

Channel 5 Broadcasting Limited
Airtime General Terms and Conditions of Contract

1. Definitions

In these General Terms and Conditions the following words and expressions shall have the following meanings:

Acts means the Broadcasting Acts 1990 and 1996 and the Communications Act 2003 and any amendments thereto.

Actual Delivery means the actual TVRs delivered by the Company as reported by BARB.

Advance Booking Deadline or AB Deadline means the date as notified by the Company to the Buyer or published on the Company's website as the deadline by which the Buyer is required to make its airtime booking.

Advertisement means any advertising material intended for transmission by the Company on the Service.

Advertiser means a person, firm or company making an airtime booking with the Company otherwise than through or by means of an advertising agent or agency and includes its successors in title and assigns.

Airtime means advertising airtime on television (excluding any interactive or sponsorship element).

Airtime Credit has the meaning given in clause 16.

Airtime Debt has the meaning given in clause 16.

ASA means the Advertising Standards Association or any superseding body.

Auditing means the Company's rights of audit as set out in clause 9.

Auditors has the meaning given in clause 9.

BACS means Bankers Automated Clearing Service.

BARB means the Broadcasters' Audience Research Board Limited and any successor or replacement.

Barter means any advertising airtime activity that is booked within the scope of the Company's definition of Broadcast which may be paid for, in part, by cash, trading credits and/or contra arrangements.

Broadcast means all Gross Expenditure with the Company under any Deal Arrangement with a Buyer or agency together with all Gross Expenditure incurred by Buyer or agency, including its associated undertakings with third parties in relation to all existing and new stations and

channels broadcast in the UK (to include all BARB and Non-BARB measured activity) received by, but not limited to, cable, satellite, internet, simulcast, Narrowcast, Broadband or any other technology during the Term of any Deal Arrangement.

Broadcast Revenue means all actual expenditure (whether direct or indirect expenditure) in any form (whether in cash or in kind) by Buyer or Advertiser (as specified in the Deal Arrangement) on airtime and advertising space during the Term other than expenditure relating to any of the following: Excluded Clients, Excluded Brands, Excluded Business as defined in any Deal Arrangement or unless otherwise specifically excluded.

Buyer means a person, firm or company carrying on a business involving the selection and purchase of advertising space or time for itself or on behalf of persons wishing to advertise its successors in title and assigns and includes any invoicing, booking or buying agency.

Centre Break or CB means an advertising break which occurs approximately half way through the duration of a programme.

CHAPS means Clearing House Automated Payments System.

Clearcast means the advertising clearance centre or any successor body fulfilling the same or a broadly similar function.

Company means Channel 5 Broadcasting Limited and its successors in title and assigns or any entity holding the licence to broadcast Channel 5/Five or any entity managing or selling airtime on the Five Channels or on behalf of Channel 5 Broadcasting Limited.

Cost Per Thousand or CPT means the cost per 1000 Impacts in respect of advertising airtime.

Credit Buyer means a Buyer which has been granted credit by the Company and includes a Buyer which has been granted credit subject to any limit or other conditions but only to the extent such limit has not been exceeded or such conditions are at the relevant time satisfied.

Data Protection Rules means all laws and regulations relating to the protection of personal data including the principles of the Data Protection Act 1998.

Day parts means segments of times as specified by the Company or as set out in the Deal Arrangements.

Deal Arrangements means the deal memorandum and/or any other outstanding agreement (other than these General Terms and Conditions) between the Company and Buyer or relating to the terms agreed between them for the sale of airtime advertising during any agreed Term.

End Break or EB means an advertising break which occurs immediately at the end of a programme.

Exclusions means the exclusions expressly set out in the Deal Arrangements.

Five Channels means any television channel, station or service on any platform including but not limited to analogue terrestrial, DTT, cable, satellite owned or controlled by the Company.

Force Majeure means an event, inability or delay which is caused by circumstances beyond the relevant party's reasonable control and which cannot be cured by measures which might reasonably be taken in the course of that relevant party's business, including, without limitation, war or other action of military forces, terrorism, riot, civil commotion, sabotage, vandalism, accident, breakdown or damage to machinery or equipment or technology, fire, flood, acts of God, regulatory, legislative or administrative interference, ruling or decision PROVIDED THAT no circumstance or cause shall be considered to be beyond the control of a party if it arises as a result of that party's failure to take reasonable care. For the avoidance of doubt, the loss of a client or a client's brand (including, without limitation, by virtue of insolvency or by virtue of a win by a third party agency) by a Buyer or agency will not be deemed to be an event of Force Majeure.

Gross Expenditure means gross expenditure, whether in cash or otherwise, before any commission or discount but net of VAT.

Impact means a measure of viewing with one impact being one viewing of one advertisement by one person.

Kick-off Spot means the first spot in a campaign.

Legislation includes all laws, Acts of Parliament, all provisions of the Treaties constituting the European Community, the European Union and the European Economic Area, all Data Protection Rules and all orders, regulations, directives, conventions and subordinate legislation made pursuant to such an Act or Treaty or otherwise having the force of law.

