

## **BEAM TERMS AND CONDITIONS**

### **BEAM SERVICE / DIGITAL ASSET MANAGEMENT SERVICE / DISTRIBUTION / TV ADMIN AND BUSINESS AFFAIRS**

#### **1. DEFINITIONS**

1.1 In these Terms and Conditions the following words shall have following meanings: "Beam" means The Mill (Facility) Limited through its division Beam of 11-14 Windmill Street, London, W1T 2JG; "Beam Service" means Beam's online digital asset management service ("DAM"), primarily intended for businesses operating in the advertising sector and operated through and/or via the Beam Site; "Beam Site" means the website located at <http://www.beam.tv> or such address as Beam may from time to time substitute therefore together with all other websites which may from time to time be operated by Beam (whether alone or with one or more others) in connection with the Beam Site; "Client" means the individual client of Beam, including its agents, licences, employees and contractors using the Beam Site; "Client Data" means all data owned or controlled by the Client and Uploaded by or on behalf of the Client to the Beam Site; "Library" means Beam's Library of data stored on behalf of its Clients which Library may be online and/or offline, where the Client may (subject) to their Storage Space library old Assets and access them from; "Permitted User" means those persons nominated by the Client (at the time of Upload or at any time thereafter) to whom access privileges are granted by the Client in respect of specific Client Data; "Project" means each and every individual marketing campaign which the Client uses the Beam Site for; "Terms and Conditions" means these Terms and Conditions as may change from time to time; "Upload" means the upload of data to the Beam Site and "Uploaded" and "Uploading" shall be construed accordingly; "Upload Charges" means charges incurred for Uploading, the current rates for which are available on request.

#### **2. USE OF THE SERVICE**

- 2.1 The Client and its Permitted Users use of the Beam Site and access to the Beam Site are subject to these Terms and Conditions.
- 2.2 Access to and use of all services comprising the Beam Site requires the establishment of an online account with Beam and the use of a password. A password will be automatically allocated to the Client upon the Client's application using, a current email address, to become a user of the Beam Site. On establishment of an account with Beam, the Client shall have the ability to nominate Permitted Users and shall specify the extent to which individual Permitted Users may access Client Data Uploaded to the Beam Site. The Client acknowledges and agrees that it shall be solely responsible for the payment of all charges incurred by Permitted Users and for the acts and defaults of all Permitted Users. Each Permitted User will be allocated a password by Beam. It is the responsibility of the Client to notify Beam of further Permitted Users or to request that Beam revokes some or all of a Permitted User's access privileges.
- 2.3 All passwords must be kept confidential. The Client shall be solely responsible for maintaining the confidentiality of all passwords issued to it and its Permitted Users and shall require that all Permitted Users to whom passwords are issued shall keep them confidential. The Client shall notify Beam immediately if the Client becomes aware of any unauthorised use of any password issued to it or any Permitted User or if the Client believes that any such password may have become known to an unauthorised third party. Beam may require (but shall have no obligation to do so) that the Client confirms that all Permitted Users should continue to have the relevant access privileges and may require that passwords are changed from time to time. Any change to the Client's or any Permitted User's registered email address should be notified immediately by the Client or the relevant Permitted User to Beam.
- 2.4 Following registration as a user of the Beam Service, the Client (and, if applicable, Permitted Users) shall, subject to the Client's payment of all relevant charges in accordance with condition 3.2, have the right to Upload Client Data to the Beam Site and move data from one area of the Beam Site to another.
- 2.5 The Upload Charge (calculated in accordance with the prevailing rates) will be payable in respect of the Upload of Client Data to the Beam Site.
- 2.6 The time period for which Client Data Uploaded to the Beam Site will be stored and accessible by a Client and its Permitted Users will depend on the area of the Beam Site to which Upload takes place. Details of the current Beam storage time periods shall be available on request. Beam reserves the right to store Client Data in cloud storage 12 months from the date of Upload which may result in extended recall time for the Client Data outside normal business hours. Client Data will be deleted from the Beam Site on expiry of the applicable time period unless prior to expiry, it has been transferred by the Client to the Library or unless it was originally uploaded to the Library. Please note that time periods will continue to run whilst a Client's access to the Beam Service is suspended. A charge shall be levied for the transfer of Client Data to the Library.
- 2.7 Where the Client is using SendPlus technology, which permits the transfer over the internet protocol of large files, the functionality of such SendPlus technology will be subject to the Client and/or the Permitted User downloading software to their local machine and having sufficient bandwidth on their internet connection.

#### **3. CHARGES AND PAYMENT TERMS**

- 3.1 Charges for use of the Beam Service shall be as set out on the Beam Service rate card, available on request. Beam may at any time introduce charges for components of the Beam Service which may have otherwise been provided without charge. All charges quoted are exclusive of VAT.
- 3.2 Charges for use of the Beam Service shall be payable within 28 days of the date of all invoices rendered by The Mill. If a Client shall fail to settle an invoice in full within the 28 day payment period, Beam will be entitled to suspend the Client's (and all Permitted User's) access to the Beam Service and/or may charge interest on the overdue amounts which interest shall be charged at the rate of 4% above the base rate of The Royal Bank of Scotland plc from time to time, from the due date of payment to the actual date of payment.
- 3.3 Beam may at any time withhold access to the Beam Service and/or without limiting the provisions of condition 6, remove any Client Data uploaded to the Beam Site by the Client pending payment of any sum due from the Client under any contract between the Client and The Mill (Facility) Limited and/or in the event that any payment made shall be dishonoured. 3.4 Payment of all charges shall only be made in the currency in which they are invoiced or as quoted to the Client on the prevailing Beam rate card applicable in the country from which the Client is accessing the Beam Service and shall not be subject to any deductions whatsoever. 3.5 The Client shall pay all amounts owing to Beam in full and shall not exercise any rights of set-off or counterclaim against invoices submitted.

