

TERMS AND CONDITIONS OF ADVERTISING

1. General

1.1 All orders and bookings made to the Publisher for Advertisements, Campaigns and/or Insertions are subject to and governed by these terms and conditions.

1.2 In these conditions,

(1) **Advertisement** includes the materials which advertise, promote, market, sponsor and/or endorse a product or a service or a brand or an image which:

(a) in the case of print advertisement is printed on the page or reproduced as a copied cutting or separately inserted or attached, and includes Inserts and any mailing, brochure or catalogue, stick-on notes or wrap-arounds;

(b) in the case of advertisements on or delivered through the internet, website and mobile devices and any other delivery mechanism, whether now known or invented in the future, includes text, graphics, layout, logos, audio or visual material, avatars, static and dynamic images, animations, straplines, banner advertisement, hypertext, links, microsites, click through advertising, embedded and/or overlaid codes and algorithms, emails and/or messaging; and

(c) in the case of technology based advertisements, includes digital technologies.

(2) **Advertiser** means the entity advertising the product or service that is the subject of the Advertisement.

(3) **Advertising Copy** means the textual content of an Advertisement.

(4) **Audience Extension** means serving the Advertiser's Advertisements to users of the Telegraph Network on third party websites. This is achieved through the use of Cookie-technology to track a user's browsing activity when on the Telegraph Network and to tag the user with a retargeting Cookie (**Retargeting Cookie**), so that the user will continue to see Advertisements from the Advertiser on selected websites outside of the Telegraph Network (where advertising inventory is made available to the Publisher).

(5) **Audience Extension Inventory** means advertising inventory on third party websites which is made available to the Publisher for use for Audience Extension for the Advertiser's Advertisements.

(6) **Buyer** means the person placing the order with the Publisher for the Campaign, whether such person is the Advertiser or the Advertiser's advertising agency or media buyer.

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- (7) **Buyer Materials** means all information, materials and content in any format provided by or on behalf of the Buyer for use in connection with the Campaign.
- (8) **Campaign** means the organised programme of advertising and promotional activity as set out in the Campaign Schedule or, if there is no Campaign Schedule, as otherwise agreed by the parties. The programme may consist of only one or more items, whether an Advertisement or a promotional activity or other activity or item;
- (9) **Campaign Schedule** means the campaign schedule to this Agreement (if any) or otherwise such schedule of campaign activity agreed by the parties. For clarity, campaign activity may comprise of one or more items, whether an Advertisement or a promotional activity or other activity or item;
- (10) **Charge(s)** means the Publisher's advertising charge(s) for the Advertisement, Campaign, or Insertion as notified to the Buyer and agreed (including any Charge and Additional Charge set out in any Term Sheet), or if there is no such notification and agreement, the Publisher's standard charges as set out in its Rate Card.
- (11) **Content** means all content, materials, concepts and ideas prepared, created and/or developed for any Advertisement and/or Campaign.
- (12) **FSMA** means the *Financial Services and Markets Act 2000* together with any rules, orders, regulations, codes of practice and delegated legislation made thereunder from time to time and all rules, guides and codes issued, published and/or updated from time to time by the Financial Services Authority including without limitation the FCA Handbook.
- (13) **Impression** means each individual instance in which an Advertisement is successfully served to a third party user's web browser (or similar software) via the Telegraph Network, and, in the case of Audience Extension, via the Audience Extension Inventory.
- (14) **Insert** means any insert or onsert which is separately distributed with the newspapers or, in the case of email campaigns, distributed by email to an email database. In the case of onserts, these are not inserted within the newspapers, but accompany each newspaper or are inserted into its packaging. **Insertion** has a corresponding meaning.
- (15) **Insertion Order** means any order under which the parties confirm and the Publisher accepts for the placement of Advertisements, Inserts and/or the delivery of the Campaign.
- (16) **Intellectual Property Rights** means any and all intellectual property rights of whatever nature and in whatever form including inventions, patents, trade marks, registered designs, pending applications for any of the foregoing, trade and business names, brand names, unregistered trade marks, unregistered designs and rights in designs, copyrights,

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database rights, moral rights, performers rights, know-how, trade secrets and all other similar or equivalent industrial, intellectual or commercial rights or property subsisting under the laws of each and every jurisdiction throughout the world whether registered or not, and whether vested, contingent or future, and all reversions, renewals and extensions of any of the foregoing, and all rights under licences, consents, orders, statutes or otherwise in relation to any of the foregoing and all rights to apply for registration of such of the foregoing as are registrable.

- (17) **Promotion** means a promotional reader offer (if any) which is agreed by the parties as part of the Campaign, details of which are set out in the Campaign Schedule;
- (18) **Publisher's Intellectual Property** means the content referred to in clause 15.2 and the Publisher's registered and unregistered trade marks.
- (19) **Rate Card** means the Publisher's rate card in effect from time to time and may include, among other matters, its scale of advertisement rates, technical specifications, copy and cancellation deadlines and setting styles, and other terms and/or conditions set out at www.telegraph.co.uk/advertising.
- (20) **Retargetting Cookie** means the Cookie used to tag users of the Telegraph Network as described in the definition of Audience Extension.
- (21) **Telegraph Network** means websites published by the Publisher (including www.telegraph.co.uk) and websites published by third parties on which the Publisher may publish the Advertisement, mobile versions of those websites and mobile pages or apps published or reproduced by the Publisher on any mobile device.
- (22) **Term Sheet** means the term sheet for the Campaign as attached to this Agreement or otherwise the commercial terms agreed by the parties for the Campaign.
- 1.3 Where a term used in this Agreement appears in bold type in the Term Sheet, that term has the meaning shown opposite it in the Term Sheet.
- 1.4 Reference to:
- (1) any one gender (masculine, feminine and neuter) includes the others;
 - (2) the singular includes the plural and the plural includes the singular;
 - (3) a person includes a body corporate;
 - (4) a party includes the party's executors, administrators, successors and permitted assigns;
 - (5) money is to British Pounds Sterling, unless otherwise stated;