Loss means all losses, claims, liabilities, costs, expenses and damages.

Macro means a region of the UK specified as such by the Company.

Natural Delivery means delivery of Advertisements on a fair and even-handed basis (by reference to information published by BARB) when compared to the delivery of all Advertisements.

Non-pre-emptible means guaranteed to be shown at the agreed time and not capable of being transferred to any other time except by agreement with the Buyer. All other airtime is moveable.

Ofcom means the Office of Communications or any successor body.

Optimal and Optimisation means the most efficient manner in the reasonable opinion of the Company, using non-discriminatory and objective criteria, of matching demand for advertising and supply of airtime across all Buyers and of delivering the agreed audiences.

Outdoor means any form of advertising space or airtime booked in the following locations: roadside (e.g. phone kiosks, 6 sheets, 48 sheets, 96 sheets), transport (e.g. railway and underground systems, airports, buses, taxis and truck sides), retail/point of sale/leisure (e.g. bars, nightclubs, health and leisure centres, shopping centres, supermarkets, and petrol stations and including screens and trolley posters). This is a non-exhaustive list and may include any other similar or related locations.

Position in Break or PIB means a specified position in an advertising break.

Pro-Forma Buyer means a Buyer which at the relevant time has not been granted credit by the Company or a Buyer who has been granted limited credit which has been exceeded or any such other condition is not satisfied.

Programme Select or PYO means the percentage of TVR delivery by Day Part in programmes that the Buyer may select in writing by the Advance Booking Deadline.

Reconciliation means the reconciliation to be carried out in accordance with clause 16.

Service means the service operated by the Company on the channels currently known as Five, Five US and Fiver and any "plus-one" variants, as licensed by Ofcom howsoever delivered to viewers and any other Five owned or licensed service.

Specials means those programmes specified as such by the Company.

Standard Time Lengths means a duration of not less than 10 seconds and a multiple of 10 seconds.

Station Price means the price for a particular demograph calculated by dividing all gross revenue by the total number of 30 second equivalent impacts for that demograph delivered over a given period of time, usually over a calendar month.

Strike weight means the amount of TVRs by reference to an agreed period.

Super Macro means a combination of two or more Macros.

Term means any term agreed and specified in any Deal Arrangements or separately with any Buyer.

Top and Tail means any two spots in an advertising break (and for the avoidance of doubt does not mean the first and last spots in an advertising break).

Trade Spot means a spot agreed between the Buyer and the Company as having a fixed date and time of transmission on a specific channel and for which the Company grants permission for the date and time of such spot to be published by third parties. While the Company will use reasonable endeavours to ensure that all Trade Spots are met it cannot be liable for any losses or liabilities arising from the non-transmission of Trade Spots.

TVR means television rating defined as one per cent of a specified audience.

UK means the United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Bailiwicks of Jersey and Guernsey

Volume means the volume of Gross Expenditure set out in the Deal Arrangement and which the Buyer guarantees to the Company will be the minimum Gross Expenditure under any Deal Arrangement and these General Terms and Conditions.

Working Day means Monday to Friday inclusive in each week except any Bank or Public Holiday.

2 Interpretation

In these General Terms and Conditions save where the context otherwise requires:

- 2.1 The singular includes the plural and vice versa and reference to any gender includes a reference to both genders.
- 2.2 Headings and the use of bold typeface shall be ignored.
- 2.3 References to any enactment shall include references to such enactment as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted.
- 2.4 A reference to a clause, sub-clause, paragraph, sub-paragraph or schedule is, unless indicated to the contrary, a reference to a clause, sub-clause, paragraph or schedule of this Agreement.
- 2.5 Unless otherwise expressly provided, expressions defined in the Companies Acts 1985, 1989 and 2006 (as amended and as in force) have the meanings there given to them.
- 2.6 A reference to a person includes a reference to a firm, a body corporate, an unincorporated association or to a person's executors or administrators.
- 2.7 References to writing shall include any modes of reproducing words in a legible and non-transitory form.

3 Buyers and Commissions

- 3.1 A Buyer shall be deemed to contract as principal in all respects and as such will be personally responsible for observance and performance of the contract including for payment of accounts.
- 3.2 The Company will consider applications for commission from any Buyer (Agency Commission) which will be at the Company's sole discretion and be paid by way of deduction from invoices. The Agency Commission will be calculated on the basis of the rates applicable (i.e. excluding surcharge for late payment or late copy) less any discount allowed.
- 3.3 A Buyer will be granted credit at the Company's sole discretion. This can also be withdrawn or the limit increased or decreased at any time by the Company. Information relating to a Buyer may be passed on a confidential basis to a third party insurer in order for the Company to make an informed decision whether to grant credit.

