

## CME AUTOMOTIVE MARKETING LIMITED STANDARD TERMS & CONDITIONS FOR MEDIA BUYING AND DIGITAL MARKETING SERVICES

These CMe Automotive Marketing Limited Standard Terms and Conditions for Media Buying and Digital Marketing Services (“**Conditions**”) are entered into between CMe Automotive Marketing Limited (“**CME**”) and its clients (“**Client**”) and states the terms and conditions on which CME is prepared to provide the Services to the Client.

### 1. Definitions and Interpretation

1.1 In this Agreement, the following words and phrases shall have the following meanings:

“**Advertising**”: all the Client’s advertising intended for display by the Client, for which CME performs the Media Buying Services for the Client under this Agreement;

“**Advertising Regulator**”: Office of Communications (‘Ofcom’), Advertising Standards Authority (‘ASA’) and any other UK regulator or statutory and regulatory body relevant to the Advertising and Services;

“**Advertising Regulation**”: any present or future codes of practice, including the Broadcast Code of Advertising Practice (‘BCAP’) and the Code of Advertising Practice (‘CAP’), adjudication, decision, direction or rule of any Advertising Regulator, including any modifications, amendments or extensions thereof in force from time to time;

“**Agreement**”: this agreement, which is comprised of these Conditions and the Booking Terms;

“**Client Materials**”: data, equipment, software, documents and any other materials or information owned by or licensed to the Client that are provided by the Client to CME in connection with the provision of the Services;

“**Confidential Information**”: all confidential information (however recorded or preserved) disclosed by a party to the other party in connection with the Services, including the existence and terms of this Agreement; any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party; (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party; and (iii) any information developed by the parties in the course of carrying out this Agreement;

“**Data Protection Legislation**”: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

“**Deliverable**”: an asset to be delivered as part of the Digital Marketing Services other than content including a website, intranet or extranet to be developed by CME for the Client, as set out in the Booking Terms;

“**Digital Marketing Services**”: the strategic consultancy or digital creative services, including online media, PR, email marketing, viral marketing and seeding, the development of a Deliverable, website maintenance and hosting, as set out in the Booking Terms (where applicable);

“**Fees**”: the fees payable by the Client for the supply of the Services, as set out in the Booking Terms.

“**Force Majeure Event**”: circumstances beyond the reasonable control of a party to this Agreement which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party’s), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, volcanic activity, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors;

**“Intellectual Property Rights”:** the following rights, wherever in the world enforceable including, in each case, whether registered or unregistered and including all applications and rights to apply for and be granted reversions, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection in: (i) any patents including any applications for the same; (ii) any trade marks (whether or not registered) including any applications for registration of the same; (iii) inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration; (iv) copyright or design rights (whether registered or unregistered including where applicable any applications for the same); (v) database rights; (vi) any goodwill in any trade or service name, trading style or get-up; and (v) any and all other intellectual property or proprietary rights;

**“Media Buying Services”:** the media buying and/or media design or production services to be provided by CME to the Client, as set out in the Booking Terms (where applicable);

**“Payment Terms”:** the terms of payment of the Fees by the Client to CME, as set out in the Booking Terms;

**“Services”:** the Media Buying Services and/or the Digital Marketing Services (where applicable) to be provided by CME to the Client, as set out in the Booking Terms;

**“Suppliers”:** the media owners, publishers, exchanges, platform providers, search engines, ad-servers, campaign partners and related technology and data providers who will publish, distribute or play the Advertising, as specified in the Booking Terms;

**“Suppliers’ Terms”:** the Suppliers’ standard terms of business or service level agreement, or any other individual conditions, terms or contracts that are required by the Suppliers to be entered into by CME with the Suppliers for the benefit of the Client;

**“Term”:** the period from the Commencement Date until the termination of this Agreement;

**“Third Party Materials”:** any materials in any Advertising created by the Client which are owned and licensed by a third party;

**“UK GDPR”:** has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and

**“Working Day”:** a day (other than a Saturday or a Sunday) on which the clearing banks in the City of London are open for business.

