



## **MEDIA EXILES TERMS AND CONDITIONS**

April 2017

### **1. DEFINITIONS**

"Act" means the Broadcasting Acts 1990 and 1996 and, the Communications Act 2003, as amended from time to time and/or any Acts or regulations that supersede the same.

"Advertiser" means a person, firm or company making a booking otherwise than through or by means of an Advertising Agent and includes its successors in title and assigns.

"Advertisement" means any advertisement presented by a Client to the Company for advertising placement pursuant to the terms hereof.

"Advertising Agent" means a person, firm or company carrying on the business involving the selection and purchase of advertising space or time for persons wishing to advertise, but does not include the Company.

"Advertising Copy" or "Copy" means any advertising material intended for transmission by Broadcasters, or for placement on any Websites, as the case may be, pursuant to the terms hereof. Delivery of Advertising Copy shall be deemed to have been made only when the Company's technical requirements have been met, and, in the case of Television Advertising, when required definitive Clearcast approval has been given.

"Advertising Services" means Online Advertising and/or Television Advertising.

"Broadcaster(s)" mean the broadcasting company(ies) that own or operate any Channel(s) and/or that own or operate any Website(s).

"CARIA Service" means the electronic data transfer system for approval of Television Advertising campaign booking details and approval of advertising copy rotation instructions administered by IMD Optimad (or any subsequent provider as agreed between the parties from time to time);

"Channels(s)" means the channel(s) whose advertising airtime is engaged by the Client, via the Company pursuant to the terms hereof, for the purposes for broadcasting Advertising.

"Clearcast" means the OFCOM recognized body that gives guidance and approval, from a regulatory compliance perspective, for broadcast of advertisements in the UK on commercial television, or any superseding replacement body.

"Client(s)" means any Advertising Agency or Advertiser that engages from any Broadcaster, via the Company, Online Advertising and/or Television Advertising pursuant to the terms hereof.

"Company" means Media Exiles Limited whose registered office is at 62 Stakes Road, Purbrook, Waterlooville, Hampshire PO7 5NT

"Conditions" means these Media Exiles Terms and Conditions;

"Contract" means any agreement between the Client and the Company for the booking of Broadcaster airtime for Television Advertising and/or the placement of advertisements on any Websites for Online Advertising. For the avoidance of doubt, and without limitation, constituting of Contracts includes: a), regarding all booking of Television Advertising, a Contract will be deemed to have been constituted every time that a Client makes a booking of airtime through the CARIA service regarding Advertising Services specifications that have been confirmed in writing between the parties, via email or otherwise; and b), regarding all booking of Online Advertising, a Contract will be deemed to have been constituted every time that the Company issues and invoice for a booking and the Client countersigns the same. These Conditions are automatically deemed to form a part of each Contract such that they have binding legal effect between the Company and each Client upon the closing of each Contract.

"Force Majeure" means any event beyond the reasonable control of either the Company or Client, as applicable, and shall include (but not by way of limitation) strikes, lockouts, riots, sabotage, acts of war, terrorism, hostilities or piracy, destruction of essential equipment by fire, explosion, storm, flood, earthquake, and delay caused by failure of power supplies or transport, but which does not include any event that causes late payment by the Client hereunder.

"OFCOM" means the Office for Communications and/or any successor or replacement body.

"Online

Advertising" means paid placement of Advertisements in any Websites(s).

"Television Advertising" means paid airtime for exploitation of Advertisements in any Channel(s).

"Website (S)" – means the websites whose advertising space is engaged by the Client, via the Company pursuant to the terms hereof, for the purposes of displaying Advertising.

"working day" means Monday to Friday inclusive in each week except any Bank or Public Holiday.

## 2. ADVERTISING AGENCIES

Where the Client is an Advertising Agent it shall be deemed to contract as principal in all respects and as such will be personally responsible for the payment of accounts and the compliance with all Client obligations, representations, warranties and indemnities under any Contract(s) or herein.

## 3. ACCEPTANCE OF CONDITIONS

3.1 By closing a Contract the Company, either by making a booking across CARIA for Television Advertising, or by making a booking for Online Advertising by countersigning any corresponding invoice issued by the Company, or howsoever otherwise, the Client accepts in full these Conditions.

