

TERMS & CONDITIONS

1. Definitions and Interpretation

1.1 In this Agreement, the following expressions have the following meanings:

"Advertisement" means the banner, text, graphic, logo, or any other advertising format that the Advertiser submits to MEDIA IQ DIGITAL LTD for placement on the Media Vehicle in accordance with the terms of this Agreement;

"MEDIA IQ DIGITAL LTD" means MEDIA IQ DIGITAL LTD Ltd (141 Wardour Street, London, W1F 0UT, UK, registration number (07321732));

"Advertiser" means the advertiser or media-buying agency that signs an Advertising Order;

"Advertising Order" means an order in MEDIA IQ DIGITAL LTD's prescribed format for the placement of an Advertisement signed by the Advertiser and MEDIA IQ DIGITAL LTD;

"Advertising Space" means the space available for the placement of advertisements on the Media Vehicle;

"Agreement" means the agreement between the Advertiser and MEDIA IQ DIGITAL LTD for the purchase of Advertising Space on the Media Vehicle consisting of an Advertising Order and the general terms and conditions contained in this document;

"Charges" means the charges to be paid by the Advertiser to MEDIA IQ DIGITAL LTD for placing or procuring the placement of the Advertisement on the Media Vehicle in accordance with the Advertising Order;

"Force Majeure" means any event beyond the reasonable control of a Party, including but not limited to lightning, flood, exceptionally severe weather, fire, explosion, war, civil disorder, industrial disputes (whether or not involving that Party's employees), an Insolvency Event in relation to a Publisher or acts of local or central Government or other competent authorities. For the avoidance of doubt, any incidents linked to the failure of any IT equipment, software or services, including but not limited to Internet availability, that prevents MEDIA IQ DIGITAL LTD from carrying out the momentary, full or partial disclosure of the Advertisement shall be deemed an event of Force Majeure;

"Insolvency Event" means, in relation to an entity, that it becomes insolvent or unable to pay its debts as they fall due or becomes subject to, or itself takes any steps to invoke, any law, proceedings, procedure or third party action preliminary or relating to its insolvency, winding-up, liquidation, administration or receivership (or any analogous proceedings in any jurisdiction) or any enforcement of any security against it, or to a rescheduling, composition or arrangement in respect of any of its debts;

"Intellectual Property Rights" means all copyrights, patents, utility models, trademarks, service marks, design rights (whether registered or unregistered), database rights, semiconductor topography rights, proprietary information rights and all other similar proprietary rights as any exist anywhere in the world;

"Linked Website" means a website which is accessible through any hyperlink (or other method of linking pages on the World Wide Web) embodied in an Advertisement;

"Media Vehicle" means the medium on which the Advertisement(s) are to be placed, as set out in the Advertising Order;

"Parties" means the Advertiser and MEDIA IQ DIGITAL LTD, and "Party" means either of them;

"Payment Date" means the date for payment of the Charges being the date thirty (30) days from the date of MEDIA IQ DIGITAL LTD's invoice for the Charges;

"**Publisher**" means the person that is responsible for the operation of the Media Vehicle from time to time; and "**Start Date**" means the date on which it is intended that the Advertisement will first be placed on the Media Vehicle as set out in the Advertising Order or as otherwise agreed between MEDIA IQ DIGITAL LTD and the Advertiser.

1.2 In this Agreement, unless the context otherwise requires:

(a) a reference to a clause is a reference to a clause of this Agreement;

(b) a reference to any legislation is a reference to that legislation as amended, replaced or re-enacted from time to time and any subordinate legislation made under it;

(c) a reference to a person includes an individual, a firm, a body corporate, an unincorporated association or an authority and that person's executors, administrators, successors, substitutes (including but not limited to persons taking by notation) and assigns; and

(d) references to the single include the plural and vice versa and a reference to one gender includes all genders as the context admits or requires.

2. Scope of Agreement

This Agreement sets out the rights and obligations of the Parties in relation to the placement of Advertisements on the Media Vehicle.