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- (6) any thing includes the whole and each part of it separately; and
 - (7) a "**person**" includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established).
- 1.5 "Including" and similar expressions are not words of limitation.
 - 1.6 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 - 1.7 Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
 - 1.8 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

2. Status of Buyer

- 2.1 The party placing the order for the Advertisement ("**Buyer**") shall do so as principal at law. This is regardless of whether that party is the Advertiser itself or is the Advertiser's advertising agency or media buyer or is acting for the Advertiser in some other representative capacity. Therefore under this Agreement, the Buyer shall have full liability for all obligations of both the Buyer and of the Advertiser.

3. The Campaign

- 3.1 The Publisher's Charge is agreed on the basis of the Campaign activity as described in the Campaign Schedule. Accordingly, it is agreed that if the Buyer proposes to use a promotional concept outside the scope of this Campaign, then such use may only take place provided that appropriate remuneration and licensing provisions are agreed in writing between the parties in advance.
- 3.2 Bookings for all Campaigns, Advertisements and Inserts are for UK editions only. If the Advertiser wishes to run the Campaign, Advertisements and Inserts in the other editions of the Newspapers, it will be subject to different rates, and the Advertiser or Buyer should contact TMG's sales team for the applicable rates.

4. Publisher's Rights Reserved

- 4.1 The Publisher may change the format of any of its publications, its advertisement rates and technical and other specifications for each of its different publications and form of media at any time and may vary or apply differing rates and specifications accordingly.

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- 4.2 The Publisher gives no warranty or guarantee in relation to:
- (1) date of Insertion nor position or location of the Advertisement;
 - (2) quality of the colour or mono reproduction of any Advertisement;
 - (3) the availability or the absence of technical or other disturbances on the internet or the Telegraph Network;
 - (4) the attendance or response rate or take up for any event, or direct mailing or email campaign or coupons or other form of Advertisement nor the number of clicks or page impressions or unique views for any online activity (unless otherwise specified in writing in the Campaign Schedule);
 - (5) incomplete runs when distributing Inserts;
 - (6) a coupon not backing on to another coupon, or another advertisement or insert for a similar service or product not appearing in the same issue or same page (whether in print or online) as the Advertisement.

In the event of any problem arising in relation to the foregoing the Buyer accepts that the Publisher shall not be obliged to give any compensation or refunds in such instances.

- 4.3 The Publisher has no obligation to supply voucher copies or tearsheets in relation to any print Advertisements and their absence shall not affect the Buyer's liability for the agreed charge.
- 4.4 All orders and bookings are subject to change or cancellation due to production, promotions and editorial schedules. The Publisher reserves the right to decline any order or booking or decline to publish any Advertisement or decline to undertake any Campaign activity.
- 4.5 Without limiting the generality of clause 4.4, where the Publisher has unusual or unexpected business needs (for example, newsworthy events or other special events, such as outbreak of war, major disaster, terrorist attack or other urgent or important news item), the Publisher has the right to postpone the publication, display, delivery, Insertion, and/or distribution of any Advertisement or any Campaign item for a temporary period and the parties shall in good faith negotiate and agree alternative dates for the relevant activity, both parties acting reasonably. Any dispute shall be subject to clauses 14.1 and 14.2
- 4.6 In relation to on-line Advertisements, without prejudice to the Publisher's other rights and remedies, at any time and without giving advance notice to the Buyer, the Publisher may permanently or temporarily move, remove or edit an Advertisement from the Telegraph Network and, in the case of Audience Extension, from the Audience Extension Inventory.
- 4.7 The Publisher may syndicate any Advertisement which may be incidental to a content syndication arrangement which the Publisher may have with a third party.

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- 4.8 The Publisher may show and/or display the Advertisement and/or the Campaign for internal purposes and for marketing its services to other prospective advertisers, including in any public relations materials and direct marketing materials.

5. Buyer's Materials

- 5.1 The Buyer shall submit to the Publisher all materials, content and information in relation to all Advertisements and/or the Campaign in advance of publication or display or delivery or Insertion of any Advertisement or any item of the Campaign in accordance with the Publisher's deadlines and timescales, unless otherwise agreed by the Publisher.
- 5.2 Whilst the Publisher shall exercise reasonable care in relation to the Buyer Materials, the Publisher will not be liable for any loss of or damage to any Buyer Materials.

6. Publisher's Obligations

- 6.1 Notwithstanding any other provision to the contrary, the Publisher shall have and shall retain complete editorial control in relation to all editorial content forming part of the Campaign. This is a paramount right.
- 6.2 Where the Publisher is creating the Advertising Copy, the Publisher shall supply any Advertising Copy to the Advertiser for the Advertiser's comment and feedback (such feedback to be given to the Publisher within the deadlines notified to the Advertiser in writing by the Publisher in each case).
- 6.3 Notwithstanding any other provisions of this Agreement, the Publisher:
- (1) has final editorial approval over all mast heads, straplines, page design, position and location, display dimensions, framing, display environment, graphics used, colours, manner of display, fonts style and size, visibility, text alternatives and tags and other computer language coding; and
 - (2) may refuse or require to be amended or decline to publish any Content if it is not in compliance with the requirements of clause 20.1 or the Rate Card (where applicable).