1.2 In this Agreement (except where the context otherwise requires):

- 1.2.1 the clause headings are included for convenience only and shall not affect the interpretation of this Agreement;
- 1.2.2 use of the singular includes the plural and vice versa;
- 1.2.3 a reference to “**writing**” or “**written**” in this Agreement includes email but excludes fax;
- 1.2.4 any phrase introduced by the terms “**including**”, “**include**”, “**in particular**” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 the use of any gender includes the other genders.

1.3 Unless otherwise defined above, all capitalised terms herein shall have the meanings set out in the attached Booking Terms.

1.4 References to any statute or statutory provision include a reference to that statute or statutory provision as from time to time amended, extended, or re-enacted and to any subordinate legislation made from time to time under that provision.

## 2. Basis of Contract and Term

2.1 This Agreement shall commence on the Commencement Date and shall continue until terminated in accordance with clause 14 (Termination).

2.2 Other than as may be incorporated by law, no other terms or conditions shall apply in

relation to the appointment of CME as the Client's agent or service provider.

2.3 On the Client's signature to this Agreement, the Client shall be deemed to have accepted the Conditions unconditionally and no variation to them shall be valid unless expressly agreed to in writing and signed by an authorised representative of CME.

2.4 For each subsequent appointment of CME as agent or service provider of the Client, the return of the Booking Terms will be all that is required as these will be subject to the Conditions, unless otherwise specified by CME.

### **3. Exclusive Appointment**

CME is appointed on an exclusive basis in respect of the provision of the Services and the Client agrees not to appoint any third party to provide the Services (or any similar media buying services including print, TV, out of home and radio, or similar digital marketing services) during the Term, and nor shall the Client undertake such services on its own behalf.

### **4. Services**

4.1 The specific terms of the Services shall be agreed by the parties and set out in writing in the Booking Terms.

4.2 Unless otherwise agreed by the parties in writing, CME shall not under any circumstances be responsible for:

- 4.2.1 the preparation, content, production or supply of copy for any of the Advertising;
- 4.2.2 the preparation or provision of any terms of use, privacy policies or other terms or conditions that may need to be prepared and provided in respect of the Advertising;
- 4.2.3 the implementation or administration of any promotions, competitions or prize fulfilment or monitoring of social media;
- 4.2.4 user generated content or moderation or review; or
- 4.2.5 any materials once such materials are released or posted in the public domain as requested or approved by the Client, including via seeding materials on social media (being any digital platform which allows individuals or businesses to post content for viewing by others) and/or video sharing websites or the use of internet-based "widgets" (and as such, CME shall not be responsible for ensuring the accuracy of what any third party publishes or any other resulting third party acts or omissions), except, in each case, where specifically agreed by the parties in the Booking Terms.

4.3 In supplying the Services, CME shall:

- 4.3.1 use reasonable endeavours to perform the Services in accordance with the service description set out in the Booking Terms;
- 4.3.2 ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Digital Marketing Services are of satisfactory quality and are fit for purpose; and
- 4.3.3 use reasonable endeavours to meet any performance dates specified in the Booking Terms, but any such dates shall be estimates only and time for performance by CME shall not be of the essence of this Agreement.

### **5. Client's obligations**

5.1 The Client shall:

- 5.1.1 give CME clear briefings and ensure that all information and materials given to CME for use in the course of the Services, including those included in the Booking Terms, are complete and accurate;
- 5.1.2 co-operate with CME in all matters relating to the Services at all times, ensuring that its creative agencies and other communications suppliers also co-operate with CME;

- 5.1.3 deliver all Advertising and/or Client Materials (at the Client's cost) to CME in the form and at the place (and within the time) specified by CME;
- 5.1.4 unless a specific time frame for the Client's response is specified, respond promptly to any request by CME for information or approval;
- 5.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services to be performed before the Commencement Date and during the Term; and
- 5.1.6 comply with:
  - 5.1.6.1 any additional obligations set out in the Booking Terms; and
  - 5.1.6.2 all applicable law and Advertising Regulation.