3. Submission of Orders

3.1 The Advertising Order shall be the only order form used by MEDIA IQ DIGITAL LTD and the Advertiser. No terms or conditions endorsed upon or delivered by the Advertiser with the Advertising Order will form part of this Agreement. An Advertising Order signed by the Advertiser shall be deemed to be an offer to purchase Advertising Space.

3.2 The Advertiser may submit a signed Advertising Order to MEDIA IQ DIGITAL LTD at any time, however such order shall not be deemed to be accepted until MEDIA IQ DIGITAL LTD has returned a copy of such Advertising Order to the Client duly countersigned by MEDIA IQ DIGITAL LTD. MEDIA IQ DIGITAL LTD will endeavour to notify the Advertiser within five (5) days of its receipt of an Advertising Order whether or not it accepts such order.

3.3 MEDIA IQ DIGITAL LTD will have no liability to procure the placement of an Advertisement on the Media Vehicle until it has countersigned the relevant Advertising Order and returned it to the Advertiser.

4. MEDIA IQ DIGITAL LTD's Rights and Obligations

4.1 Once MEDIA IQ DIGITAL LTD has countersigned and returned the Advertising Order to the Advertiser, MEDIA IQ DIGITAL LTD will use all commercially reasonable endeavours to procure the placement of the Advertisement on the date(s) or during the period and in the manner specified on the Advertising Order.

4.2 MEDIA IQ DIGITAL LTD reserves the right to make any technical or other modifications that it may deem necessary to facilitate the delivery of the Advertisement in accordance with the Advertising Order. MEDIA IQ DIGITAL LTD shall not however make any amendments to the creative content of an Advertisement.

4.3 MEDIA IQ DIGITAL LTD is not required to inform the Advertiser of the progress of an Advertisement but will use its reasonable endeavours to address any queries the Advertiser may have about the Advertising Space from time to time as soon as reasonably practicable.

4.4 In the event that any Media Vehicle on which the Advertiser has purchased Advertising Space ceases to exist or is unavailable during the period in which the Advertiser wishes to purchase Advertising Space, the Parties will endeavour to identify and agree an alternative Media Vehicle with a similar user profile on which the Advertiser can be placed.

5. Delivery of the Advertisement

5.1 The Advertiser must make available to MEDIA IQ DIGITAL LTD, a minimum of three (3) working days (or 10 working days in case of rich media formats) prior to the Start Date:

- (a) all the advertising materials necessary to enable MEDIA IQ DIGITAL LTD to publish the Advertisement on the Media Vehicle; and
- (b) a copy rotation for the Advertisement.

5.2 In the event that the Advertiser fails to provide an Advertisement to MEDIA IQ DIGITAL LTD within the timescales set out in Clause 5.1, MEDIA IQ DIGITAL LTD may still, at its discretion use its reasonable endeavours to procure the placement of the Advertisement on the date(s) or during the period and in the manner specified on the Advertising Order but shall be entitled to impose an additional charge on the Advertiser for doing so. Where an Advertisement cannot be placed as planned as a result of such late delivery, MEDIA IQ DIGITAL LTD shall remain entitled to invoice the Advertiser for the Charges in full.

5.3 MEDIA IQ DIGITAL LTD shall not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the Start Date as specified in the Advertising Order, where such delay is the result of the Advertiser's failure to meet its obligations set out in Clause 5.1.

5.4 The Advertiser will ensure that any Advertisement that it delivers to MEDIA IQ DIGITAL LTD complies with the provisions of this Agreement.

6. Advertiser's Cancellation Option and Responsibilities

The Advertiser may cancel an Advertising Order after that Advertising Order has been accepted by MEDIA IQ DIGITAL LTD provided that:

6.1 if the Advertiser cancels its order between four (4) and two (2) weeks prior to the Start Date it shall remain liable to pay fifty percent (50%) of the Charges; and

6.2 if the Advertiser cancels its order within two (2) weeks of the Start Date, the Charges will remain payable in full.

7. Financial Terms

7.1 The Advertiser must pay the Charges in full by the Payment Date. The Charges are exclusive of VAT and any other applicable sales taxes which shall be payable at the applicable rate on the Payment Date.