4 Acceptance of Terms and Conditions

- 4.1 By placing an order with the Company for advertising time, the Buyer accepts in full these General Terms and Conditions.
- 4.2 No waiver of any breach of any of these provisions shall be deemed to be a waiver of any other breach and no waiver shall be effective unless in writing.
- 4.3 For the avoidance of doubt, the Company's standard rates applicable from time to time and these General Terms and Conditions shall apply to the purchase of airtime by a

Buyer in the absence of any Deal Arrangement or other agreement between the Buyer and the Company.

- 4.4 The Buyer is to be bound by these Terms and Conditions and any Deal Arrangement irrespective of whether or not the Deal Arrangement is signed by the Buyer. In the event of any conflict between these General Terms and Conditions and any Deal Arrangement, the Deal Arrangement will prevail.

5 Acceptance of Advertisements

- 5.1 Advertisements will only be transmitted if they are approved in advance by the Company, satisfy its technical requirements and comply with the Acts and all laws and regulations. Five's technical requirements can be found at <http://about.five.tv/programme-production> or on request. Advertisements must also comply with the law and the BCAP Television Advertising Standards Code as adopted by Ofcom and any subsequent codes implemented by Ofcom to supplement and/or replace the same, Clearcast Notes of Guidance and Copy Clearance Bulletins in force at the time of transmission or any other law or regulation relating to the content of advertisements. In addition, Advertisements must be submitted for approval and dealt with in accordance with any procedure laid down by the Company, Ofcom and/or Clearcast from time to time and in particular but without limitation:

5.1.1 scripts and/or storyboards for all Advertisements must be submitted in advance to Clearcast for provisional approval (filming or recording should not be commenced until such provisional approval has been obtained and is undertaken at the Buyer's risk);

5.1.2 all finished Advertisements must be submitted to Clearcast for final approval before transmission and no Advertisement will be transmitted without such approval unless the Company agrees at its absolute discretion.

- 5.2 Approval of Advertisements shall not in any way prejudice the Company's right to reject Advertisements as provided below:

5.2.1 Advertisements must be delivered to the Company at the address specified by the Company from time to time not less than one clear Working Day before the date of intended transmission. In exceptional cases the Company may in its absolute discretion accept Advertisements delivered less than one clear Working Day before the date of transmission. In such exceptional cases the Company will not be obliged to notify the Buyer if it decides the Advertisement is unsuitable and in that case the Buyer shall at the discretion of the Company be liable to pay in full for the advertising time booked whether or not any Advertisement is transmitted;

5.2.2 Delivery of an Advertisement shall be deemed to have been made only when the Company's technical requirements have been met and the relevant transmission instructions have been given;

5.2.3 Advertisements or changes in transmission instructions accepted at the absolute discretion of the Company less than one clear Working Day before the intended

transmission date shall, at the absolute discretion of the Company, be subject to a surcharge of £250 plus VAT per clock identification number. It is the responsibility of the Buyer to ensure that advertisements are delivered no later than one clear Working Day before intended transmission and the Buyer will be responsible for any surcharge if the advertisement is delivered late.

- 5.2.4 The Company reserves the right at its absolute discretion to charge the Buyer in full for all airtime in the event that an Advertisement is not delivered within the one Working Day deadline whether or not it complies with all relevant laws and regulations, has been approved by Clearcast and meets the technical requirements.
- 5.3 Outside the exceptional cases described at clause 5.2.1 above if the Company, in its sole discretion, decides that an Advertisement is not acceptable in any respect the Company shall notify the Buyer, who must supply an alternative Advertisement as soon as possible and in any case not less than one clear Working Day prior to the intended transmission. An alternative Advertisement, if accepted at shorter notice, shall be subject to a surcharge as stated in clause 5.2.3 above. Should an alternative Advertisement not be supplied or not be accepted the Company shall be entitled to be paid by the Buyer in full for the advertising booked whether or not any Advertisement is in fact transmitted. The Company at its discretion may in such circumstances repeat previously transmitted copy or invoke the cancellation provisions of clause 11.
- 5.4 The provisions of paragraphs 5.2 and 5.3 above shall be without prejudice to any special arrangements made with the agreement of the Company at shorter notice.
- 5.5 The Company shall not be responsible for any additions to, changes in or deletions from any Advertisement required by Ofcom, the Clearcast or the Company or for the withholding or withdrawal of approval of any Advertisement by the Clearcast or Ofcom or the Company or for any costs or consequential loss resulting from any such action.
- 5.6 The Company reserves the right in its absolute discretion and without incurring any liability to:
- 5.6.1 Decline to transmit any Advertisement without giving any reason in writing for so declining. In such circumstances the Buyer shall not be liable for the charges in respect of the transmission that would otherwise have been incurred; and/or
- 5.6.2 Do any act or thing in respect of the transmission of any Advertisement or part thereof (including fading, editing, cutting or non transmission) which at the sole discretion of the Company is found to contain material deemed unsuitable and the Company shall not thereby incur any liability to the Buyer who shall have no claim whatsoever for damages or otherwise and the Buyer shall remain liable to the Company for the charges payable for such Advertisements.
- 5.7 The Company reserves the right in its sole discretion to restrict any repeat transmissions of an Advertisement.
- 5.8 Subject to the provisions of clause 14 and 15, all bookings are accepted on the understanding that they will be paid for at the rates in force at the date of transmission.