7. Mistakes and errors

- 7.1 The Buyer must check the correctness of each and every Advertisement and/or the details of the Campaign. In the case of multiple or repeat Advertisements, the Publisher assumes no responsibility for the repetition of an error unless the Buyer has notified the Publisher immediately the error occurs and before the Publisher's deadline for the next Insertion or publication or display or delivery of a Campaign item.

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8. Additional conditions applying to online Advertisements (including on Audience Extension)

8.1 This clause applies where the Campaign or Advertisement includes any website or online or digital activity on the Telegraph Network and in respect of Audience Extension campaigns on Audience Extension Inventory.

8.2 Advertisements must be delivered to TMG in the format prescribed by TMG (the prescribed format is set out in the Rate Card) no later than 3 business days (for standard format) or 5 business days (for rich media format) prior to publication. In the event of late submission of an Advertisement:

- (1) the agreed start date for the first appearance of such Advertisement will be moved to an alternative date to be determined at TMG's sole discretion; and
- (2) the finish date of any campaign as set out in the Insertion Order will not be extended; and
- (3) notwithstanding the provisions of clause 4.1(2), the Charges as set out in the Insertion Order or Term Sheet (as the case may be) will be payable in full.

8.3 Notwithstanding clause 8.1, the Publisher shall not be bound by a stop order or cancellation or postponement of any online Advertisement or the Campaign (or any element of it) unless the stop order, cancellation or postponement is submitted to the Publisher in writing within the deadlines set out in the Rate Card, or if not so specified in the Rate Card, not less than thirty (30) days before the Campaign start date, unless otherwise agreed by the parties in writing.

8.4 The Advertiser (or the Buyer, as the case may be) is responsible for complying with clause 16.9 and the Publisher reserves the right to refuse the publication of non-compliant Advertisement and the Advertiser (or the Buyer, as the case may be) shall nevertheless be liable to pay for the non-compliant Advertisement even if it is refused under this clause.

8.5 Where it is set out in the Campaign Schedule or otherwise agreed by the parties in writing that the Charges are based upon the online traffic or activity relating to the Campaign:

- (1) the Publisher shall generate performance reports (via third party software applications) and the figures in such report shall be the official definitive measure of the Publisher's performance on which the Charges will be based.
- (2) Upon not less than 30 days prior written notice, the Publisher will provide website traffic reports to the Buyer.

9. Further Additional Conditions applying to Audience Extension

9.1 This clause applies where the Campaign includes Audience Extension.

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- 9.2 The Publisher will use third party suppliers to facilitate the Audience Extension in respect of the Advertiser's Advertisements including:
- (1) Accessing advertising inventory on third party websites;
 - (2) Managing brand safety through the use of content controls;
 - (3) The technology used for tagging of users of the Telegraph Network.
- 9.3 In the Campaign Schedule or Insertion Order, the Buyer must provide the Publisher with:
- (1) a blacklist of websites which it does not wish its Advertisements to appear;
 - (2) a list of geographical territories to which the Audience Extension is to be limited;
 - (3) the selection of content risk category.
- 9.4 The Publisher shall take reasonable care in the use of the third party services for Audience Extension and the selection and implementation of the restrictions requested by the Buyer to the Publisher under clause 9.3.
- 9.5 The Publisher shall take reasonable care to ensure that any Audience Extension Inventory does not include any "Barred Inventory" as specified in Schedule C of the IASH Code of Conduct.
- 9.6 Notwithstanding clauses 9.4 and 9.5, the Buyer and the Advertiser acknowledge that given the nature of Audience Extension and the internet and that the services are being provided by third parties, the Publisher cannot give any warranty or guarantee in relation to date of Insertion nor where the Advertisement will appear within the Audience Extension Inventory nor which websites and in which geographical location, nor the content with which it will appear. The Publisher cannot guarantee the efficacy of the controls made available by third parties to manage the restrictions requested by the Buyer under clause 9.3.
- 9.7 The Buyer may issue a written instruction to the Publisher to have an Advertisement removed from a particular website and the Publisher shall make such request of the relevant third party supplier and advise the Buyer when the Advertisement has been removed.
- 9.8 The Publisher will use reasonable endeavours to provide the Buyer on request, relevant audience figures that relate to the Audience Extension. The Buyer shall treat this information as confidential.
- 10. Additional conditions applying to Inserts**
- 10.1 This clause applies where the Campaign or Advertisement includes the publication and/or distribution of Inserts.