7.2 If the Charges (and all applicable taxes) are not paid in full by the Payment Date, MEDIA IQ DIGITAL LTD may charge interest on the overdue sum from the Payment Date at a rate equivalent to one percent (1%) above the then current base lending rate of such London clearing bank as MEDIA IQ DIGITAL LTD shall nominate from time to time. This charge may be levied until all amounts due are paid in full.

7.3 MEDIA IQ DIGITAL LTD may require full or partial payment of the Charges due either prior to the Start Date or during the lifetime of the campaign where the Advertiser:

(a) places an Advertising Order directly with MEDIA IQ DIGITAL LTD without using the services of a media buying agency; or

(b) is a media buying agency which is or becomes not officially recognised as such by the Institute of Practitioners in Advertising; or

(c) the Advertiser (or any entity on whose behalf it is buying) is or becomes subject to an Insolvency Event.

7.4 No payment shall be deemed to have been received until MEDIA IQ DIGITAL LTD has received the Charges in cleared funds.

7.5 The Advertiser shall make all payments due under this Agreement without any deduction, whether by way of set-off, counterclaim, discount, abatement or otherwise unless the advertiser has a valid court order requiring an amount equal to such deduction to be paid by MEDIA IQ DIGITAL LTD to the Advertiser.

7.6 Subject to clause 7.3, MEDIA IQ DIGITAL LTD shall be entitled to invoice the Advertiser at the conclusion of each campaign for an Advertisement, or where a campaign runs for more than six (6) weeks, MEDIA IQ DIGITAL LTD may invoice the Advertiser every four (4) weeks in arrears.

7.7 The data used by MEDIA IQ DIGITAL LTD for the purpose of invoicing the Advertiser shall be based upon MEDIA IQ DIGITAL LTD's advertising and reporting system from time to time in force. The Charges will be payable in full in the event of discrepancy between the purchased inventory and the actual number of Advertisements delivered provided the under-delivery is less than 10% of the purchased inventory for rich format Advertisements and 5% for all other Advertisements.

7.8 For the period from placing an Advertising Order until payment is made to MEDIA IQ DIGITAL LTD, the Advertiser shall hold the Charges on trust for MEDIA IQ DIGITAL LTD and in a specially designated account, separate from all other monies (save for other monies to be paid to MEDIA IQ DIGITAL LTD).

8. Intellectual Property Rights

8.1 The Advertiser agrees that it will obtain no Intellectual Property Rights in the layout, compilation, design, copy and organisation of the Media Vehicle.

8.2 The Advertiser grants to MEDIA IQ DIGITAL LTD and the Publisher a non-exclusive, worldwide, perpetual, royalty free license to transmit over the internet, use, display, copy, translate, create derivative works in respect of any Intellectual Property Rights embodied in any Advertisement and in any other information provided by the Advertiser to MEDIA IQ DIGITAL LTD pursuant to this Agreement.

9. Warranties and Indemnities.

9.1 Each of the Parties represents and warrants to the other that:

(a) it has the requisite power and authority to enter into and perform this Agreement; and

(b) this Agreement constitutes binding obligations of the Party in accordance with its terms.

9.2 The Advertiser warrants and represents for the benefit of the Publisher and MEDIA IQ DIGITAL LTD that:

(a) it is the owner of the Advertisement or it has the authority of the owner of the

Advertisement to provide the Advertisement to MEDIA IQ DIGITAL LTD and to the Publisher for display on the Media Vehicle;

(b) the reproduction and/or publication of the Advertisement on the Media Vehicle will not

breach any contract or infringe or violate any Intellectual Property Right, any applicable

laws, codes of practice (including the Codes of Advertising and Sales Promotion

published by the Advertising Standards Authority) or any personal or proprietary right of any person including any rights of privacy anywhere where the Media Vehicle is accessed by a third party;

(c) any information contained within the Advertisement and any Linked Site is accurate and is not misleading;

(d) if any Advertisement or Linked Website contains a name or pictorial representation (photographic or otherwise) of any living person, the Advertiser has obtained the authority of such living person to make such use of name, representation and/or copy including use on the Media Vehicle or Linked Website (as the case may be);

