

SNACK MEDIA LIMITED

TERMS AND CONDITIONS

Snack Media is in the business of providing media services and is willing to provide the services herein to the Client in accordance with these terms and conditions.

The Client's attention is particularly drawn to the provisions of clause 9 and 14.

1 INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Advert: means any text hyper-link, html code, button, banner, video or other graphic or text file(s) provided to Snack Media by the Client for the purpose of advertising.

Advertising Services: the advertising services, including the Deliverables, supplied by Snack Media to the Client as set out in the Purchase Order.

Applicable Laws: means any present or future applicable code of practice, law, adjudication, decision, guideline, direction or rule of any Regulatory Body or other body that is applicable to the Advertising Services and including any applicable modification, extension or replacement in force from time to time;

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Campaign: means the period within which Snack Media provides the Advertising Services pursuant to and in accordance with these terms and conditions and the Purchase Order.

Campaign Plan: the plan for the Client's Campaign formulated by Snack Media in consultation with the Client and set out in the Purchase Order or as otherwise agreed to by the parties in writing during the Term.

Click: means an attempt by Snack Media to redirect a User who has clicked or otherwise selected an Advert from one of the Sites and through such click or selection indicated an intent to be redirected to a URL specified by the Client or Snack Media.

Commencement Date: has the meaning set out in clause 2.4.

Conditions: these terms and conditions as amended from time to time in accordance with clause 18.7.

Contract: the contract between Snack Media and the Client for the supply of Advertising Services in accordance with these Conditions and each applicable Purchase Order.

Client: the person or firm who purchases Advertising Services from Snack Media whose details are set out in the Purchase Order.

Client Property: any and all materials, documents, records, research, photography, logos, trade marks, designs, software or other property belonging to the Client and/or

any of its affiliates, including without limitation the Adverts, which are provided to Snack Media by or on behalf of the Client and/or otherwise come into the possession, custody or control of Snack Media in the provision of the Advertising Services.

Deliverables: all copy, layouts, artwork, storyboards, scripts, presentations, drawings, charts, graphics, photographs, films and/or other materials created or produced by or on behalf of Snack Media in the course of providing the Advertising Services, on any media including without limitation any Snack Media Materials.

Display Advertising Services: the placement of Adverts on the Snack Media Network by Snack Media as more particularly set out in the Purchase Order and clause 4, including for the avoidance of doubt media buying services.

Downtime: means any planned or unplanned period during which the Snack Media Network is not available to Users;

Editorial Services: means the provision of articles to include social media posts in various media as more particularly set out in the Purchase Order and clause 6.

Expenses: any expenses incurred by Snack Media in the provision of the Advertising Services.

Fees: the fees payable by the Client for the Advertising Services in accordance with clause 10.

Impression: means the single display of an Advert served by Snack Media to a User on Sites.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Internet: means the global connection of computer networks providing a variety of information and communication facilities.

Live Blog Services: means live commentary (including without limitation social media posts) on an event as more particularly set out in the Purchase Order and clause 6.

Monitoring Services: those services as are more specifically set out in clause 5.

Purchase Order: the Client's order for Advertising Services setting out details of the Fees, the Campaign Plan and the Deliverables.

Regulatory Bodies: means the Office of Communications, the Broadcast Committee of Advertising Practice, the Committee of Advertising Practice, the Advertising Standards Authority (ASA) the ASA (Broadcast) and any other UK or EU or other

territories regulatory or statutory body relevant to the Advertising Services to be provided under this Contract.

Site or Sites: means the website(s) and digital platform applications (i) owned, operated or controlled by Snack Media, (ii) owned, operated or controlled by a third party which has appointed Snack Media to represent it for the purposes of selling advertising, or (iii) owned, operated or controlled by a third party from which Snack Media purchases advertising services on behalf of the Client; agreed between the parties from time to time for the placement of any Advert. Such Sites may be accessible via computer display, mobile device, smart television or other Internet-connected device.

Snack Media Network: means the Sites upon which Snack Media may place Adverts from time to time.