5.2 To the extent that the Client does not fulfil its obligations under this Agreement ("Client Default"), then (without prejudice CME's rights and remedies) CME shall have the right to suspend performance of the Services until the Client remedies the Client Default and CME will be relieved of its obligations to the Client to the extent that CME is prevented from, or delayed in, performing the Services in accordance with this Agreement. CME shall not be liable for any damages, costs, charges or losses sustained by the Client arising directly or indirectly from any failure or delay of the Client or its other suppliers or representatives to fulfil its obligations under this Agreement, and shall be reimbursed by the Client on written demand for any costs or losses sustained or incurred by CME arising directly or indirectly from the Client Default.

## **6. Media Buying Services - Dealings with Suppliers**

6.1 CME is authorised by the Client to accept and enter into the Suppliers' Terms on behalf of the Client, acting as its agent, without prior reference to the Client.

6.2 The Client acknowledges that all of CME's dealings with Suppliers in placing orders shall be on the relevant Suppliers' Terms, which are non-negotiable. The Client agrees that such Suppliers' Terms shall be binding on the Client as if they were incorporated into this Agreement, and CME shall have no liability to the Client in respect of any act or omission of any Supplier, or for any discrepancy or non-conformance between the terms of this Agreement and the Supplier's Terms. Copies of the Suppliers' Terms shall be provided on request and the Client shall not instruct CME to undertake any activity that may, or will, infringe them.

6.3 The Client understands and acknowledges that some Suppliers may restrict users from engaging in certain activities and/or displaying certain content on or through the use of the Suppliers' services and/or require certain specific privacy disclosures. The Client agrees to abide by such requirements where applicable, and agrees that CME is not responsible for any activities undertaken by the Client, or that are approved by the Client, that violate such requirements. Further, the Client agrees that it will ensure that its website(s) will feature an easy-to-understand privacy policy and, if applicable, any other privacy disclosures that are necessary to comply with all applicable laws and regulations (including any applicable industry self-regulations) generally, as well as any specific requirements of any Supplier.

## **7. Media Buying Services - Approvals and Authority**

7.1 CME shall not make any media bookings on behalf of the Client, nor shall it incur any third party expenditure for which the Client shall be billed (except messenger/delivery costs), without first obtaining:

- 7.1.1 the Client's approval in writing; or
- 7.1.2 signed Booking Terms from the Client.

7.2 Approval may be made in writing where necessary without the need of signed Booking Terms where it would be impractical, for example due to short deadlines that have to be met, and such approval shall be signed by an authorised representative of the Client.

7.3 The Client's written approval of the Booking Terms and any related estimates will constitute CME's authority to make reservations and contracts for space, time and other facilities with Suppliers under the Suppliers' Terms required by Suppliers.

7.4 CME will notify the Client promptly of any changes in the Booking Terms required by the Suppliers, including the Supplier Fees and the Advertising, and will seek further written approval from the Client for any such change before accepting the same on the Client's behalf.

#### **8. Cancellation or Variation of the Booking Terms**

8.1 The Client may request CME to cancel or amend any or all Booking Terms in progress. Such request must be made in writing and CME will take reasonable steps to comply with any such written request provided (in the case of the Media Buying Services only) that CME is able to do so within its contractual obligations under the Suppliers' Terms.

8.2 In the event of any such request for cancellation or amendment, the Client shall:

- 8.2.1 reimburse CME for any costs, charges or expenses incurred by CME up to the date of the request, and also beyond which CME is committed in any Booking Terms to action such request;
- 8.2.2. in the case of Media Buying Services only, pay any charges imposed on CME by the Suppliers arising under the Suppliers' Terms from such cancellation or amendment;
- 8.2.3 in the case of a request for cancellation, pay any outstanding Supplier Fees, CME Fees or approved costs (pursuant to clause 9.4) in respect of the cancelled Booking Terms only, which shall be payable in accordance with clause 9 (Fees and Payment); and
- 8.2.4 in the case of a request for amendment:
  - 8.2.4.1 give CME clear briefings and ensure that all information and materials given to CME for the necessary amendment are complete and accurate; and
  - 8.2.4.2 deliver all amended Advertising and/or Client Materials (at the Client's cost) to CME in the form and at the place (and within the time) specified by CME.