3.2 No terms or conditions other than those set forth in any Contract and/or herein or any variations thereof under Clauses 11 and 12 shall be binding upon the Company or the Client as applicable unless in writing and signed on behalf of both the Company and the Client.

#### 4. ACCEPTANCE OF ADVERTISEMENTS

4.1 Advertisements will only be broadcast for Television Advertising, or placed for Online Advertising, if they are approved by the Broadcaster, satisfy its technical requirements and are compliant with all local law and applicable regulations in all territories in which the respective Television Advertising will be broadcast and/or from which users will have access to respective Online Advertising, including in the case of Television Advertising broadcast to the UK, compliant with the Act and in particular the Code of Advertising Standards and Practice issued by OFCOM. All Advertising Copy for Television Advertising will be submitted by the Client to Clearcast in its completed state, and

Clearcast approval will have been obtained, prior to being delivered to the Company and/or the respective Broadcaster(s).

4.2 Advertising Copy, in its complete and final form, must be delivered to the Broadcaster not less than ten (10) working days before the date of the intended broadcast and/or, as the case may, inclusion in any Website. In exceptional cases the Company may in its sole discretion accept Advertising Copy being delivered to the Broadcaster less than ten (10) working days before the date of transmission. In such cases the Company is not obliged, pursuant to Clause 4.3 below, to notify the Client if it or the Broadcaster decides the Copy is unsuitable. Furthermore, and without prejudice to the immediately forgoing:

- i) Where Advertising Copy, in its complete and final form, is not delivered at least five (5) clear working days before the intended television broadcast date and/or Website inclusion date, the Client shall, at the discretion of the Company be liable to pay in full for the advertising time and/or advertising space booked whether or not the Advertisement is in fact broadcast and/or included;
- ii) Advertising Copy that is accepted, in the absolute discretion of the Company, less than three (3) clear working days before the intended television broadcast date and/or Website inclusion date shall, at the discretion of the Company, be subject to a surcharge of £50 (plus VAT) per Advertisement, payable within fifteen (15) working days of such acceptance;

4.3 If, at their absolute discretion, the Company or the respective Broadcaster(s) decide that the Advertising Copy is unsuitable, the Company shall notify the Client who must supply alternative Advertising Copy as soon as possible and in any case not later than five (5) clear working days prior to the intended television broadcast date and/or Website inclusion date. Acceptance of alternative Advertising Copy at shorter notice, if accepted, at the absolute discretion of the Company, shall be subject to a surcharge of £50 (plus VAT) per Advertisement payable within fifteen (15) working days of such acceptance. Should alternative Advertising Copy not be supplied or not be accepted the Company shall be entitled to be paid by the Client as the case may be in full for the advertising time booked.

4.4 The provisions of Clauses 4.2 and 4.3 above shall be without prejudice to any special arrangements agreed in writing with the Company for bookings made at shorter notice.

4.5 The Company shall not be held responsible for any addition to, changes in or deletions from any Advertising Copy required by OFCOM/Clearcast or delays of any nature resulting there from.

4.6 The Company, on behalf of itself and/or the Broadcaster, reserves the right in its absolute discretion and without incurring any liability, to decline to television broadcast and/or include in any Website any Advertisement without giving any reason in writing for so declining, but the Client shall not be liable to pay for any Televising Advertising or Online Advertising which the Company so declines, unless the reason for declining to television broadcast and/or include in any Website, arises from any other provision of these Conditions, or breach thereof in which case the Client shall be liable for the payments referred to herein.

4.7 The Company reserves the right in its absolute discretion to do any act or thing in respect of the broadcast of any material / inclusion of any material in any Website or part thereof (including the fading, editing, or cutting thereof), which is found to contain unsuitable material and the Company shall not thereby incur any liability to the Client or any third party who shall have no claim whatsoever for damages or otherwise in respect of any non-broadcast/ non-inclusion of any such Advertising Copy or part thereof, but the Client shall remain liable to the Company for the charges payable for the respective Television Advertising and/or Online Advertising, as the case may be.

4.8 The Company reserves the right to restrict any repeat broadcast of any Television Advertising.

4.9 Subject to the provisions of Clause 11, all bookings are accepted on the understanding that they will be paid for at the rates in force on the date of television broadcast/ Website inclusion.