Snack Media: Snack Media Limited of 18 Dartmouth Park Hill, London NW5 1HL registered in England and Wales with company number 6120996.

Snack Media Materials: means all and any materials, concepts, techniques, ideas that have been recorded in writing, products or processes including without limitation all ad-serving, targeting and tracking technologies owned by Snack Media prior to the commencement of the Advertising Services and used or delivered to the Client in the provision of the Advertising Services;

Territory: means those countries in which the Advertising Services are to be provided (including without limitation countries where any Advert would be available including through websites and other globally accessible media);

Third Party Fees: fees payable by Snack Media to third parties relating to the provision of the Advertising Services which are not included in the Fees and which are not Expenses.

URL means the group of characters which identify a type of Internet resource and its location on the Internet.

User: means any person accessing Sites and/or the Snack Media Network.

Web-build Services: means website design and build services as more particularly set out in the Purchase Order and clause 7.

1.2 **Construction.** In these Conditions, the following rules apply:

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

- 1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 a reference to **writing** or **written** includes faxes and e-mails.

2 BASIS OF CONTRACT

- 2.1 The Contract is a framework agreement under which the Client may request Snack Media to provide without limitation the following types of Advertising Services:-
 - 2.1.1 Display Advertising Services
 - 2.1.2 Editorial Services
 - 2.1.3 Live Blog Services
 - 2.1.4 Monitoring Services
 - 2.1.5 Web-build Services
- 2.2 Each Purchase Order shall constitute an offer by the Client to purchase those Advertising Services as set out in each Purchase Order in accordance with these Conditions.
- 2.3 Each Purchase Order shall only be deemed to be accepted when Snack Media issues written acceptance of the Purchase Order.
- 2.4 Acceptance by Snack Media of the first Purchase Order shall be deemed the **Commencement Date** of the Contract which shall continue unless terminated in accordance with clause 15 or until either party serves one month's written notice on the other to terminate the Contract or until no Purchase Order has been entered into between the parties for a consecutive period of six months commencing on the date of the last accepted Purchase Order (**Term**).
- 2.5 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Snack Media which is not set out in the Contract.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3 SUPPLY OF SERVICES

- 3.1 In consideration of the Fees paid by the Client, Snack Media shall supply the Advertising Services to the Client in accordance with the Campaign Plan in the Purchase Order.
- 3.2 Snack Media shall use all reasonable endeavours to meet any performance dates specified in the Purchase Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Advertising Services.
- 3.3 Notwithstanding the provisions of clause 3.2, Snack Media shall use its reasonable endeavours to procure that each advertising campaign for the Client as set out in each applicable Campaign Plan shall run for the agreed number of days. The Client acknowledges and agrees that the start and end date for such campaign may be modified by Snack Media due to scheduling delays or Client delays in delivering any required Client Property or any other bona fide reason.
- 3.4 Snack Media shall have the right to make any changes to the Advertising Services which are necessary to comply with any Applicable Law or safety requirement, or which do not materially affect the nature or quality of the Advertising Services, and Snack Media shall notify the Client in any such event.
- 3.5 Snack Media shall provide the Advertising Services in accordance with all reasonable guidelines supplied by the Client including any brand guidelines.
- 3.6 Snack Media warrants to the Client that the Advertising Services will be provided using reasonable care and skill.

4 DISPLAY ADVERTISING SERVICES

- 4.1 If as part of the Advertising Services Snack Media agrees to provide Display Advertising Services the following provisions shall apply:-
 - 4.1.1 The position, placement and description of the Adverts on Snack Media Network will be as set forth in the Purchase Order and Snack Media will use its reasonable endeavours to place the Adverts on the Snack Media Network as described and specified in the Purchase Order.
 - 4.1.2 The Client acknowledges that notwithstanding the provisions of clause 4.1.1, in the event that Snack Media redesigns and/or materially changes the Snack Media Network during the Term, Snack Media will provide the Client with placements of Adverts that are similar in prominence and value as determined by Snack Media in its sole discretion.
 - 4.1.3 Snack Media, in its sole discretion, reserves the right to reject, revise or remove, or to require the Client to correct, revise or substitute any or all of the

Adverts, if Snack Media reasonably believes in its sole discretion that such Adverts might breach any Applicable Law, violate any of the Client's representations and warranties, or might fail to conform to Snack Media's standards for advertising (as amended from time to time).