8.3 The cancellation of any Advertising included in the Booking Terms under this clause 8 shall not affect the continuation in force of this Agreement, including any other Advertising or Digital Marketing Services included in the Booking Terms not requested to be cancelled.

8.4 In respect of Media Buying Services only, the Client recognises that CME must be the party to notify changes to, or the cancellation of, any Booking Terms to the Suppliers, and agrees not to make changes to any aspect of the Booking Terms without first notifying and seeking the permission of CME.

8.5 The Client shall be solely responsible for making or producing any revised Advertising that it may require under this clause 8.

8.6 The Client acknowledges that if it makes any unauthorised changes to the Booking Terms, CME cannot be expected to fulfil any performance based obligations, and cannot be held responsible for any adverse effects including any damages, loss, liability, costs and expenses that may result from such changes in providing the Services.

#### **9. Fees and Payment**

9.1 The fees payable by the Client for the Services shall be the Fees (unless otherwise agreed by both parties in writing).

9.2 The Fees do not cover the provision of any services other than the Services. If any such services are requested, the level of remuneration for them will be separately agreed in writing by the parties.

9.3 The Fees shall be paid in accordance with the Payment Terms, and in respect of the CME Fees only, where third party contractors or suppliers require payment before commencing all or part of the Digital Marketing Services, payment of the CME's invoice raised for such work shall be payable before the commencement of such Digital Marketing Services.

9.4 In addition to the Fees, the CME will invoice the Client in respect of the following approved costs incurred by the CME in performing the Services:

- 9.4.1 any travel or accommodation expenses in attending any location at the Client's request;
- 9.4.2 any applicable levies payable, including to the Advertising Standards Board of Finance ("ASBOF") and the Broadcast Advertising Standards Board of Finance ("BASBOF");
- 9.4.3 bank charges, currency conversion charges and similar expenses including any foreign government tax; and
- 9.4.5 any other expense agreed between the parties in writing.

9.5 Any invoice raised by CME in respect of the costs incurred as set out in clause 9.4 above shall be payable within the same time period(s) stated in the Payment Terms, failing which:

- 9.5.1 for costs incurred in the provision of Digital Marketing Services, within 30 days of the date of invoice; and
- 9.5.2 for costs incurred in the provision of Media Buying Services, within 30 days of the date of invoice.

9.6 All payments made by the Client under this clause 9 shall be made by way of same day bank transfer of immediately available funds to the CME Bank Account (or other account as nominated in writing by an authorised representative of CME). Time of payment is of the essence.

9.7 The Client will be responsible for all foreign exchange, losses and all other costs incurred by CME, including foreign exchange commissions or other banking charges.

9.8 All sums quoted in this Agreement are exclusive of VAT or other applicable sales tax, which will be payable in addition and included and itemised separately on CME's invoices, where appropriate, at the rate prevailing from time to time.

9.9 If payment is not received from the Client by the due dates for payment, CME will be entitled to charge interest at the base rate of the Bank of England from time to time plus 4% on any unpaid balance from the date due until payment is made in full. Interest will be calculated on a daily basis. The Client shall reimburse CME for any late copy charges and/or for any charges imposed on CME because of late payment by the Client.

9.10 The Client shall pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). CME may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Client against any amount payable by CME to the Client.

9.11 In the event of CME's credit insurers refusing, revising or withdrawing cover for the Client, or if CME is unable to obtain sufficient credit references in respect of the Client, CME reserves the right to revise its terms of payment and if necessary ask for payments in advance of media bookings and/or seek suitable guarantees from the Client. If it is not possible to reach agreement on suitable revised terms, CME will have the right of termination set out in clause 14.3.

## 10. Ownership of Client Materials and Intellectual Property Rights

10.1 CME acknowledges that ownership of (including, without limitation, ownership of all Intellectual Property Rights in) any Client Materials, shall remain vested in the Client or its licensors. The Client hereby grants CME a non-exclusive and royalty-free licence during the Term to use the Client Materials solely for the purposes of providing the Services.