- 5.9 The Company reserves the right at its absolute discretion to refuse to transmit Advertisements advertising more than one product or will be entitled to charge for such an Advertisement on the basis it comprises more than one Advertisement.
- 5.10 The Company will use its reasonable endeavours to adhere to advertisement rotation notified to the Company by the Buyer but shall not be liable for any failure to comply therewith.
- 5.11 The Company will use all reasonable endeavours to ensure that Advertisements are transmitted in the screen format in which they are delivered by the Buyer, provided always that Advertisements are delivered to the Company in 16:9 full height amorphous aspect ratio and protected for 14:9 and conform to the technical requirements of the Company as published and changed from time to time. It is understood and agreed by the parties that the Company cannot guarantee to transmit the Advertisement in the format as delivered and the Buyer will at all times remain liable for all charges hereunder if the Advertisements are not transmitted in the delivered format through technical error, breakdown or otherwise or as a result of the Advertisements not complying with the Company's technical requirements applicable from time to time.
- 5.12 The Buyer may not change an Advertisement after it has been approved, including from one product to another without the prior agreement of the Company.

6 Dates/Times of Transmission

- 6.1 The Company does not guarantee that the times and/or dates of transmission as stated on any schedule of spot advertising will be adhered to. If an Advertisement is not transmitted at the time and/or date or at the rate arranged, the Company will endeavour to offer a transmission at some other time and/or some other date which may be accepted by the Buyer instead. If any offer of such a transmission is not accepted (or not made) the original booking shall be cancelled and the Buyer shall have no claim against the Company in respect of non-transmission or for any expenses or damage whatsoever incurred as a result thereof. The Company shall make no charge to the Buyer for bookings cancelled by the Buyer but the Company shall be reimbursed by the Buyer any fees or expenses reasonably incurred by the Company in respect of any facilities arranged or provided.
- 6.2 In the event of any significant alteration(s) to the Company's programme schedule, the Company reserves the right to re-establish the breaks affected as unsold airtime. Where there is a current booking in an affected break the Company will, if possible, consult with the Buyer and try to agree an alternative transmission time. Failing this the Buyer will be entitled to cancel the booking but shall have no claim against the Company.
- 6.3 The Company shall not incur liability for any failure in transmission of all or part of any Advertisement for any reason or for any error in any Advertisement transmitted, except where a total failure to transmit is due to the fault of the Company then no charge will be made for the affected Advertisement.
- 6.4 In the event of the Company's transmission activities being restricted, curtailed or prevented by any law or any other act or thing beyond the Company's control, the

Company may at any time at its absolute discretion and notwithstanding anything hereinbefore contained, forthwith determine the Deal Arrangement or agreement governed by these General Terms and Conditions without prejudice to the Company, and its right to be paid by the Buyer any monies due and owing to the Company up to the time of such determination.

- 6.5 The Company will transmit advertisements at the dates and times which it considers to be most efficient having regard to the demand for advertising and its requirements to deliver target audiences generally. The Company may change the date or time of any transmission as it sees fit in order to deal with any change in Legislation or any other change in circumstances. The Company will not be held responsible or liable in any way for the content, nature or subject matter of any other advertising or programme transmitted on its channels and the effect or otherwise that any of the same may have on the effectiveness or otherwise of any advertising transmitted by the Company on behalf of the Buyer.
- 6.6 Transmissions of a longer duration than 30 seconds will be charged pro rata at the 30 second rate. 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 and rates for other time lengths of less than 30 seconds will be subject to separate negotiation and availability.
- 6.7 Advertisements which are not Standard Time Lengths will only be accepted by the Company if they can be transmitted within the same break as other Advertisements for the same advertiser or client or product and the total length bought is a Standard Time-Length. Rates for non Standard Time Lengths will be subject to negotiation and availability.
- 6.8 From time to time the Buyer may be required to fill some macro availability on a channel where the Company has accepted a macro area booking.
- 6.9 The Buyer shall not without the prior consent of the Company publish any dates or times of any scheduled Advertisement.

7 Pricing

- 7.1 The prices chargeable by the Company will be as agreed from time to time with the Buyer. All prices are national unless otherwise agreed in writing by the Company. The Buyer agrees that where an approval in relation to the transmission of an Advertisement is not received by the Company from the Buyer in writing prior to any applicable Advance Booking Deadline, the Company reserves the right not to make such transmission but if it agrees to make such transmission any price previously agreed in respect of such transmission may, at the absolute discretion of the Company, no longer apply and be subject to further agreement with the Company.
- 7.2 The Buyer acknowledges and agrees that prices agreed prior to transmission are estimates based on the Company's estimate of its advertising revenue and the number of Impacts over a specified period and the prices will vary depending on the Company's actual revenue and Impacts.