- 4.1.4 Where the Client is providing Snack Media with an Advert to be used as part of the Campaign Plan, the Client shall do so within five Business Days of the start date for the campaign that the Advert relates to, as set out in the Campaign Plan. Failure by the Client to deliver an Advert on time shall entitle Snack Media to either (i) summarily terminate the applicable Purchase Order on notice to the Client, in which event the provisions of clause 15 and clause 16 shall apply or (ii) continue to provide the Advertising Services if the Advert in question can be displayed within 10 Business Days of receipt of the same from the Client.
- 4.1.5 In the event that Snack Media delivers a shortfall greater than 10% of the number of Adverts to be displayed as set forth in the Purchase Order based on Snack Media's figures, the Client's sole remedy, at Snack Media's discretion, will be: (i) to extend the length of the relevant campaign until the total number of Adverts are delivered; (ii) position and place the Adverts on the Snack Media Network during some future time period; or (iii) deliver the Adverts as otherwise mutually agreed upon by the parties. For the avoidance of doubt, if the shortfall is less than or equal to 10% of the number of Adverts to be displayed as set forth in the Purchase Order, the Client shall have no remedy against Snack Media
- 4.1.6 Computer and telecommunications systems are not fault free and may require periods of, or be subject to, Downtime. Accordingly, Snack Media does not guarantee uninterrupted availability of the Internet, the Snack Media Network or any Sites but it shall make reasonable commercial efforts to minimise any Downtime (or downtime of third party Sites) which is within its direct control. The Client shall have no claim for breach of the Contract or otherwise in respect of any Downtime (or downtime of third party Sites). Where reasonably possible, Snack Media shall advise the Client in advance of any Downtime (or downtime of third party Sites) within its direct control.
- 4.1.7 Where Downtime runs for an uninterrupted period of 24 hours or more and impacts on Snack Media's ability to procure the display of Adverts on Sites, the Term of this Agreement will be automatically extended to make good the period for which the Downtime occurred. In respect of downtime of third party Sites, Snack Media shall be under no such obligation.

5 MONITORING SERVICES

- 5.1 If as part of the Advertising Services Snack Media agrees to provide Monitoring Services the following provisions shall apply:-
 - 5.1.1 Snack Media shall maintain a measure of the number of Impressions and Clicks on any Advert and shall store this information in a secure dedicated

area on Snack Media's systems for access only by the Client and Snack Media. For the avoidance of doubt, Snack Media's measurement of Impressions and Clicks is definitive (except where it considers the same are, or may be, fraudulent), notwithstanding any third party advert, or server measurements obtained by the Client.

- 5.1.2 Following the end of each Campaign, Snack Media shall where it is feasible to do so provide the Client with a report detailing the Campaign analytics including without limitation Impressions and Clicks.
- 5.1.3 For the avoidance of doubt, the Client and not Snack Media shall be responsible for monitoring the information referred to in clause 5.1.1 above during any campaign.
- 5.1.4 The Client shall report to Snack Media, within two weeks of the information being made available by Snack Media, any discrepancy relating to Snack Media's measure of Impressions and Clicks. Snack Media is not liable for any discrepancy not reported within this time frame and the Client waives all right, title and intent to dispute payment to Snack Media based upon any discrepancy not reported within this time frame. If there is a bona fide discrepancy reported in time by the Client then the Client may seek credit for any such discrepancy and Snack Media agrees to review the disputed information and will make a reasonable effort to investigate and negotiate a reconciliation for confirmed discrepancy. In no case will Snack Media credit more than ten (10%) percent of the total number of Impressions or Clicks in relation to an Advert.
- 5.1.5 Snack Media operates an electronic validation system that is intended to monitor the validity of a User's request for an Advert or a User's request to be redirected to the URL specified by the Client, such request being indicated by an Impression or a Click. The Client accepts that this system is not 'foolproof' and Snack Media shall not be liable for any fraud by any User or third party including the owner or operator of Sites or their employees.
- 5.1.6 Snack Media reserves the right to use the information it collects/maintains in the provision of the Monitoring Services, provided that it complies with all Applicable Laws and does not disclose to a third party any information which identifies or specifically relates to the Client or any of the Client's Adverts.