4.10 Without limitation to any other provision herein, the Company reserves the right at its absolute discretion to refuse Advertising Copy advertising more than one product.

4.11 The Company will use its reasonable endeavours to procure that Broadcasters adhere to advertisement rotation instructions for all Television Advertising but shall not be liable for any failure or repeat failure of Broadcasters to comply with any such instructions.

## 5. DATES/TIMES OF TRANSMISSIONS

5.1 The Company does not guarantee that the times and/or dates of television broadcast/ inclusion of any material in any Website will be adhered to. If any Advertisement is not first television broadcast/ first included on the day and in an airtime band as agreed, the Company will endeavour to offer a first television broadcast / first Website inclusion at some other date which may be accepted instead by the Client. If any offer of such is not accepted, or not made, the original booking shall be cancelled and the Client shall have no claim against the Company in respect of non-transmission /non-inclusion or for any expenses or damage whatsoever incurred as a result thereof. The Company shall make no charge to the Client for such booking but the Company at its discretion shall be entitled to be paid by the Client any agreed fees or expenses that the Company has already incurred in respect of any related services engaged or provided.

5.2 The Company shall incur no liability for any failure by a Broadcaster to television broadcast or include in a Website all or any part of any Advertising Copy or for any failure to adhere to advertisement rotation instructions, but if there is a total failure to television broadcast/ include in a Website there shall be no charge for the Television Advertising or Online Advertising.

5.3 Agreed Contract television broadcast dates and/or Website inclusion dates may only be altered at the application of the Client with the agreement of the Company at its absolute direction, and any such case will be subject to a minimum surcharge of £50 (plus VAT) per Advertisement, payable within fifteen (15) working days of such agreement; such surcharge may be increased by the Company at its reasonable discretion depending on the level of respective charges for the corresponding Advertising Services and the length of deferment.

5.4 Regarding Television Advertising, in the event of any significant alteration(s) to any relevant Broadcaster's schedule, the Company reserves the right, on behalf of itself and/or the Broadcaster, to re-establish any affected breaks as unsold time. In the case of a current booking in a specifically agreed affected break the Company will seek to negotiate an alternative broadcast time, in consultation with the Client who will otherwise be entitled to cancel that booking.

5.5 Television Advertising appearing within five (5) minutes of an airtime band will normally be regarded, at the election of the Company, as appearing within that airtime band. Television Advertising booked for television broadcast at a specific time will be transmitted in the commercial break nearest to that time.

5.6 In the event of a Broadcaster's television broadcasting or website activities being restricted, curtailed or prevented by any law, regulation or any other act or thing beyond the Company's control, including there being a break in scheduled programming for reason of "news flashes" or specific news event broadcasting, the Company may at any time, notwithstanding anything herein contained forthwith terminate or suspend any Contract without prejudice to the Company's right to be paid by the Client any monies due and owing by the Client at the time of such termination or suspension. The completion of suspended Advertisement Services shall be rendered in terms agreed between the Company and the Client.

5.7 The Company does not give any protection against proximity of competitive products in any Channel airtime or Website space.

5.8 All programming and Website content is subject to suspension or cancellation or product placement at the sole discretion of the Broadcasters.

5.9 Without limitation to any other provision hereof, the Company on behalf of itself and any Broadcasters, reserves the right to reject any advertisements for any content or other matter that relates to any competing channels or websites or that contain day or time specific references to entertainment content in either a verbal or visual context.

## 6. CANCELLATION

6.1 Without limitation to Clauses 11 and 12, any Television Advertising or Website Advertising booking may be cancelled by either party provided that notice in writing is received and acknowledged by the Company or the Client as the case may be not less than six (6) weeks before the scheduled television broadcast/ Website inclusion date. Cancellation or postponement requests made by a Client less than six (6) weeks before the scheduled television broadcast date / Website inclusion date, as the case may be, may be considered by the Company and may be accepted at the Company's absolute discretion and depending on the Company's negotiation with the Broadcaster regarding any such cancellation; if so accepted such cancellations shall be subject to the following cancellation charges which the Client will pay to the Company within fifteen (15) working days from the date of cancellation, in the event that the Company accepts:

6-3 weeks 40% of Contract price

2-1 weeks 60% of Contract price

< 10 working days 100% of Contract price

Unless a booking is cancelled in accordance with these Conditions, any failure by a client to deliver or to procure the delivery of Advertising Copy will be subject to Clause 4.