- 7.3 Subject to the terms of any Deal Arrangement the Company reserves the right to adjust its prices at any time during the Term in order to reflect its revised estimate of its revenue and/or Impacts and gives no guarantee as to the level of its revenue and/or Impacts.
- 7.4 The Buyer understands and agrees that if the Station Price increases, the amount paid by a Buyer under a Deal Arrangement (unless a fixed number of Spots or TVR's is purchased for an agreed price) will purchase less TVRs and if the Station Price decreases, the amount paid by a Buyer under a Booking Agreement will purchase more TVRs.
- 7.5 Where a Buyer books airtime on the channels currently known as Fiver or Five USA the broadcaster may fulfil its obligations under any Deal Arrangement or booking on the corresponding time-shifted versions of that channel.
- 7.9 In circumstances where a client of a Buyer moves any or all of its business to another agency the Airtime Debt or Airtime Credit of that client remains with the original Buyer unless otherwise specifically agreed by both Buyer and the Company.

8 Deal Conditions

- 8.1 The Buyer undertakes to the Company to procure that Gross Expenditure under a Deal Arrangement with the Company during the Term (or such other period specified in the Deal Arrangement) is not less than the percentage share of Broadcast set out in the Deal Arrangement or is not less than the Volume specified in the Deal Arrangement. In the case of any estimated minimum volume (as opposed to Volume) stated in the Deal Arrangement, the Buyer acknowledges that the Company expects to receive not less than this amount of Gross Expenditure under these General Terms and Conditions.
- 8.2 If, at the end of the Term, the Buyer has failed to meet any of the buyer commitments in any Deal Arrangements in full such that an under-spend has arisen, the Company will seek to agree terms under any new agreement for the purchase of Airtime by the Buyer for such under-spend to be carried forward and paid in full under the terms of such new Airtime agreement. In the absence of agreeing acceptable terms, the Company shall be entitled at any time forthwith after the end of the Term to require that the Buyer pay the broadcaster in cash the amount of any such under-spend.
- 8.3 If, during the Term, the Buyer is unable to demonstrate to the Company's reasonable satisfaction that it will fulfil the buyer commitments such that it appears that an under-spend may arise at the end of the Term, the Company may at its sole discretion adjust the prices set out in the Schedules to the Deal Arrangements and/or any of the Deal Arrangements to take reasonable account of the likely buyer spend in addition to recouping the under-spend in cash as set out above.
- 8.4 Without prejudice to the Company's other rights, any payment due under this clause shall be payable within 14 days of written request for payment by the Company.

- 8.5 The amount of Gross Expenditure with third parties will include expenditure by or on behalf of the Principal and all of its associated undertakings from time to time save to the extent agreed otherwise in the Deal Arrangement;
- 8.6 The amount of Gross Expenditure with third parties will include expenditure in respect of all of the Buyer or principal's and its associated undertakings' clients from time to time during the Term and all of such clients' brands, products and services from time to time during the Term, including for the avoidance of doubt all new clients during the Term, subject in each case to any exclusions in the Deal Arrangement.
- 8.7 The amount of Gross Expenditure with third parties and with the Company will exclude any on-line, video on demand, interactive and sponsorship expenditure.
- 8.8 The amount of Gross Expenditure with third parties will include all non cash and part cash transactions including barter and contra transactions and all expenditure with third parties will be valued in cash.

9 Auditing

The Company reserves the right to subject delivery of share of expenditure commitments made in this agreement or any Deal Arrangement to an independent audit (upon reasonable notice) of all records of the Buyer/principal who undertakes bookings of UK television advertising airtime at any time during the course of the Deal Arrangement or other agreement to which these General Terms and Conditions apply and after the Deal Arrangement or other agreement has expired to ensure that any terms and conditions have been complied with. The auditors appointed by the Company (the Auditors) are to be permitted access to any information, including access to all associated undertakings and relevant third parties (including specialist barter/outdoor companies) and make such enquiries within both media and finance departments of the Buyer/principal as they consider relevant to the performance of their duties. The Buyer will procure that all relevant third parties keep accurate records on its behalf and ensure auditor access to such records in order to establish compliance with any Deal Arrangement or other agreement. The Buyer/principal will provide auditors with supporting working papers reconciling the certified share delivery with media bookings derived from DDS or other media booking system. Five shall be entitled to receive details of all audited expenditures falling within the terms of any Deal Arrangement or other agreement.

10 Result of Audit

- 10.1 If any audit (or other information) demonstrates that the Buyer's Broadcast Revenue has been understated, the Buyer's Broadcast Revenue shall be restated correctly and the Buyer will pay to the Company any additional amount which would have been payable had such Broadcast Revenue been correctly stated such payment to be made within 14 days of receipt of written notice from the Company.
- 10.2 If any audit (or other information) demonstrates that the Buyer is otherwise in breach of its obligations under any Deal Arrangement or other agreement, the Buyer will pay to the Company any damages or compensation to place the Company in the position it would have been had the Buyer complied with all its obligations.