6 EDITORIAL, LIVE BLOG AND SOCIAL MEDIA SERVICES

- 6.1 If as part of the Advertising Services Snack Media agrees to provide Editorial and Live Blog Services the following provisions shall apply:-
 - 6.1.1 Snack Media shall obtain the Client's prior written approval of editorial script, artwork and layouts where reasonably possible.
 - 6.1.2 Snack Media shall obtain the Client's written approval of the tone and voice for any Live Blogs and shall send to the Client where reasonably possible any examples or mock ups of any Live Blogs for general approval.

6.1.3 The Client acknowledges that the very nature of Live Blog content means that the Client shall not have the opportunity to approve all the Live Blogs delivered by Snack Media as part of the Advertising Services and shall have no rights to bring any claim against Snack Media for the content of any Live Blogs (in particular but without limitation where the same may attract negative media attention) PROVIDED THAT Snack Media has adhered to the tone and voice for the Live Blogs as approved by the Client in accordance with clause 6.1.2.

7 WEB-BUILD SERVICES

7.1 If as part of the Advertising Services Snack Media agrees to provide Web-build Services the following provisions shall apply:-

7.2 The Client and Snack Media shall agree a specification for Web-build Services in writing (**Web-build Specification**).

7.3 The Web-build Specification shall include without limitation:

7.3.1 key functionality and style of the website;

7.3.2 time-scale for design and build;

7.3.3 domain name preferences and responsibility for registration of the same; and

7.3.4 budget.

7.4 Should the scope of the Web-build Specification be wider than envisaged when Snack Media agreed a Purchase Order with the Client, Snack Media reserves the right to revise such part of the Fees as may be apportioned to the Web-build Services.

7.5 The Client shall be responsible for the information it provides for the website.

7.6 Before the Client's website is set live, Snack Media shall send a link to the Client to check the website. When the Client approves the website it confirms that all content, is correct. Further to such approval, Snack Media shall not be liable for errors notified to it.

7.7 For the avoidance of doubt all rights in and to any website designed and/or built pursuant to this clause 7 shall vest in Snack Media subject to agreement in writing otherwise.

8 CLIENT'S OBLIGATIONS

8.1 The Client shall:

- 8.1.1 co-operate in a timely manner with the Snack Media in all matters relating to the Advertising Services;
 - 8.1.2 provide Snack Media with such information and materials as Snack Media may reasonably require in order to supply the Advertising Services, and ensure that such information is accurate in all material respects;
 - 8.1.3 promptly approve any Campaign Plan or other matters relating to the Advertising Services including without limitation any editorial content, media schedules or Third Party Fees and Expenses.
- 8.2 If Snack Media's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
- 8.2.1 Snack Media shall without limiting its other rights or remedies have the right to suspend performance of the Advertising Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays Snack Media's performance of any of its obligations;
 - 8.2.2 Snack Media shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Snack Media's failure or delay to perform any of its obligations as set out in this clause 8.2; and
 - 8.2.3 the Client shall reimburse Snack Media on written demand for any costs or losses sustained or incurred by the Snack Media arising directly or indirectly from the Client Default.