10.2 The Client acknowledges that ownership of (including, without limitation, ownership of all Intellectual Property Rights in) any Third Party Materials shall remain vested in such third party. The Client shall take all steps necessary to procure a licence to use the Third Party Materials is entered into by the Client and the third party, to the extent that they are required to be used in order for the Client to use the Third Party Materials.

10.3 Notwithstanding the Client's rights within this clause 10, CME shall retain all know how obtained in connection with providing the Services and nothing in this Agreement shall prevent CME from using any know how, methodologies, strategic data, ideas or concepts acquired before or during the performance of the Services for any purpose, subject always to the provisions of clause 11 (Confidential Information).

## 11. Confidential Information

11.1 The parties acknowledge a duty not at any time to disclose without the other party's prior written permission any Confidential Information.

11.2 Each party shall use its reasonable endeavours to ensure its confidentiality obligations under this clause 11 are observed by its own personnel, including its employees, officers and representatives, and any third parties to whom Confidential Information has to be disclosed in order to enable that party to carry out its obligations under this Agreement.

11.3 For the avoidance of doubt, the restrictions in this clause shall not prevent:

11.3.1 the disclosure or use of Confidential Information in the proper performance of a party's obligations or duties under this Agreement;

11.3.2 the disclosure of Confidential Information:

11.3.2.1 if required by law or by any governmental or other regulatory authority;

11.3.2.2 which has come into the public domain

otherwise than through unauthorised disclosure;

11.3.2.3 where such information was available to the receiving party on a non-confidential basis before disclosure by the disclosing party; or

11.3.2.4 where the parties agree in writing is not confidential or may be disclosed.

11.4 The Client acknowledges that nothing in this Agreement shall affect CME's right to use as it sees fit any general marketing or advertising intelligence gained by CME in the course of its appointment.

## 12. Warranties and Indemnities

12.1 The Client warrants that:

12.1.1 to the best of its knowledge, information and belief all information supplied to CME before and during the Term (including in the Booking Terms) is, and will be, complete and accurate, and not in any way contrary to any applicable law; and

12.1.2 it has the authority and requisite corporate power to enter into this Agreement without obtaining the consent of any third party.

- 12.2 The Client agrees to indemnify CME from and against all claims, damages, loss, liabilities, costs, expenses or judgment:
- 12.2.1 suffered or incurred (whether directly or indirectly) by CME which results from the use of any material (including Client Materials) provided to CME by the Client (or any third party on the Client's behalf) and incorporated into any Deliverables or used generally to perform the Services; and
  - 12.2.2 arising out of, or in connection with, any third party demand, claim, action or allegation that use of the Client Materials infringes the Intellectual Property Rights or any other rights of a third party or is contrary to applicable law or (in the case of Media Buying Services only) any specific Supplier requirement (including within any Suppliers' Terms).

12.3 CME warrants that the Services will be provided using reasonable care and skill.

12.4 CME provides no warranties as to the accuracy of all estimated and target figures relating to:

- 12.4.1 the number, proportion or type of people likely to be exposed to the Advertising;
- 12.4.2 the number of exposures each person is likely to receive; and
- 12.4.3 the cost of achieving these exposures,

since these are matters which are ultimately beyond CME's control, and CME shall have no liability in respect of any losses suffered by the Client or by any third party by reason of the Client's reliance on such estimates and/or targets.

### 13. Limitation of Liability

13.1 Nothing in this Agreement shall exclude or in any way limit the parties' liability for fraud, or for death or personal injury caused by its negligence or any other liability to the extent such liability may not be excluded or limited as a matter of law.

13.2 Subject to clause 13.1:

- 13.2.1 CME's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, will in no circumstances exceed the total Fees actually paid to, and received by, CME; and
- 13.2.2 CME will not be liable under this Agreement for any:
  - 13.2.2.1 loss of actual or anticipated income or profits;
  - 13.2.2.2 loss of agreements or contracts;
  - 13.2.2.3 loss of sales or business;
  - 13.2.2.4 loss of or corruption to software, data or information;
  - 13.2.2.5 loss of anticipated savings;
  - 13.2.2.6 loss of, or damage to, goodwill; or
  - 13.2.2.7 special, indirect or consequential loss or damage of any kind in each case, howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

13.3 This Agreement states the full extent of CME's obligations and liabilities in respect of the performance of the Services. The parties agree that any condition, warranty, representation or other term concerning the performance of the Services which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is excluded to the maximum extent permitted by law.