- 10.3 All payments due under this clause shall be made within 14 days of the outcome of the audit being notified to the Buyer in writing but shall be deemed to have been due when they should properly have been made.
- 10.4 The Company shall bear its own costs of conducting such audits, except that in the event that an audit shows that the Buyer's Broadcast Revenue has been understated by more than 3%, or the Buyer has underpaid by more than 3% of the sums properly due or the Buyer is otherwise in material breach of any Deal Arrangement, then the costs incurred by the Company in carrying out the audit shall be borne by the Buyer (and the Buyer shall pay such costs to the Company on demand).

11 Cancellations

- 11.1 Subject to the provisions of clauses 14 and 15 the Company, at its absolute discretion, may consider requests received in writing from a Buyer to withdraw and/or amend bookings, and subject to the following terms:
- 11.1.1 Buyers will be charged a 30% cancellation fee of the total gross campaign expenditure when cancelling bookings up to 2 weeks (inclusive) after the AB Deadline;
- 11.1.2 Buyers will be charged a 40% cancellation fee of the total gross campaign expenditure when cancelling bookings more than 2 weeks and up to 4 weeks (inclusive) after the AB Deadline;
- 11.1.3 Buyers will be charged a 60% cancellation fee of the total gross campaign expenditure when cancelling bookings more than 4 weeks and up to 6 weeks (inclusive) after the AB Deadline;
- 11.1.4 Buyers will be charged a 75% cancellation fee of the total gross campaign expenditure when cancelling bookings more than 6 weeks and up to 7 weeks (inclusive) after the AB Deadline;
- 11.1.5 Buyers will be charged a 100% cancellation fee of the total gross campaign expenditure when cancelling bookings more than 7 weeks after the AB Deadline;
- 11.2 Any charge pursuant to this clause must be paid by the Buyer within 14 days of written notice being given by the Company.
- 11.3 The Company shall not be obliged to give reasons for accepting or declining an application for cancellation and rebate of airtime value.
- 11.4 Unless bookings are cancelled in accordance with the above conditions, a Buyer who fails to deliver an Advertisement in accordance with clause 5 remains liable for payment in full whether or not the Advertisement is transmitted.

12 Materials and Property Liability

While every reasonable care will be taken in respect of Advertisements, recordings, goods or equipment, the Company cannot accept liability for any delay in delivery, loss or damages thereof whether in the studios or in transit and whether or not such Advertisements, recordings, goods or equipment are supplied by the Company. Unless the Buyer instructs otherwise in writing, Advertisements will be destroyed by the Company if not transmitted during a period of eight weeks from the date of receipt or the date of last transmission thereof whichever is later and in either case without further reference to the Buyer.

13 Invoices

13.1 In the event that the Company has agreed to grant credit to a Buyer (as at the date which is ten days before the scheduled transmission date) invoices payable by that Buyer shall be paid not later than the fifteenth day of the month following transmission unless the Buyer ceases to be granted credit by the Company (the Payment Date). In the event that the Company, by written notice, ceases to grant credit to a Buyer, payment of invoices for transmitted airtime will fall due for payment immediately and airtime booked but not yet transmitted will require payment in accordance with clause 13.2) below.

13.2 Save for invoices payable under clause 13.1, invoices shall be paid not later than 10 days before the scheduled transmission date and in default of payment the Company shall be entitled without prejudice to its other remedies for breach of contract to refuse to transmit the Advertisement.

13.3 Any amount specified in any invoice which is not paid by a Buyer to which the Company continues to extend credit by the twenty fifth day of the next month following the month in which the transmission takes place will be subject to an immediate surcharge of 1.5% of such amount. A further surcharge of 1% will be imposed in respect of the principal amount which is still outstanding on the tenth day of each subsequent month until the principal amount and any surcharges are paid. The Company reserves the right to review and if necessary increase the levels of the surcharges and to amend the dates on which the surcharges apply by notice in writing. Payment shall be deemed to have been made in due time if there is proof that the appropriate bankable remittance is posted by first class post by the twenty fourth day of the appropriate month. In months where the twenty fifth day falls on a Sunday, Public or Bank Holiday the next Working Day shall be regarded as the due date by which the payment must be despatched by first class post. When the twenty fifth falls on a Monday, which is not a Public or Bank Holiday, then that shall be the due date by which payment must be despatched.