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- 10.2 The Buyer must submit samples of the Inserts or Insert dummies for the Publisher's approval prior to the booking. Insert dummies must be supplied on the same material and to the same dimensions as the actual insert. Details of coded inserts must be provided at the time of booking.
- 10.3 Final Inserts must conform to the agreed specification. In the event that non-conforming Inserts are provided by or on behalf of the Buyer the Publisher shall not be obliged to insert non-conforming Inserts, but the Buyer shall in any event remain liable for full charges. If no code is given or if on delivery of the Inserts, instructions do not correspond with the given codes, the Publisher shall not be responsible for incorrect Insertion nor for fulfilling any coding requests.
- 10.4 Print figures for Insert runs given by the Publisher are derived from current print and circulation information and are estimates only. If there are excess quantities, the Buyer may either collect or re-run excess Inserts at the next available opportunity. The Buyer must notify the Publisher of its decision within 7 days of the relevant insertion run. Unless the Publisher receives written instructions to the contrary, any unused inserts will be destroyed within 7 days after the date of the relevant Insertion run.
- 10.5 All deliveries should include an extra quantity to each delivery address to allow for 1% wastage. Failure to supply this wastage allowance could result in the ordered quantity being used as waste. The Buyer remains liable for payment of the charges in full.
- 10.6 Short deliveries will be billed at full quantity rates.
- 10.7 The Publisher's certificate of insertion issued on completion of each run shall be definitive of quantity in relation to each Insert run.
- 10.8 Inserts must be packaged and delivered to the Publisher in accordance with the Publisher's instructions and delivery deadlines. Failure to do so may result in non-insertion or cancellation of the booking and the Buyer will remain liable for full charges.
- 10.9 Reruns of Inserts will be treated as a separate booking and charged at the agreed rate.
- 11. Additional Conditions relating to Reader Offer Promotions**
- 11.1 This clause applies where the Campaign or Advertisement includes a Promotion.
- 11.2 Where a Promotion forms part of the Campaign, such Promotion shall be offered to readers on terms and conditions agreed by the parties ("**Offer Copy**") and the Buyer shall ensure that the product or service which is offered under the Promotion conforms to and perform in all respects in accordance with the Offer Copy and any other relevant specifications and standards.
- 11.3 The Buyer shall not make or allow to be made on its or the Advertiser's behalf the same or similar offer to the Promotion to consumers directly or indirectly through any third party during the promotion period in the United Kingdom, in

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order to preserve the unique contemporaneous appeal of the Promotion to the Advertiser's readers.

11.4 The Buyer shall warrant that:

- (1) the Advertiser has made an accurate and reasonable assessment of the likely take-up by readers of the Promotion;
- (2) the Advertiser has full power and authority to enter into and perform this Agreement and to supply the item or service which is the subject of the Promotion;
- (3) the Advertiser holds adequate stocks / has adequate availability of item / service promoted given its assessment of likely take up. The Advertiser is obliged to make available to all eligible participants in the Promotion the item or service which is the subject of the Promotion;
- (4) the Advertiser has adequate logistical processes in place to meet and supply the likely demand for Promotion in accordance with the delivery times specified in the Promotion offer copy (if any);
- (5) if the Promotion is for or includes a service, the service is performed with reasonable skill and care and according to the highest industry standard;
- (6) if the Promotion is for or includes a chattel, it must be free from defects in materials and workmanship and of the highest industry standard;
- (7) if the Promotion is for or includes a chattel that requires delivery and installation, delivery and installation shall be undertaken with all reasonable skill by personnel of appropriate expertise and experience;
- (8) if the Promotion is of or includes any element of travel, holiday or accommodation:
 - (a) the Advertiser has and shall maintain up-to-date travel industry insurance bond and registration (for example, ABTA, FTO, AITO, ABTOT) sufficient to cover all potential liability to customers and/or the Publisher in connection with the Promotion; and
 - (b) the Advertiser holds and shall maintain current up-to-date IATA or ATOL accreditation for any travel elements of the Promotion, if and to the extent that it is required to hold such accreditation;
- (9) the Advertiser provides all eligible participants with all necessary documents and information relating to the subject of the Promotion and otherwise complies with all relevant Applicable Regulations; and
- (10) should the Advertiser receive any oral, written or telephone complaint about the Promotion from any participant or from any relevant trading standards authority, it immediately notifies the Publisher, delivers any

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relevant documentation and handles all such complaints promptly and efficiently, and in accordance with Publisher's reasonable instructions.

12. Payments and charges

- 12.1 The Buyer shall pay the Charges together with any associated agency commission without deduction or set off.
- 12.2 All sums payable under this Agreement are exclusive of any value added tax that may be payable by either party and refer to UK editions only. Value added tax will be added to the sum payable on the invoice at the relevant rate on the date of invoicing. If any Campaign, Advertisements and/or Inserts are run in non-UK editions of the Newspapers, these will be subject to TMG's then prevailing rates for non-UK editions.
- 12.3 In the absence of any other specific arrangement between the Publisher and the Buyer (as evidenced in writing), payment in respect of the Advertisement and any item of the Campaign (including any associated production, late copy and box number charges) is due in advance of publication or insertion except where the Publisher has agreed to allow credit to the Buyer, in which case the due time for payment shall be no later than 3pm:
- (1) if the Buyer is a recognised agency under the Agency Recognition Scheme of the News Media Association, on the last working day of the month following that in which the advertisement appeared (so that, for example, payment for advertisements published during June 2016 would be due by 3pm on 31 July 2016); or
 - (2) in any other case, on the seventh day following the date of the Publisher's invoice issued on or after the date on which the advertisement appeared. Full details of each remittance are to be supplied to the Publisher by the due time.
- 12.4 Payment shall mean the receipt by the Publisher at its principal place of business (or elsewhere as it may direct) of cash or a cheque of cleared funds or at its bank of moneys transferred electronically in cleared funds or through the clearing banks' giro credit system or BACS. The Publisher reserves to itself a right to recharge the Buyer any charges it incurs resulting from the Buyer's chosen method of payment.
- 12.5 If the Buyer is registered for VAT in a member state of the European Union other than the United Kingdom and wishes to be invoiced by the Publisher with VAT charged at a rate of zero or such other rate as may be lower than the standard rate of VAT for the time being in force in the United Kingdom, the Buyer must with its order furnish the Publisher with the Buyer's VAT registration number in its member state.
- 12.6 Although the Publisher makes every effort to render invoices in the ordinary course, payment for the Advertisement, Insertion and the Campaign shall be made as detailed above whether or not the Buyer shall have received the

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Publisher's invoice or provided the Publisher with an order number at the time the Advertisement or item of the Campaign was booked.