(e) the Advertisement and any Linked Website are legal and do not contain objectionable material, including unlawful, fraudulent, obscene or pornographic material or any material that is likely to incite racial hatred or which is defamatory of any person under the laws of any country in which the Media Vehicle is accessed by a third party;

(f) the Advertisement and any Linked Website do not contain any viruses, bugs, worms, trojans or any other computer programming routines that are intended to damage, interfere or intercept any computer system or extract any data or personal information; and

(g) where an Advertisement contains a hyperlink to a Linked Website, nothing in the coding or other configuration of that Linked Website will act so as to disable the 'back' button on a user's Internet browser.

9.3 It is the responsibility of the Advertiser to notify the Publisher and MEDIA IQ DIGITAL LTD of any errors in any Advertisement and any complaints or claims made in respect of any Advertisement as soon as the same come to its attention.

9.4 The Advertiser must keep the Publisher and MEDIA IQ DIGITAL LTD fully indemnified against all claims, costs, proceedings, demands, losses, expenses or liability whatsoever arising as a result of any breach of the warranties and representations set out above or as a result of any other breach or nonperformance by the Advertiser of any other term set out in this Agreement or imposed by law.

10. Right to withdraw Advertisement

MEDIA IQ DIGITAL LTD may withdraw any Advertisement from the Media Vehicle and/or require any

Advertisement to be amended if either MEDIA IQ DIGITAL LTD or the Publisher considers, in its sole discretion, that the Advertisement breaches any of the requirements set out in Clause 9.

11. Confidentiality

11.1 Each Party undertakes to the other that it will not divulge to any third party any information of a confidential nature disclosed to it by the other Party and may use such information solely for the purpose of this Agreement. However, that obligation to keep the information confidential does not apply in circumstances where:

(a) such disclosure is required by law or any appropriate regulatory body; or

(b) such information is already in the public domain, other than as a result of a breach of this obligation of confidentiality.

11.2 The Advertiser must keep confidential all statistical or other data provided to it by MEDIA IQ DIGITAL LTD in connection with the placement of any Advertisement on the Media Vehicle, and acknowledges that such information is and will remain the property of the Publisher, and that it may not be disclosed by the Advertiser to any third party without the Publisher's express written consent.

12. Limitation of liability

12.1 Neither MEDIA IQ DIGITAL LTD or the Publisher give any guarantees or warranties in respect of any other material placed on the Media Vehicle.

12.2 The Media Vehicle is provided on an "as is" and "as available" basis. MEDIA IQ DIGITAL LTD expressly excludes all warranties of any kind in relation to the Media Vehicle, including but not limited to warranties of title, fitness for a particular purpose, satisfactory quality and non-infringement of proprietary or third party rights.

12.3 MEDIA IQ DIGITAL LTD does not warrant or guarantee that:

(a) the Media Vehicle and/or any information will meet the requirements of the Advertiser; or

(b) any errors or inaccuracies will be corrected; or

(c) the material on the Media Vehicle will be accurate and makes no representations as to its integrity or quality.

12.4 MEDIA IQ DIGITAL LTD shall not be liable for any failure to perform its obligations under this Agreement as a consequence of an event of Force Majeure.

12.5 MEDIA IQ DIGITAL LTD shall not be liable to the Advertiser in contract, tort (including negligence) or otherwise arising out of or otherwise in connection with this Agreement or the performance or observance of its obligations under this Agreement for any loss or damage of a consequential or indirect character or for any loss of goodwill, profit, business, abortive expenditure, anticipated savings or loss of business opportunity whether foreseeable or not.

12.6 MEDIA IQ DIGITAL LTD's maximum aggregate liability in contract, tort (including negligence) or otherwise arising out of or in connection with this Agreement shall be limited in each six month period commencing on the date of signature of the Advertising Order, to the total amount of the Charges paid by the Advertiser to MEDIA IQ DIGITAL LTD for the placement of Advertisements in that six (6) month period.

12.7 Nothing in this Clause 12 serves to limit or exclude either Party's liability for death or personal injury arising from its own negligence.