13.4 In the event of a Buyer not paying an invoice by the tenth day of the month following the month in which payment becomes due, the Company reserves the right without prejudice to all its other rights:

13.4.1 not to accept further bookings from the Buyer (notwithstanding that the Buyer has not ceased to be granted credit from the Company); and/or

- 13.4.2 to report unpaid amounts to third parties which may use this information for the purposes of financial analysis, unless the Buyer has notified the Company that it is disputing the sum in question and, in the sole view of the Company, has given valid reasons for contesting it; and/or
- 13.4.3 to treat any amount due to the Company as a simple debt recoverable forthwith.
- 13.5 Invoices will normally be rendered at least weekly by the Company, the invoices for the last week of the month being dispatched by first class post or email in normal circumstances not later than five Working Days from the end of the month of transmission.
- 13.6 Failure by the Company to render or despatch invoices at the times referred to in sub-clause 13.5) above will not affect the obligation of the Buyer to make payment in accordance with these General Terms and Conditions.
- 13.7 The existence of a query of an individual spot within a campaign will only affect the due date for payment of the airtime value of that individual spot and not the due date for payment of the remainder of the campaign. The Buyer shall notify the Company of any query in writing within seven Working Days after the invoice date. This notification must include the precise reason for the query and should be addressed to the Financial Controller at Channel 5 Broadcasting Limited, 22 Long Acre, London WC2E 9LY. Advertisements may not be brought into query by the Buyer after this time. In the event that a credit note and re-invoice is agreed to be issued, then the sums due to the Company will be paid within seven working days of the new invoice date. In the event of a query being resolved in favour of the Company the amount in query will be subject to the full rate of any surcharge payable pursuant to these General Terms and Conditions.
- 13.8 All payment of invoices for advertising time placed on the Service shall be made in full and it shall not be open to the Buyer to claim any rights of set-off or make any counterclaim in any proceedings brought by the Company in respect thereof.
- 13.9 Payment will be deemed to have been made prior to the Payment Date if the Company has received a cheque (which is subsequently cleared for payment) for the full amount or written confirmation that the Buyer has sent the full amount by BACS or CHAPS, in each case prior to 12.30 pm on the Payment Date.
- 13.10 All payments to the Company must be made in pounds Sterling.
- 13.11 All payments to the Company must be paid in full without set off, counterclaim, deduction or any withholding and are subject to VAT at the applicable rate.

14 Change of Rates and Conditions

While the Company will endeavour to give a minimum of four weeks' written notice in respect of changes of rates (excluding pricing) and these General Terms and Conditions, the Company reserves the right to make such changes at shorter notice. In the event of such a change the rates payable and the terms and conditions applicable shall be those in force at the time of transmission, but the Buyer shall (by serving written notice on the Company within two weeks of receiving notice of such a change) be entitled to cancel,

without charge, any order for an Advertisement to which the change of rates (if increased) or terms and conditions (if less favourable to the Buyer) would otherwise be applicable.

15 Special Rates

- 15.1 Special charges and conditions may at the sole discretion of the Company be announced from time to time for particular programmes.
- 15.2 Scheduled programming may be subject to change and in instances where the change is deemed by the Company to be significant in either rating or audience profile, the Company reserves the right to renegotiate the terms for the transmission of Advertisements booked in or around such programmes.

16 Deal delivery

- 16.1 The Buyer understands and accepts that projections of likely impacts/TVRs are estimates and so delivery of fewer or greater impacts/TVRs is expected.
- 16.2 The provisions of this clause will not apply where agreements are made that are not reliant on delivery of amounts of impacts or TVRs.
- 16.3 In the event that the actual delivery of impacts/TVRs is less than that agreed between the parties in any Deal Arrangement or other agreement the Company will at its sole discretion use its reasonable endeavours to provide any shortfall through additional airtime to the value of any such shortfall. Any under-delivery that exists at the end of the agreement period will be provided for by adjusting the provisions of any future agreement to purchase airtime to reflect the value of the under-delivery. Cash refunds for any shortfall will only be paid at Five's sole discretion.
- 16.4 In the event that the actual delivery of impacts/TVRs is more than that agreed between the parties in any Deal arrangement or other agreement the Company shall be entitled to recoup the value of any over delivery by adjusting the provisions of any future agreement to purchase airtime to reflect the value of any over delivery. In the event that there is no future agreement or terms cannot be agreed as to how any over delivery will be reconciled the Company shall be entitled to recover from the Buyer the value of any over delivery by way of a cash payment.
- 16.5 In the event that TVRs actually delivered for a particular campaign or pursuant to the terms of a Deal Arrangement are:
- a. less than those estimated to be delivered and paid for by a Buyer an airtime debt equal to the value of the difference between such estimate and actual delivery (an 'Airtime Debt'); or
 - b. more than those estimated to be delivered and paid for by a Buyer, this will give rise to an airtime credit equal to the value of the difference between such estimate and actual delivery (an 'Airtime Credit').

If the Airtime Credits exceed the Airtime Debts or vice versa for a particular Buyer, the Company will, subject as provided below, from time to time use its reasonable endeavours to agree with the Buyer arrangements intended to reconcile this. From time to time the Company shall carry out a reconciliation of actual TVRs delivered by a campaign. For the avoidance of doubt, in circumstances where there exists a Deal Arrangement or other trading relationship between the Buyer and the Company (whether pursuant to these General Terms and Conditions or otherwise) in relation to the sale of advertising airtime, at no time shall any Airtime Credit or Airtime Debt have any cash value or entitle either party to any cash payment from the other save where specifically provided for in any Deal Arrangement. In the event that no such trading relationship exists and all agreements between the Company and the Buyer relating to the sale of advertising airtime have terminated, the Company will use its reasonable endeavours to agree a reconciliation with the Buyer in relation to any outstanding Airtime Credit and/or Airtime Debt.