13.4 This clause 13 shall survive termination of this Agreement.

### 14. Termination

- 14.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement without reason by service of three month's written notice to the other party.

14.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement immediately by notice in writing to the other party if the other party:

- 14.2.1 is in material breach of any of the terms of this Agreement and, in the case of a breach capable of remedy, fails to remedy such breach within 30 days of receipt of written notice giving full particulars of the breach and of the steps required to remedy it; or
- 14.2.2 an order is made or a resolution is passed for the winding up of the other party or the other party has a receiver or administrator appointed of the whole or any part of its assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or which entitles the court to make a winding up or administration order or if the other party is unable to pay its debts; or
- 14.2.3 ceases, or threatens to cease, to carry on all or a substantial part of its business.

14.3 CME shall be entitled to immediately terminate this Agreement by written notice to the Client if:

- 14.3.1 acceptable guarantees have not been made available by the Client within seven days after CME's written request; or
- 14.3.2 the Client fails to pay any amount due under this Agreement on the due date for payment.

14.4 Without affecting any other right or remedy available to it, CME may suspend the supply of Services under this Agreement or any other contract between CME and the Client if the Client fails to pay any amount due under this Agreement on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.2.2 and clause 14.2.3, or CME reasonably believes that the Client is about to become subject to any of them.

## 15. Consequences of Termination

15.1 On termination of this Agreement:

- 15.1.1 CME shall immediately cease all further performance of the Services and (in the case of Media Buying Services only) serve notice on all Suppliers for any bookings made with the Suppliers under the Booking Terms that need to be cancelled, in accordance with the Suppliers' Terms;
- 15.1.2 the Client shall immediately pay to CME:
  - 15.1.2.1 all of the outstanding unpaid Fees and/or invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, CME shall submit an invoice, which shall be payable by the Client immediately on receipt; and
  - 15.1.2.2 in the case of Media Buying Services only, any sums payable by CME to any Suppliers under the Suppliers' Terms, including any cancellation or termination fees payable;
- 15.1.3 each party shall:
  - 15.1.3.1 return to the other party all documents and materials (including the Client Materials), containing, reflecting, incorporating or based on the other party's Confidential Information (including copies thereof);
  - 15.1.3.2 erase all the other party's Confidential Information from its computer systems (to the extent possible); and
  - 15.1.3.3 each party shall certify in writing to the other party that it has complied with the requirements of clause 15.1.3.1 and clause 15.1.3.2, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of clause 11 (Confidential Information) shall continue to apply to any such documents and materials retained by a recipient party.

15.2 Termination of this Agreement shall not affect the parties' rights, remedies, obligations, duties, liabilities and responsibilities that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.

15.3 Any provision of this Agreement that expressly or by implication is intended to come into, or continue, in force on or after termination of this Agreement shall continue in full force and effect.

## 16. Advertising Standards

16.1 The Client shall comply with applicable law and Advertising Regulation.

16.2 For the avoidance of doubt, CME is not responsible for late delivery of the Advertising provided by a third party creative agency or for advising the Client about compliance issues.

16.3 The Client shall inform CME without delay if the Client discovers that any Advertising is false or misleading or in any way contrary to law or to any applicable code or Advertising Regulation.

## 17. Data Protection

17.1 Each party warrants to the other party that it is compliant, and will continue to comply, with the Data Protection Legislation and any other relevant data protection laws, legislation and regulation in the United Kingdom. Neither party shall do any act that puts the other party in breach of its obligations set out in this clause 17, nor shall nothing in this Agreement be deemed to prevent any party from taking the steps it deems necessary to comply with the Data Protection Legislation.