6.2 In the event that the Company does not agree to any cancellation less than six (6) weeks before the scheduled television broadcast/ Website inclusion date, the entirety of the respective Contract price will be paid to the Company within fifteen (15) working days from the date of the intended first television broadcast and/or Website inclusion. Furthermore, at the absolute discretion of the Company, the Company may then agree to treat the corresponding airtime / Website space as having been postponed, and re-book the postponed airtime / Website space for the Client during a mutually agreed period that shall be no greater than 6 months from the date of cancellation; in the event that airtime/ Website space is not rebooked within such period, the airtime/ Website space shall be deemed cancelled and the Company shall retain the entirety of the paid Contract price.

## 7. MATERIALS AND ELECTRONIC FILES

While every reasonable care will be taken in respect of advertising films, recordings, goods, clips, electronic files, soft-format files, digital copies or equipment, the Company cannot accept liability for the delay in delivery, loss, theft, unauthorized copying or damage thereof whether in the studios, transit, online or on any servers or hardware of the Company. Unless otherwise instructed, the material holding any advertising and any related electronic files, soft-format files and/or digital copies may be destroyed by the Company at the Company's discretion.

## 8. ACCOUNTS

8.1 Save for the accounts payable under Clause 8.2, accounts shall be paid no later than ten (10) working days before the scheduled first television broadcast date and/or first Website inclusion date and in default of payment the Company shall be entitled, without prejudice to its other remedies for breach of contract, to refuse to television broadcast and/or include in any Website the Advertisement.

8.2 Where prior-approved by the Company only, accounts payable by a Client may be paid not later than the last day of the month that follows the respective month to which the respective invoiced Advertising Services relate. Prior to the closing of any new Contract the Company may, at its absolute discretion, revoke any such approval and in any such event Clause 8.1 will apply.

8.3 In the event of a Client not paying an account by the due date, the Company reserves the right without prejudice to all its other rights that it may have hereunder or at law:

- i) to suspend the Companies performance of the Contract and all other existing Contracts with the Client until all due or overdue payments by the Client to the Company regarding any Contracts is paid in full;
- ii) to treat any amount due to the Company as a simple debt recoverable forthwith;

iii) to charge interest on all monies outstanding beyond the due date for payment at a rate of four per cent (4%) per annum calculated and accrued daily above the base rate of the Company's bank in the UK at that time;

8.4 Accounts are payable on invoice and invoices will normally be rendered at least monthly by the Company; in the circumstances of Clause 8.2, invoices for the last week of the month being dispatched by first-class post in normal circumstances not later than five (5) working days from the end of the month of television broadcast/Website inclusion.

8.5 The existence of a query on any individual item in an account will only affect the due date of payment of that individual item. The Client must notify the Company of any query within five (5) working days from the receipt of the invoice; thereafter no queries may be raised.

8.6 All payment of accounts hereunder shall be made in full and it shall not be open to the Client to claim any rights of set-off in respect thereof. In the event that any payments from overseas Clients are subject to any mandatory withholding tax, the Client shall "gross up" such payments by such sums that produce a zero net effect on payment received by the Company once the withholding is deducted.

## 9. WARRANTIES AND INDEMNITY

9.1 The Client represents, warrants and undertakes to the Company, for the benefit of the Company and all Broadcaster(s) whose airtime or Website space are exploited hereunder by the Client's Advertising, that:

- i) it will obtain and pay for all necessary and desirable copyright, image right, rights in publicity, performance rights, and other neighbouring rights of any kind ("Intellectual Property Rights"), that are necessary or desirable for the television broadcast and/or Website inclusion of all Advertising that becomes the subject of any Contract, such that neither the Company nor the Broadcaster(s) need manage or obtain any clearances of any kind nor pay any related fees in respect of exploitation of any Advertising hereunder in any territory of the world for which the Client engages any advertising services hereunder;
- ii) without limitation to the immediately forgoing, the exploitation of Advertising hereunder by the Company and/or Broadcaster(s) will not breach any Intellectual Property of any third party, nor be defamatory of any person or company in any relevant territory of exploitation;
- iii) all completed Advertising Copy will be Clearcast approved where exploited for Television Advertising, and will, in any event be compliant with all local law and applicable regulations in all territories in which the respective Television Advertising will be broadcast and/or from which users will have access to respective Online Advertising, including in the case of Television Advertising broadcast to the UK, compliant with the Act and in particular the Code of Advertising Standards and Practice issued by OFCOM;
- iv) it will duly honour the payment obligations of the Contracts and of these Conditions
- v) the Client shall not include in any Advertisement more than one object of advertising, unless specifically approved by the Company;

vi) regarding Online Advertising, any link that is included in any Advertisement shall not lead to more than one website or run hidden programs on users' hardware;

vii) notwithstanding anything to the contrary contained herein, it will indemnify and keep the Company and Broadcaster(s) indemnified on demand against all actions, proceedings, costs, damages, expenses, penalties, claims, demands and liabilities arising from any breach of any provision herein or in any manner whatsoever in consequence of the exploitation of any Advertising as contemplated hereunder and/or under any Contract.

9.2 The Contract (Rights of Third Parties) Act 1999 applies to this Agreement such that all Broadcasters may enforce against Clients any term of this Contract that confers any benefit on them, including, without limitation, the representations, warranties and undertakings, set out in Clause 9.1; with respect to any other third parties, however, they shall not have the right to enforce any term or terms of this Contract pursuant to the Contract (Rights of Third Parties) Act 1999.

## 10. CONTRACT TERMINATION

10.1 In the event that either party is in breach of any Contract, the non-breaching party may terminate that Contract by giving the breaching party five (5) days written notice, provided that the former has already served the latter with a written notice to cure of at least ten (10) working days, and such period has expired without cure.

10.2 In any event the Company may terminate any individual Contract, and/or all Contracts, with a Client by giving the Client ninety (90) days prior written notice.

## 11. CHANGE OF RATES AND CONDITIONS

While, where possible, the Company will try to give at least four (4) weeks' notice in respect of any changes of rates and/or changes to these 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 Conditions applicable shall be those in force at the time of that corresponding Advertising Services are undertaken, but the Client concerned shall (by serving written notice on the Company within two (2) weeks of the effective date of the change) be entitled to cancel any order for Advertising Services to which the change of rates (if increased) or change of these Conditions would otherwise be applicable.

## 12. CHANGE OF AIRTIME BANDS AND CLASSIFICATIONS

While, where possible, the Company will try to give at least four (4) weeks' notice in respect of any changes of airtime bands and classifications, the Company reserves the right to make such changes at shorter notice. In the event of such a change, the rate payable shall be at the rate in force at the time of the television broadcast after taking into account any such change. If these are announced at less than four (4) weeks notice, the Client with bookings in the airtime bands affected by such changes shall (by serving written notice on the Company within two (2) weeks of effective date of such change) be entitled to cancel any order for an Advertising Services to which the changes would otherwise be applicable.

## 13. SPECIAL RATES

Special Rates and Conditions may be announced from time to time regarding particular programming and particular Broadcasters.



#### 14. ADDITIONAL SPOTS

The Company reserves the right to television broadcast additional spots, and/or to post advertising in any number of Website pages at no extra charge in order to achieve advertising objectives.

#### 15. INTELLECTUAL PROPERTY RIGHTS

The Client hereby grants to the Company a worldwide, non-exclusive, royalty free license for the Company to exploit Advertisements via Online Advertising and/or Television Advertising, (including, without limitation, all intellectual or industrial property rights in the content, copyright, image rights, trade marks and brand features contained therein) via any of the following media (or any multiples of the following media) terrestrial, satellite or cable TV, whether pay or free, or over the internet.

#### 16. AUDITING

16.1 The Company shall have the right to audit the Client's records as the case may be at its own cost at any time on reasonable prior written notice to ensure that payments are being made in accordance with any agreement for Television Advertising and/or Online Advertising based upon the share of the Client's advertising expenditure, as the case may be, that it has agreed to commit in purchasing airtime and/or advertising space sold by the Company. If any such audit reveals that the Client has underpaid the Company by more than 3% of sums properly due, then the Client shall pay to the Company forthwith the cost of the audit, together with the amount of the shortfall being revealed, together with interest as set out in Clause 8.3.