- 16.6 In circumstances where a client of a Buyer moves any or all of its business to another agency the Airtime Debt or Airtime Credit of that client remains with the original Buyer unless otherwise specifically agreed by both Buyer and the Company.

17 Termination

- 17.1 Without prejudice to its other rights and remedies, any Deal Arrangement or agreement to which these General Terms and Conditions apply may be terminated at any time by giving notice in writing if:

17.1.1 a petition is presented or a meeting convened for the purpose of considering a resolution for the making of an administration order, the winding up, bankruptcy or dissolution of a Buyer; or

17.1.2 if a Buyer stops payment or ceases or threatens to cease to carry on its business or is or shall become unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or

17.1.3 a Buyer compounds with or enters into a scheme of arrangement for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) or if a receiver is appointed over the party or its assets or any part thereof or a resolution is passed for such appointment or if an administration order is made in relation to that party.

- 17.2 Termination of this Agreement shall not affect either party's accrued rights or obligations.

18 Liability

- 18.1 Subject to clause 18.2 below, neither party accepts any liability under or in relation to any Deal Arrangement or any agreement to which these General Terms and Conditions apply or its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation or for any other reason) for any of the loss of profit or sales, loss of opportunity, loss of turnover, loss of use of any hardware, software or data, loss of or damage

to business, indirect, special or consequential loss or damage and for the purposes of this clause the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.

18.2 Neither party's liability:

18.2.1 for death or personal injury caused by that party's negligence or the negligence of that party's employees or agents;

18.2.2 for fraudulent misrepresentation;

18.2.3 for any liability which cannot be excluded or limited by applicable law,

is excluded or limited by any Deal Arrangement or agreement to which these General Terms and Conditions apply.

19 Warranties & Indemnity

19.1 In relation to all Advertisements submitted to the Company for broadcasting the Buyer warrants and undertakes that:

19.1.1 it will obtain and pay for all necessary licences, consents and clearances for the transmission on the Service of any material contained in the Advertisement or the featuring of any person in the Advertisement;

19.1.2 no Advertisement will breach any rights of any third party including but not limited to copyright, trademark infringement, passing off, defamation, confidence, or any privacy, image or right to reputation nor will it in any other way be contrary to the law or breach any applicable Ofcom or other regulatory or industry code including without limitation the Ofcom Broadcasting Code and the BCAP Television Advertising Standards Code as supplemented or amended from time to time, the Clearcast Notes of Guidance or Copy Clearance Bulletins in force at the time of transmission;

19.1.3 it will indemnify, hold the Company harmless and keep the Company indemnified against all actions, threats of actions, proceedings, costs (including legal costs), damages, expenses, claims, demands and liabilities whatsoever arising from:

19.1.3.1 any claim that an Advertisement infringes any right of any third party or is in any other way contrary to the law; and

19.1.3.2 any breach by the Buyer of this Agreement.

20 Confidentiality

Neither party shall during or after the expiry of any agreement to provide advertising airtime under these General Terms and Conditions duplicate, disclose or use or permit the duplication, disclosure or use of any confidential information other than to perform

its obligations under this Agreement unless such duplication, disclosure or use is specifically authorised by the other party in writing or it is required by law.

21 General

- 21.1 The parties do not intend that a third party shall benefit from or have the right to enforce any provision of this Agreement.
- 21.2 The Buyer shall be solely responsible for advising any advertisers or clients of any commercial or other terms for the purchase of airtime with the Company in any Deal Arrangement or other agreement including but not limited to any incentive or commission arrangements.
- 21.3 Time for payment of invoices shall be of the essence.
- 21.4 This Agreement shall be governed by English law and the Courts of England and Wales shall have exclusive jurisdiction to hear and determine any disputes arising out of this Agreement.
- 21.5 This Agreement is personal to the Buyer and it may not assign, mortgage, charge or sub-license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the prior written consent of the Company.
- 21.6 No failure or delay by any party in exercising any of its rights under this Agreement will be deemed to be a waiver of those rights and no waiver of a breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of the same or any other provision.

22 Notices

- 22.1 Unless otherwise stated, any notice or other communication to be given under these Terms and Conditions shall be in writing, shall be deemed to have been duly served on, given to or made in relation to a party if it is left at the authorised address of that party, posted by pre-paid first class post addressed to that party at such address and shall if:
- 22.1.1 personally delivered, be deemed to have been received at the time of delivery;
or
- 22.1.2 posted to an inland address in the United Kingdom, be deemed to have been received on the second Working Day after the date of posting;

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