12.8 MEDIA IQ DIGITAL LTD shall not be liable to the Advertiser for failure to place an Advertisement due to the termination of the agreement between MEDIA IQ DIGITAL LTD and a Publisher. In such circumstances MEDIA IQ DIGITAL LTD shall refund to the Advertiser pro-rata any Charges still held by MEDIA IQ DIGITAL LTD that it the Advertiser has paid in advance in respect of the placement of such Advertisement(s).

13. Usage Statistics

Notwithstanding any provisions of the Advertising Order, the Advertiser acknowledges that MEDIA IQ DIGITAL LTD has not made any guarantees with respect to usage statistics or levels of impressions for any Advertisement. MEDIA IQ DIGITAL LTD provides the Advertiser with estimated usage statistics only as a courtesy to the Advertiser and will not be held liable for any claims relating to any usage statistics however supplied. The Advertiser acknowledges that delivery statistics provided by MEDIA IQ DIGITAL LTD are the official, definitive measurements of MEDIA IQ DIGITAL LTD performance on any delivery obligations provided in the Advertising Order.

14. Termination

Without prejudice to any other rights or remedies MEDIA IQ DIGITAL LTD may have at law, MEDIA IQ DIGITAL LTD may terminate this Agreement (or at its election suspend fulfillment of all or any part(s) of any Advertising Order) immediately by giving written notice if:

14.1 the Advertiser fails to pay any amount by its due date;

14.2 the Advertiser breaches any obligations contained in this Agreement and in the case of a remediable breach (which does not include any payment obligation under this Agreement), does not remedy such breach within thirty one seven (317) days of a written notice to do so; or

14.3 the Advertiser (or any entity on whose behalf the Advertiser is buying) is subject to an Insolvency Event.

15. Novation

In the event of the termination of the agreement between MEDIA IQ DIGITAL LTD and the Publisher relating to MEDIA IQ DIGITAL LTD's ability to sell Advertising Space on the Media Vehicle, the Advertiser shall, if so directed by MEDIA IQ DIGITAL LTD, novate this Agreement to the Publisher and the Advertiser shall bear its own costs in respect of that novation.

16. General

16.1 This Agreement is governed by, construed and interpreted in accordance with the laws of England and Wales, and the parties hereby submit to the non-exclusive jurisdiction of the Courts of England and Wales.

16.2 This document is the entire agreement between the Parties and supersedes all other agreements or arrangements, whether written or oral, express or implied (except in the case of fraud). No variations of this agreement are effective unless made in writing signed by both Parties or their authorised agents.

16.3 MEDIA IQ DIGITAL LTD shall be entitled to assign this Agreement to any associated company and to any purchaser of the whole or of the part of its business that has responsibility for this Agreement.

16.4 Failure or delay by MEDIA IQ DIGITAL LTD in enforcing or partially enforcing any provision of this Agreement shall not be construed as a waiver of any of its rights under this Agreement.

16.5 If any provision of this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of this Agreement and the remainder of such provision shall continue in full force and effect.

16.6 Where the Advertiser is buying on behalf of any other entity, it acts for the purposes of this Agreement as an agent on behalf of that entity (and not as a principal at law). That entity shall accordingly be considered liable as a Party to this Agreement for all the debts and liabilities of the Advertiser, notwithstanding that the Advertiser shall additionally be liable therefor.]

17. Insurance

17.1 Each Party shall take out a public liability insurance policy covering the risks relating to the performance of its obligations under this Agreement with a first rate insurance company.

17.2 Each Party must provide the other Party, upon request, with an insurance certificate certifying that the abovementioned policy has been taken out.

18. Rights of Third Parties

18.1 The Publisher may enforce this Agreement against the Advertiser subject to and in accordance with its terms and the provisions of the Contracts (Rights of Third Parties) Act 1999.

18.2 Except as provided in Clause 18.1, a person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party that exists or is available apart from that Act.

18.3 Notwithstanding Clauses 18.1 and 18.2, the Parties may by agreement rescind or vary the terms of this Agreement without the consent of the Publisher.