- 12.7 Any overdue payments of the Charge and other monies payable under this Agreement shall bear interest at the rate of 4% above the base rate of the Royal Bank of Scotland plc (or such other bank as nominated by the Publisher from time to time)(such rate to be calculated monthly on a compound basis). Interest shall accrue on and from the day on which payment was due until the day when payment is actually made (both before and after any judgment) or until payment is accepted by the Publisher as the case may be.
- 12.8 As part of its normal business procedures the Publisher reserves the right to make searches and/or other enquiries about the Buyer using the services of credit reference agencies. The Buyer acknowledges that such enquires may be made and that agencies may keep copies of the searches which will be shared with other parties.
- 12.9 Where the Buyer is the Advertiser's advertising agency or media buyer or is acting for the Advertiser in some other representative capacity, notwithstanding clause 2.1, the Buyer hereby grants to the Publisher the right of subrogation of all and any debts owed by the Advertiser to the Buyer in relation to or associated with the order or booking for the Advertisement made with the Publisher. Should the Publisher exercise its rights of subrogation, it shall be without prejudice to any of its other rights or remedies available under this agreement or the general law.

13. Cancellations and Amendments

- 13.1 The Publisher shall not be bound by a stop order or cancellation or postponement of any Advertisement or the Campaign (or any element of it) or the Insertion run unless the stop order, cancellation or postponement meets the requirements specified on the Rate Card or, in the case of online Advertisements the provisions of clause 8.3 shall apply.
- 13.2 The Buyer shall remain liable for payment for a stopped, cancelled or postponed Advertisement or the Campaign (or any element of it) or Insertion run, if the relevant instruction is received by the Publisher after the deadline (even if such instruction is followed by the Publisher).
- 13.3 Should an Insertion run be cancelled or moved, the Buyer shall be liable for any production charges that may occur as a result of this.

14. Disputes

- 14.1 Any other matter of complaint, claim or query must be raised with the Publisher in writing within seven days following:
- (1) In the case of any Advertisement or Insert, the date of insertion or publication or display of the Advertisement or the date on which it is claimed the Advertisement should have appeared or the Insert run should have occurred;

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- (2) In the case of any other item of the Campaign, the date of the delivery of the particular item within the Campaign or the date on which the Buyer claims the item of the Campaign should have been delivered;
 - (3) In the case of a disputed invoice, the date of the receipt by the Buyer of the disputed invoice.
- 14.2 The Publisher's maximum liability for any complaint, claim or query referred to in clause 14.1 is limited to giving a credit for its charge for the advertisement or (in an appropriate instance) of publishing the Advertisement or redelivering the Campaign item for a second time without charge. Any complaint, claim or query shall not affect the liability of the Buyer for payment by the due time of the Charges for that item and all other Campaign items. Once any dispute in respect of any item of the Campaign has been resolved, payment for that item will, if the original due date has then already passed, be due within three working days.

15. Intellectual Property

- 15.1 The Buyer warrants that it has and it has secured for the benefit in relation to the Publisher all necessary, licenses, permissions, clearances, consents, right, title, interest and Intellectual Property Rights for in relation to the Buyer Materials and, where relevant, in relation to any Promotion, including any trade marks and branding of the Advertiser to enable the Publisher to perform and meet its obligations and enjoy its rights and benefits under this Agreement.
- 15.2 If the Publisher has agreed to provide the creative work for the Advertisement or Campaign, all Intellectual Property Rights in and to all Content owned by or created by the Publisher pursuant to this Agreement (but not the Buyer Materials) are reserved to the Publisher and shall remain under the exclusive ownership of the Publisher, or its licensors (as the case may be).
- 15.3 The Buyer shall not use and shall not permit any other person to use any of the Publisher's Intellectual Property without the prior written consent of the Publisher. Such consent may be given or withheld, and if given, may be given upon such terms and conditions (including as to payment) determined in the Publisher's absolute discretion.
- 15.4 If the Buyer proposes to use any Content developed by the Publisher outside the advertising Campaign proposed in the order (whether during the Term, or following the expiry of the Term), then such use may only take place provided that appropriate remuneration and licensing provisions are agreed in writing between the parties in advance.
- 15.5 The Buyer shall promptly inform the Publisher of any suspected unauthorised use of the Publisher's Intellectual Property Rights referred to in Clause 15.2.
- 15.6 The Publisher has the sole right to decide what action (if any) to take in relation to any unauthorised use referred to in clause 15.5 and sole control of the conduct of all proceedings and shall do so at its own expense. If requested, the Buyer shall give the Publisher all reasonable assistance to enable it to do so.