9 CLIENT WARRANTIES AND INDEMNITY THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 9.1 The Client represents and warrants to Snack Media that:-
- 9.1.1 The Client has all necessary rights title and interest in the Client Materials to permit the use thereof by Snack Media as contemplated herein in relation to the Advertising Services;
 - 9.1.2 The use by Snack Media of the Client Materials as contemplated herein shall not infringe the copyright of other Intellectual Property Rights of any third party;
 - 9.1.3 The use of the Client Materials as contemplated herein will not infringe or be contrary to any Applicable Law in any part of the Territory;
 - 9.1.4 the Client Materials are free from all viruses or other harmful or disabling code;
 - 9.1.5 the Client Materials do not contain any obscene, abusive, violent, bigoted or otherwise inappropriate content;

- 9.1.6 the Adverts do not offer any products or services that are illegal or immoral or inappropriate for use by minors;
 - 9.1.7 the Adverts contain provision for Users consent before the uploading or storing of any information or program onto a User's software/device;
 - 9.1.8 the landing page for each Advert (i.e. the Client's website page to which any User is directed) contains a privacy policy, cookie policy and such other applicable policies (or links thereto) as required by any Applicable Law including without limitation any advertising industry specific regulations and opt-out requirements;
 - 9.1.9 the Client shall not and shall not permit any third party to modify, adapt, translate, copy, decompile, reverse engineer or derive source code from any of the Deliverables.
- 9.2 The Client shall indemnify and hold harmless Snack Media its successors and assigns against all liabilities costs expenses damages and losses (including but not limited to any direct, indirect or consequential losses and legal costs (calculated on a full indemnity basis) and other professional costs and expenses) suffered or incurred by Snack Media directly or indirectly arising out of or in connection with a breach by the Client of the warranties in this clause 9 and in particular but without limitation any arising due to a claim by any Regulatory Body.
- 9.3 The Client accepts full legal responsibility in respect of any Advertising Services approved by it for publication and will indemnify Snack Media in respect of any loss or liability costs (including legal costs) or damages incurred as a result of any use of the Client Materials for advertising purposes.
- 9.4 The limitations in clause 14 shall not apply to the indemnity in this clause 9.

10 FES AND PAYMENT

- 10.1 The Fees for the Advertising Services shall be as set out in the Purchase Order and shall be inclusive of all costs of production of the Deliverables and all overhead and administration costs of Snack Media.
- 10.2 The Fees do not cover any Third Party Fees or Expenses unless specifically stated otherwise in the Purchase Order and all Third Party Fees and Expenses shall be payable by the Client subject to its prior approval of the same.
- 10.3 Snack Media shall invoice the Client for the Fees at such times and in such instalments as set out in the Purchase Order.

- 10.4 Snack Media shall invoice the Client for Third Party Fees and Expenses monthly in arrears and shall provide the Client with supporting documentation or the same if reasonably required.
- 10.5 The Client shall pay each invoice submitted by Snack Media:
- 10.5.1 within 30 days of the date of the invoice; and
 - 10.5.2 in full and in cleared funds to a bank account nominated in writing by Snack Media, and
 - 10.5.3 time for payment shall be of the essence of the Contract.
- 10.6 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Snack Media to the Client, the Client shall, on receipt of a valid VAT invoice from the Snack Media, pay to the Snack Media such additional amounts in respect of VAT as are chargeable on the supply of the Advertising Services at the same time as payment is due for the Fees.
- 10.7 If the Client fails to make any payment due to Snack Media under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per cent per annum above Lloyds TSB 's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 10.8 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Snack Media may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Snack Media to the Client.

11 INTELLECTUAL PROPERTY RIGHTS AND LICENCE

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Advertising Services including without limitation the Deliverables shall be owned by Snack Media. The Snack Media Materials shall be the exclusive property of Snack Media and the Client Property shall be the exclusive property of the Client subject to the licenses granted in clause 11.3 unless otherwise agreed by the parties in writing.
- 11.2 Where the Client:
- 11.2.1 supplies Snack Media with content for use as part of the Deliverables;
 - 11.2.2 procures the supply of content to Snack Media for use as part of the Deliverables; or

11.2.3 is involved in any capacity directly or indirectly in the creation of content which Snack Media subsequently uses to create the Deliverables,

the Client shall be responsible for obtaining any and all necessary licences and/or consents for the use of any third party Intellectual Property Rights in such content.

11.3 In consideration of the Fees Snack Media grants to the Client a non-exclusive royalty free licence in the Territory to use the Deliverables solely in relation to the Campaign Plan. In consideration of the provision of the Advertising Services, the Client grants to Snack Media a non-exclusive royalty free licence to use the Client Materials in the Territory solely in the provision of the Advertising Services by Snack Media.