17.2 Where CME processes personal data (as defined in Data Protection Legislation) on behalf of the Client, then CME shall:

- 17.2.1 process such personal data solely in accordance with the Client's instructions from time to time (consistent with its duties under such Data Protection Legislation);
- 17.2.2 adopt and maintain appropriate security measures for processing personal data, both in terms of the technology used and how it is managed.

17.3 Each party shall notify the other party immediately if they become aware of any actual, threatened or potential breach of security of the personal data. The parties shall, if a breach of security occurs, immediately co-operate with each other to take all reasonable steps necessary to:

- 17.3.1 remedy such breach or protect the personal data against any breach or threat; and
- 17.3.2 prevent an equivalent breach in the future.

17.4 Either party may, at any time on not less than 30 days' notice, revise this clause 17 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

## 18. Waiver

The failure of either party to enforce or to exercise at any time or for any period any term of or any right pursuant to this Agreement shall not be construed as a waiver of any such term or right and shall in no way affect that party's right later to enforce or exercise it.

## 19. Force Majeure Events

19.1 Neither party shall be liable for any failure to perform or delay in performance of any of its obligations under this Agreement caused by a Force Majeure Event.

19.2 The party claiming the Force Majeure Event shall promptly notify the other party in writing of its reasons for the delay or stoppage to the Services and its likely duration and shall take all reasonable steps to overcome the delay or stoppage. If the period of delay or non-performance continues for 90 days, the party not affected may terminate this Agreement by giving 14 days' written notice to the affected party.

#### 20. Non-solicitation

The parties agree that neither of them will either on their own account or in partnership or association with any person, firm, company or organisation or otherwise, and whether directly or indirectly, during the Term or for a period of 12 months from the end of the Term solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such action by any other person) any employee of the other party who has had dealings with the Services and/or the Advertising at any time during the last 12 months of the Term.

#### 21. Severance

If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable then such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. The parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

#### 22. Assignment

22.1 CME may at any time assign, transfer, charge, or deal in any other manner with any or all of its rights and obligations under this Agreement.

22.2 The Client shall not assign, transfer, charge or deal in any other manner with any or all of its rights under this Agreement without the prior written consent of CME, such consent at CME's entire discretion.

#### 23. Third Party Rights

Unless expressly stated otherwise in this Agreement, a person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

#### 24. Entire Agreement

24.1 This Agreement and the documents referred to in it constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.

24.2 The parties agree that neither of them have been induced to enter into the Agreement in reliance upon any warranty, representation, statement, agreement or undertaking of any kind (whether negligently or innocently made) of any person other than as expressly set out in this Agreement as a warranty. The only remedy available to the parties for breach of the warranties shall be for breach of contract under the terms of this Agreement and the parties unconditionally and irrevocably waive any other claims, rights or remedies that may otherwise be available.

24.3 Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

## 25. Variation

No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties (or their authorised representatives).

## 26. Notices

26.1 Any notice, invoice or other communication which either party is required by this Agreement to serve on the other party shall be sufficiently served if sent to the other party at its specified address in the Booking Terms (or such other address as is notified to the other party in writing in accordance with this clause 26) as follows:

- 26.1.1 by hand; or
- 26.1.2 by registered or pre-paid first class post or next Working Day recorded delivery; or
- 26.1.3 by email.

26.2 Any notice shall be deemed to have been received:

- 26.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 26.2.2 if sent by registered or pre-paid first-class post or next Working Day delivery service, at 9.00 am on the second Working Day after posting; and
- 26.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 26.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

26.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## 27. Dispute Resolution

27.1 If any claim or dispute arises under or in connection with this Agreement, the parties will attempt to settle such claim or dispute by negotiation.

27.2 If any claim or dispute cannot be settled by negotiation within 21 days after either party has made a written offer to the other party to negotiate a settlement to such claim or dispute, the parties shall, before resorting to court proceedings, attempt to resolve the claim or dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

27.3 If the parties have not settled any claim or dispute by mediation within 42 days from the initiation of the mediation, the dispute shall be referred to and finally resolved by the courts in accordance with clause 28 (Governing Law and Jurisdiction).

## 28. Governing Law and Jurisdiction

28.1 This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of England and Wales.

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