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- 15.7 The Publisher may disclose the Buyer's and/or the Advertiser's identity to any third party who is claiming that any material submitted by the Buyer is in breach of any of the warranties set in clause 15.1.
- 16. Data Management and Data Protection**
- 16.1 For the purpose of this Agreement:
- (1) **Cookies** mean cookies and all similar technologies for storing information, including flash cookies, web beacons or bugs (including transparent or clear gifs) and includes Retargetting Cookies;
 - (2) **Data Protection Laws** means the *Data Protection Act* 1998 and the Data Protection Principles set out in that Act, when it comes into effect, on 25 May 2018, the General Data Protection Regulation 2016 (Regulation (EU) 2016/679), the *Privacy and Electronic Communications (EC Directive) Regulations* 2003 and any associated regulations or subordinate legislation and any other applicable data protection and privacy legislation, regulations and guidelines applicable in any place territory where the Advertisement is targeted;
 - (3) **PECR** means The Privacy and Electronic Communications (EC Directive) Regulations 2003 and the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011, as applicable.
- 16.2 The parties agree that they will at all times comply with the provisions and obligations imposed by Data Protection Laws. All personal data acquired by either party from the other will be returned to the disclosing party on request.
- 16.3 Whilst the Publisher will use reasonable endeavours to forward to the Buyer any responses that it received to Advertisements from individuals wishing to contact the Advertiser regarding the Advertisement (subject to receiving the requisite consents from those individuals), the Publisher accepts no liability in respect of any loss or damage that arises (or is alleged to have arisen) as a result of any delay or omission in forwarding such responses.
- 16.4 Each party agrees to respond promptly to the other in dealing adequately with all enquires received relating to data protection.
- 16.5 The Buyer consents to the Publisher and any company within its group of companies using the information which it provides when inserting an advertisement to contact the Buyer and/or the Advertiser by email, facsimile, mail or telephone, about special advertising rates and features that the Publisher may offer from time to time. If the Buyer does not wish to be contacted by the Publisher or has any queries, the Buyer shall contact the Publisher or email data.protection@telegraph.co.uk.
- 16.6 The Buyer permits the Publisher to electronically tag and use such technology as the Publisher considers appropriate with the online content to enable the Publisher to collect such data as the Publisher requires or desires in relation to

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readership of or “clicks on” its content. Such data (but not any personal data) shall be made available to the Advertiser and Buyer.

16.7 Publisher owns all aggregated data (and the Intellectual Property Rights in such data) generated (e.g. via the placement of Cookies) by the online activity of users of:

- (1) the Telegraph Network and any Audience Extension Inventory; and
- (2) mobile devices or e readers (and their applications) upon which users access Advertisements;

collected by any third parties (“**Usage Data**”).

16.8 The Buyer shall not use (including without limitation the creation, categorisation or re-targeting of data segments), or permit any third party to use Usage Data without:

- (1) having satisfied the Publisher’s security approval process; and
- (2) the Publisher’s prior written approval.

Under no circumstance shall the Buyer use/store, or permit any third party to use/store the Usage Data for more than 7 days.

16.9 (1) Whenever any content (including to any Advertisement or link to another website) provided by or relating to the Advertiser (including Buyer Materials) (“**Third Party Content**”) is contained on any Telegraph Network or any Audience Extension Inventory, and that Third Party Content triggers the use of any Cookies or any other tracking device (other than a Retargetting Cookie) on or via Telegraph Network or any Audience Extension Inventory, the Advertiser will be fully responsible for ensuring that the use of those Cookies complies with the PECRs, including, ensuring that clear and comprehensive information is provided to visitors to the site about the use of any Cookies and ensuring that visitors’ consent is obtained to the use of those Cookies, where required by the PECRs. The Publisher shall be fully responsible for the placement and use of Retargetting Cookies and ensuring that the use of the Retargetting Cookies meet the requirements of this clause 16.9(1).

- (2) In addition, the Advertiser (or the Buyer, as the case may be) is responsible for ensuring that the Adchoices icon appears and is active on all such Advertisement. The Publisher reserves the right to refuse the publication of non-compliant Advertisement and the Advertiser (or the Buyer, as the case may be) shall nevertheless be liable to pay for the non-compliant Advertisement even if it is refused under this clause.

16.10 The Publisher may make available to its users the means for turning off Cookies (where used) and no liability shall attach to the Publisher for loss of data as a result of this.

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17. FSMA

- 17.1 This clause applies where the Campaign or Advertisement includes the marketing, advertising promotion and/or sale of financial and/or insurance services or products or investments (“**Financial Products**”).
- 17.2 The Publisher is not authorised to carry on investment business in the United Kingdom or elsewhere and the Publisher shall ensure that in promoting any Financial Products, it shall make no express nor implied representation that any of those Financial Products are approved or endorsed by the Publisher and the Buyer will make explicitly clear that the Financial Products is solely promoted by the Advertiser.
- 17.3 The Buyer warrants that the Advertiser is an authorised person within the meaning of the FSMA and that the promotion of the Financial Products in accordance with the Advertisement and Campaign is permitted under the FSMA.
- 17.4 If the Buyer advertises a “direct offer” product where no financial advice will be given and in order that the Publisher can comply with the FSMA, the Buyer warrants that the “direct offer” product shall only be offered as a result of a full review of the market place confirming that such products are the best of their type that are available in the marketplace. This warranty applies on and from the commencement of this Agreement up to and including the end of the life of that product. The Buyer will provide the Publisher with written confirmation of this in respect of each individual “direct offer” product.
- 17.5 The Buyer accepts full responsibility for compliance with the FSMA and the Buyer will not do or omit to do any act or thing within its reasonable control which will, or would be likely to, cause the Buyer or the Publisher to breach any of its or their provisions.

