

- 9.1 The Client warrants that:

- 9.1.1 Immediate's use of the Client Materials will not infringe the copyright, trade mark, moral rights or other rights of any third party (including privacy and personality rights);

- 9.1.2 it has authority to license the Client Materials to Immediate;

- 9.1.3 all statements in the Client Materials purporting to be facts will be true to the best of Client's knowledge and belief;

- 9.1.4 the Client Materials shall not contain anything that is obscene, libellous, blasphemous or offensive;

- 9.1.5 the Client Materials comply with all relevant legislation, codes and guidance including the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code) and the guidance published by the Advertising Standards Authority (ASA), as may be updated or amended from time to time;

- 9.1.6 where any person or character is featured within the Client Materials, such person or character has waived all rights of any kind in the Client Materials; and

- 9.1.7 the Client will comply with the Data T&Cs at all times when handling Personal Data under the Agreement.

- 9.2 Immediate warrants that it has the right, power and authority to enter into and fully perform the Agreement.

10. IMMEDIATE CODE OF CONDUCT

Immediate operates in accordance with its Code of Conduct and the Client shall comply with such Code of Conduct in all respects.

11. INDEMNITY

- 11.1 The Client shall indemnify Immediate, its directors, employees, officers, affiliates and its Group, against all claims, proceedings, demands, damages, liabilities, costs, expenses, and losses suffered, imposed upon or otherwise incurred by Immediate arising out of or in connection with any breach or alleged breach by the Client of the warranties in Clause 9.1.

12. LIMITATION OF LIABILITY

- 12.1 No Party will be liable to another or any third party in contract, tort or otherwise for any indirect, incidental, special, consequential, punitive, exemplary or similar damages that result from a Party's performance or non-performance of the Agreement, including loss of revenue or lost profits, even if a Party has been advised of the possibility of such damages.

- 12.2 Subject to Clauses 12.1, 12.3 and 12.4, each Party's maximum aggregate liability in respect of any claims arising out of or in connection with the Agreement, whether in contract, tort or otherwise shall not exceed an amount equal to the total sum of the Fees payable to Immediate under the Agreement.

- 12.3 Nothing in the Agreement shall limit or exclude:

- 12.3.1 any Party's liability for death or personal injury cause by negligence;

- 12.3.2 any Party's liability for fraud or fraudulent misrepresentation; or

Advertising Partnership – Terms and Conditions

- 12.3.3 any other liability that cannot be limited or excluded by law.
- 12.4 The limitations of liability set out in this Clause 12 shall not apply in respect of the indemnity given at Clause 11 of the Agreement.
- 13. FORCE MAJEURE**
- No Party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for twenty (20) Working Days or more, the Party not affected may terminate the Agreement by giving twenty (20) Working Days' written notice.
- 14. CONFIDENTIALITY**
- Each Party undertakes that it shall not at any time during the Agreement, and for a period of three (3) years after termination, use and/or disclose to any person any Confidential Information except to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Agreement, or as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's Confidential Information comply with this Clause 14.
- 15. THIRD PARTY CLAIMS**
- 15.1 In the event of any complaint or claim relating to the Client Materials, the Client shall co-operate fully with Immediate in responding to and defending such complaint or claim.
- 16. GENERAL**
- 16.1 Notices pursuant to the Agreement shall in the case of Immediate be sent to General Counsel, Immediate Media Company Limited, Vineyard House, 44 Brook Green, London W6 7BT and in the case of the Client and/or the Agent, their respective registered address.
- 16.2 A notice to be served pursuant to the Agreement shall be deemed served if delivered by hand at the time the notice is left at the address or if sent by pre-paid first class post or another next Working Day delivery service with proof of postage, at 9.30am on the second Working Day after posting.
- 16.3 The Agreement constitutes the entire understanding between the Parties in relation to the Campaign and supersedes all previous agreements between the Parties regarding the Campaign. Each Party acknowledge that in entering into the Agreement, they have not relied on any representation which is not expressly set out in the Agreement.
- 16.4 Each Party must, at the request of the other Party, use all reasonable endeavours to do all acts and execute all documents which are necessary to give full effect to the Agreement.
- 16.5 No failure, delay or omission by a Party in exercising any right, power or remedy provided by law or under the Agreement will operate as a waiver of that right, power or remedy, nor will it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under the Agreement will prevent any future exercise of it or the exercise of any other right, power or remedy.
- 16.6 The Client may not assign, transfer or sub-contract any of its right under the Agreement, in whole or in part, without Immediate's prior written consent.
- 16.7 If any provision of the Agreement is found to be unenforceable by any Court or other authority of competent jurisdiction, that clause shall, to the fullest extent permitted by law, be severed from the Agreement and the remaining provisions shall continue in full force and effect.
- 16.8 The Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 16.9 The Agreement may be executed in any number of counterparts which when executed and delivered shall together constitute the one agreement.
- 16.10 The Agreement shall be governed and construed in all respects in accordance with the laws of England and the Parties hereby submit to the exclusive jurisdiction of the English courts.