16.2 Furthermore, the Company shall have the right to receive from Clients during the term and for 2 (two) years afterwards, copies of all documentation, including correspondence with Clearcast and notarized copies of all intellectual property licenses, assignments or certificates that relate to performance of the Clients' obligations under this Agreement, and all documents which confirm, to the satisfaction of the Company, the reliability of information contained in any Advertising Copy and their compliance with English law.

#### 17. LIMITATION OF LIABILITY

17.1 The Company acts merely as an Agent for Broadcasters in the selling of Broadcasters' advertising capacity to Clients, and the Agent has no control over the acts or omissions of Broadcasters and does not warrant that the Broadcasters will perform their services regarding any Contracts closed with such Clients for Advertising Services hereunder. Consequently, and in any event, the Company's total liability to Clients for any act or omission in the performance of any Contract, where the principal cause for that act or omission is the act or omission of a Broadcaster, is limited to the corresponding Contract payments already made by the Client to the Company under the respective corresponding Contract;

17.2 Further to the immediately forgoing, where Media Exiles itself has already paid the Broadcasters for the corresponding Advertising Services, liability to the Client shall be dependent on Media Exiles receiving such funds back from the Broadcasters, and Media Exiles undertakes to use its reasonable endeavours to so obtain such funds.

17.3 Without limitation to Clause 9.1 vii) and to the Clients' payment obligations hereunder and under any Contract, neither party shall be liable to the other for the indirect or consequential loss or lost profits of the other arising from any breach hereof.

17.4 Nothing in this Clause 17 purports to limit or exclude liability for fraud, or exclude or limit liability for death or personal injury.

## 18. CONFIDENTIALITY

18.1 Each party shall keep confidential all information disclosed to it by the other party and of which the receiving party is informed, either in writing or orally, that it is confidential by the disclosing party or in relation to which the mere nature of such information or its manner of disclosure would indicate to the reasonable person that it is confidential, ("Confidential Information. Each party will only disclose Confidential Information to those of its employees, officers approved sub-contractors and agents who:

- i. Need to know it for the purpose of exercising or performing its rights and obligations under these Conditions; and,
- ii. Are informed of the confidential nature of the information divulged; and
- iii. Agree to act in compliance with these Conditions.

18.2 Neither party will disclose such information to any third party (other than its employees, officers, approved sub-contractors, professional advisors and agents in accordance with this clause), except for information that:

- i. Is already in the public domain at the time of disclosure;
- ii. becomes publicly known through no fault of its own; or
- iii. is acquired by that party from a third party without any breach of any obligation of confidence

18.3 Notwithstanding any other provision set out here in, it shall not be a breach of this agreement for either party to disclose any information pursuant to a court order or a binding request from a regulatory (or other analogous) authority with jurisdiction or from any other third party with statutory power to require the disclosure of such information, provided that the disclosing party gives all reasonable notice of such disclosure to the other party.

## 19. FORCE MAJEURE

If either party (the 'Affected Party') is prevented or delayed in whole or in part from complying with its obligations under these Conditions by reason of Force Majeure, it will notify the other party giving details thereof. The Affected Party will be relieved of its obligations under these Conditions to the extent that its performance is hindered or delayed by such Force Majeure event. If the event of Force Majeure continues for a period of more than 6 weeks, the other party shall be entitled to terminate the affected Contract by notice in writing to the Affected Party.

## 20. ASSIGNMENT

The Client may not assign, dispose of, hold on trust or part with the benefit or burden of any part of the agreement formed by these Conditions and any Contract without prior written consent of the Company. For the avoidance of doubt, if the Company grants such consent, the Client shall nonetheless remain responsible for the performance of its obligations under the respective Contract and these Conditions. The Company shall be free to assign, sub-contract and otherwise deal freely with its obligations under the agreement.

## 21. GOVERNING LAW

These Conditions shall be subject to English law and the exclusive jurisdiction of the English Courts