18. Bribery Act 2010

- 18.1 Each party shall discharge all of its obligations under this Agreement and shall otherwise conduct all of its activities relating to this Agreement in accordance with the Bribery Act 2010, as amended from time to time and any subordinate legislation, rules, guidance and notes issued thereunder (“**Bribery Act**”). The Buyer must ensure that the Advertiser observes and complies with the provisions of this clause and the Bribery Act.
- 18.2 Without prejudice to the generality of clause 18.1, no party shall (whether by act or omission) commit any breach of the Bribery Act in connection with its activities relating to this Agreement nor request that the other party(ies) (whether by act or omission) commits any breach of the Bribery Act (including, the payment of facilitation payments in order to secure customs clearance for deliveries).
- 18.3 Each party shall have and shall maintain in place throughout the Term adequate procedures under the Bribery Act, to ensure compliance with the Bribery Act, and will enforce them where appropriate.

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- 18.4 Any breach by a party of this clause 18 shall constitute a material breach by that party of this Agreement which is not capable of remedy and in such circumstances, the other party shall be entitled at its discretion (subject to clause 18.5) to immediately terminate this Agreement (together with any or all other agreements from time to time in force between the parties) by service of written notice on the party in breach.
- 18.5 When exercising any right of termination available under clause 18.4, the applicable party shall act in a reasonable and proportionate manner having regard to matters such as the gravity of the breach in question; the identity of the person responsible for that breach; and whether in the circumstances, action other than termination of this Agreement would be appropriate.

19. Modern Slavery

- 19.1 In the performance of their obligations under this Agreement, each party shall comply with the Modern Slavery Act 2015 (as amended from time to time and any subordinate legislation, rules, guidance and notes issued thereunder) ("**Modern Slavery Act**").
- 19.2 Without prejudice to the generality of clause 19.1, no party shall (whether by act or omission) commit any breach of the Modern Slavery Act in connection with its activities relating to this Agreement nor request that the other party(ies) (whether by act or omission) commits any breach of the Modern Slavery Act.
- 19.3 Any breach by a party of this clause 19 shall constitute a material breach by that party of this Agreement which is not capable of remedy and in such circumstances, the other party shall be entitled at its discretion (subject to clause 19.4) to immediately terminate this Agreement (together with any or all other agreements from time to time in force between the parties) by service of written notice on the party in breach.
- 19.4 When exercising any right of termination available under clause 19.3, the applicable party shall act in a reasonable and proportionate manner having regard to matters such as the gravity of the breach in question; the identity of the person responsible for that breach; and whether in the circumstances, action other than termination of this Agreement would be appropriate.

20. Buyer Warranties

- 20.1 The Buyer warrants that all Buyer Materials and the production, reproduction, publication and/or display of the Advertisement in any medium:
- (1) are factually correct, clear and conspicuous, and all claims can be substantiated and is not fraudulent, misleading or deceptive;
 - (2) do not include or entail misleading actions, misleading omissions, aggressive commercial practices or actions that contravene the requirements of professional diligence or in any other way contravene the requirements of ***The Consumer Protection from Unfair Trading Regulations 2008***;

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- (3) comply with the requirements of all relevant laws, legislation including subordinate legislation, codes and rules of statutorily recognised regulatory authorities applicable in the United Kingdom, the European Union and any territory where the Advertisement is targeted, including the *British Code of Advertising Practice* and the codes, rulings, determinations and requirements of the Advertising Standards Authority;
- (4) do not contain, or contain links to, content which promotes or advertises illegal or immoral activity or product or conduct, including discrimination, illegal substances; pornography; racism, hate, "spam," mail fraud, pyramid schemes, gambling or gaming, firearms, military recruitment, political candidates;
- (5) is not libellous, defamatory, contrary to public policy, or otherwise unlawful in the United Kingdom and/or anywhere where the Advertisement is served or targeted;
- (6) do not infringe or violate any copyright, trade mark, any personal or proprietary right or the privacy or confidentiality rights of any person;
- (7) is not obscene, offensive, indecent, threatening, menacing, abusive;
- (8) do not contain any names or pictorial representation (photographic or otherwise) of any living person and/or any copy by which any living person is or can be identified, unless the Advertiser has obtained the consent of such living person to make use of such name, representation and/or copy;
- (9) do comply with any legal or moral obligations placed on the Publisher or the Advertiser wherever in the world;
- (10) will not, in any other way render the Publisher liable to any civil or criminal proceedings during and after the expiration of the Campaign and/or this Agreement; and
- (11) in relation to the Buyer Materials submitted to the Publisher, does not contain any virus or other harmful code or will otherwise impair or harm the Telegraph Network or Publisher's computer systems or any third party computer system.

This clause 20.1 shall not apply to the extent that the Publisher has altered or amended the content of the Advertisement without the prior written consent of the Buyer.

- 20.2 The Publisher may (at its discretion) disclose the Buyer's and/or Advertiser's identity to any third party who is claiming that any material submitted by the Buyer is in breach of any of the warranties set out in clause 20.1.
- 20.3 The Buyer warrants that it has full power and authority to enter into this Agreement and perform its obligations hereunder.

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21. Buyer's Insurance

- 21.1 The Buyer shall ensure that at all times it has sufficient insurance to cover all its liability under this Agreement and in law, including public liability insurance where a public event forms part of the Campaign. Upon request, the Buyer shall produce copies of the insurance policy to the Publisher confirming the insurance.