12 DATA PROTECTION

The Client and Snack Media acknowledge that for the purposes of the Data Protection Act 1998 Snack Media shall only process Personal Data in accordance with instructions from the Client and the Client acknowledges that Snack Media is reliant on the Client for directions as to the extent to which Snack Media is entitled to use and process the Personal Data. Consequently Snack Media shall not be liable for any claim brought by a third party arising from any act or omission by Snack Media in relation to the Data Protection Act and the Client hereby indemnifies and shall keep indemnified and defend Snack Media against all costs, claims, damages or expenses incurred by Snack Media due to any failure by the Client to comply with its obligations under this clause. For the purposes of this clause the terms 'Personal Data' shall have the meaning as set out in section 1(1) of the Data Protection Act 1998.

13 CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 13 shall survive termination of the Contract.

14 LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 14.1 Nothing in these Conditions shall limit or exclude Snack Media's liability for:
- 14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 14.1.2 fraud or fraudulent misrepresentation; or
 - 14.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.2 Subject to clause 14.1:
- 14.2.1 Snack Media shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 14.2.2 Snack Media's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total of the Fee actually paid by the Client for the Purchase Order to which the loss relates;
 - 14.2.3 the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
 - 14.2.4 Snack Media shall not be liable for any errors in any Advertising Services as published or if publication is delayed or does not occur as planned save as otherwise set out herein or save where the same is caused by the sole fault and negligence of Snack Media.
- 14.3 The Contract states the full extent of Snack Media's obligations and liabilities in respect of the Advertising Services and the parties agree that any condition, warranty representation or other term concerning the Advertising Services which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.
- 14.4 This clause 14 shall survive termination of the Contract.

15 TERMINATION

- 15.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 15.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

- 15.1.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 15.1.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 15.1.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 15.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 15.1.8 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 15.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 15.1.10 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.2 to clause 15.1.9 (inclusive);
- 15.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 15.1.12 the other party's financial position deteriorates to such an extent that in the Snack Media's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

- 15.1.13 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 15.2 Without limiting its other rights or remedies, Snack Media may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 30 days after being notified in writing to do so.
- 15.3 Without limiting its other rights or remedies, Snack Media may suspend provision of the Advertising Services under the Contract or any other contract between the Client and Snack Media if the Client becomes subject to any of the events listed in clause 15.1.2 to clause 15.1.13, or Snack Media reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.

16 CONSEQUENCES OF TERMINATION

- 16.1 On termination of the Contract for any reason:
- 16.1.1 the Client shall immediately pay to Snack Media all of Snack Media's outstanding unpaid invoices and interest and, in respect of Advertising Services supplied but for which no invoice has been submitted, Snack Media shall submit an invoice, which shall be payable by the Client immediately on receipt;
- 16.1.2 the Client shall immediately return any Deliverables which Snack Media requests are returned. If the Client fails to do so, then Snack Media may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 16.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 16.1.4 clauses which expressly or by implication survive termination shall continue in full force and effect.

17 FORCE MAJEURE

- 17.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Snack Media including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Snack Media or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule,

regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Snack Medias or subcontractors.

17.2 Snack Media shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

17.3 If the Force Majeure Event prevents Snack Media from providing any of the Advertising Services for more than one week, Snack Media shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

18 GENERAL

18.1 Assignment and other dealings.

18.1.1 Snack Media may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

18.1.2 The Client shall not, without the prior written consent of Snack Media, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

18.2 Notices.

18.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

18.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

18.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

18.3 Severance.

- 18.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 18.3.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 18.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 18.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 18.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 18.7 **Variation.** Snack Media may at its sole discretion at any time vary any term of these Conditions that is not a material term. In all other respects, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by both parties.
- 18.8 **Conflict.** If there is an inconsistency between any of the provisions of this agreement and the provisions of the Purchase Order, the provisions of the Purchase Order shall prevail.
- 18.9 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

18.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).