22. Indemnities and liabilities

- 22.1 Subject to clause 22.3, neither party shall be liable, whether in tort, contract or otherwise, for any loss of profit, opportunity, goodwill, anticipated saving, revenue and/or any other loss which is indirect, consequential or economic regardless of whether it was or was not foreseeable and regardless of whether or not a party was notified of its possibility.
- 22.2 Subject to clause 22.3, the Publisher shall not be liable to the Buyer or the Advertiser, whether in tort, contract or otherwise, for any loss of profit, loss of opportunity, loss of goodwill or business loss incurred due to the non-insertion or shortfall in insertion of the Advertisement or running of or failure to run the Campaign.
- 22.3 Nothing in these conditions shall exclude or restrict either the Publisher's or the Buyer's liability for death or personal injury resulting from the negligence of the relevant party or of its employees while acting in the course of their employment or shall exclude or restrict either party's rights, remedies or liability under the law governing these conditions in respect of any fraud.
- 22.4 Subject to clause 22.3 and excluding the Publisher's liability in relation to matters arising under clause 14.1 (which is exclusively dealt with in clause 14.2), the Publisher's maximum aggregate liability for any loss or damage arising out of or in relation to any advertisement ordered by or on behalf of the Buyer whether in contract, tort or otherwise shall not exceed the 1½ times the total amount of the charges paid by or on behalf of the Buyer in relation to the Insertion Order.
- 22.5 Except as expressly set out in these conditions, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the obligations of the Publisher are excluded insofar as it is possible to do in law.
- 22.6 The Buyer will indemnify and keep the Publisher indemnified against all claims, costs, proceedings, demands, losses, damages, expenses or liability whatsoever arising directly or indirectly as a result of any breach or non-performance of any of the representations, warranties or other terms contained in these conditions or implied by law and against any claim made by the Advertiser against the Publisher arising from this Agreement and in relation to any breach by the Buyer of the Advertiser of any statutory duty.

23. Termination

- 23.1 A party (other than the Defaulting Party) may terminate this Agreement at any time by written notice to the other party if any of the following apply:

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- (1) a party ("**Defaulting Party**") fails to carry out any provision of this Agreement, the failure is capable of remedy and the Defaulting Party does not remedy that failure within 7 days after written notice to the Defaulting Party requiring it to be remedied;
 - (2) the Defaulting Party fails to carry out any material provision of this Agreement and the failure is not capable of remedy;
 - (3) the Defaulting Party breaches a warranty given in this Agreement or a warranty given by the Defaulting Party in this Agreement is materially incorrect;
 - (4) it becomes unlawful for the Defaulting Party to perform its obligations under this Agreement;
 - (5) 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 the Defaulting Party or the Defaulting Party 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
 - (6) the Defaulting Party 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 a receiver is appointed over the Defaulting Party or its assets or any part thereof or a resolution is passed for such appointment or an administration order is made in relation to the Defaulting Party.
- 23.2 On termination of this Agreement each party retains its rights against the other parties in respect of any past breach, in addition to any other rights, powers or remedies provided by law.
- 23.3 On termination the Buyer shall be liable for payment of all Charges as referred to in clause 13, as if a cancellation has taken effect.
- 23.4 Upon expiry or termination of this Agreement for any reason, each Party shall promptly deliver to or otherwise dispose of as directed by the other Party or its duly authorised representative any and all materials and property belonging or relating to the other Party and all copies of the same.

24. Electronic Communications

- 24.1 The parties may communicate with the other by electronic means using the following protocol:
- (1) The user identification of a sender contained in an electronic communication must be sufficient to verify the identity of the sender and the authenticity of the communication;

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- (2) An electronic communication sent containing the user's identification and establishing the user as its originator and has the same effect as a document containing the user's written signature; and
- (3) An electronic communication, or any computer printout of it, is proof of the authenticity of the original document of the electronic communication.

25. General

- 25.1 Nothing in this Agreement is intended to create a partnership or joint venture of any kind between the parties or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability or the exercise of any right or power) without the express written authority of the other in addition to this Agreement.
- 25.2 The provisions of those clauses intended to have continuing effect shall continue in full force and effect following the termination or expiry of this Agreement.
- 25.3 The terms and conditions set out herein apply to each order or contract for the Advertisement, insertion or Campaign. If there is any conflict or inconsistency in the terms and conditions of this Agreement, these terms and conditions (or, if later, the revised terms and conditions published by the Publisher pursuant to sub-clause 25.4 below) shall prevail over any terms contained in the order or booking. Any terms or conditions stipulated on the order form or elsewhere by the Buyer are void insofar as they are inconsistent with these Terms and Conditions, unless agreed in writing by the Publisher.
- 25.4 The Publisher reserves the right to change the terms and conditions at any time and the Buyer should revisit the terms and conditions before it places an order or makes a booking for an Advertisement, Insertion or Campaign at www.telegraph.co.uk to ensure that it is fully aware of the current terms and condition.
- 25.5 Neither party may assign or sub-contract any of its rights or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.
- 25.6 Calls to and from the Publisher may be recorded.
- 25.7 The failure of the Publisher to enforce any term of or right arising pursuant to this Agreement does not constitute a waiver of such term or right and shall in no way affect the Publisher's later right to enforce or exercise the term or right.
- 25.8 Apart from the Advertiser (if not a direct party to this Agreement), no person other than a party to this Agreement may enforce this Agreement by virtue of the *Contracts (Rights of Third Parties) Act 1999*.

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- 25.9 Any modification of this Agreement shall be effective only if agreed in writing and signed by both parties and the intention to amend this Agreement is clearly expressed.
- 25.10 If any provision of this Agreement is determined to be illegal or unenforceable by any court of competent jurisdiction it shall be deemed to have been deleted without affecting the remaining provisions.
- 25.11 This Agreement shall be governed by and construed in accordance with English law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.