#### **4. CANCELLATION**

- 4.1 An Upload Charge shall become payable and non-refundable once it has been accepted by a Client or any Permitted User on the Beam Site.
- 4.2 Deletion of Client Data from the Beam Site shall be effective to cancel a Permitted User's access to the applicable Client Data.

#### **5. DATA, RIGHTS AND DATA PROTECTION**

- 5.1 The Client undertakes to Beam to ensure that a backup copy of all Client Data Uploaded to the Beam Service is retained by the Client. All backup copies should be in a format that will enable recovery of the relevant Client Data in the event of its loss or corruption.
- 5.2 The Client acknowledges that as part of the operation and maintenance of the Beam Service, Client Data, may be accessed by Beam's personnel.
- 5.3 The Client shall be solely responsible for the content of all Client Data Uploaded to the Beam Service and the Client undertakes to Beam that no such data shall contain any bugs (being viruses, worms, logic bombs, time locks, time bombs, Trojan horses and bugs), infringe any copyright or other third party rights of any kind, be defamatory or otherwise transgress any laws of any country of the world. Beam reserves the right to remove from the Beam Service any Client Data that it reasonably believes contains any Bugs, infringes any copyright or other third party rights of any kind, is defamatory or otherwise breaches any laws of any country of the world.
- 5.4 The Client acknowledges that areas of the Beam Site may be accessible by the public and viewable from any country of the world and without limiting condition
- 5.3, the Client hereby undertakes to Beam that all Client Data posted to any publicly accessible area of the Beam Site and all Client Data to which access is not restricted to specified Permitted Users is and shall remain fully cleared for viewing throughout the world via the Internet and that accordingly all licences, consents and permissions necessary for the posting of such data on the Beam Site have been obtained and shall be maintained throughout the period that the data shall be available for viewing and that the posting of all data to any publicly accessible area of the Beam Site and its viewing shall not give rise to any claim by or liability to any third party whatsoever.
- 5.5 Beam reserves the right in its absolute discretion to, at any time and for any reason and without notice to the Client, remove any Client Data that shall have been posted to any publicly accessible area of the Beam Site. 5.6 Beam is an authorised data controller of the Data Protection Act 1998, the Data Protective (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy. 5.7 The Client acknowledges that in the course of the Client's dealings with Beam, Beam may acquire personal data which relates to the Client and/or any of the Client's agents, employees or contractors and the Permitted Users and the Client hereby consents to Beam, in accordance with its authorisation and the Act, collecting, storing, processing and transferring such personal data. The Client further consents to the sale or transfer by Beam of such personal data in connection with an assignment or transfer of any of Beam's assets and its disclosure to others in compliance with any rule of law or order of competent authority. 5.8 The Client's consent pursuant to this condition 5 is given by the Client for itself and on behalf of (if any) the Client's officers, employees and contractors and the Permitted Users and the Client hereby warrants to Beam that the Client has the authority to give such consent on behalf of those persons.

#### **6. TERMINATION AND DEFAULT**

- 6.1 Beam may, without limiting any of its rights and remedies against the Client, terminate in whole or in part the Client's (and all Permitted Users') access to the Beam Service at any time by notice in writing to the Client in the event that:
  - 6.1.1 the Client shall have breached any provision of these Terms and Conditions or of any other agreement between the Client and Beam or any Permitted User shall have breached any provision of these Terms and Conditions; or
  - 6.1.2 the Client shall become bankrupt; or under the provisions of Section 123 of the Insolvency Act 1986 shall be deemed to be unable to pay its debts; or compound with its creditors; or have a resolution passed or proceedings commenced for its administration or liquidation (other than for a voluntary winding up for the purpose of reconstruction or amalgamation); or have a Receiver or Manager or Administrative Receiver appointed of all or any part of its assets or undertaking; or
  - 6.1.3 the Client shall have failed to make payment of any sum due to Beam under these terms and conditions or otherwise.
- 6.2 Termination of the Client's access to the Beam Service shall entitle Beam to delete any and all Client Data Uploaded to the Beam Service. 6.3 Beam reserves the right to terminate its provision of the Beam Service (in whole or in part) at any time but shall give the Client at least one months' notice (via the Beam Site) of any such termination. Beam shall cooperate with the Client to facilitate the transfer and/or removal of all Client Data from the Beam Site during the notice period and shall advise the Client of any charges arising in connection with such transfer or removal. Following expiry of the notice period, Beam shall have the unrestricted right to delete all remaining Client Data then stored on the Beam Site.

#### **7. SUSPENSION**

- 7.1 Without limiting Beam's other rights, Beam may at any time, without notice to the Client and without liability to the Client or any third party, suspend any part of the Beam Service and/or access to the Beam Service in the event that:
  - 7.1.1 Beam is entitled to terminate the Client's access to the Beam Service;
  - 7.1.2 Beam needs to carry out maintenance, updates and/or corrections to the Beam Service or the Beam Site;
  - 7.1.3 Beam is obliged so to do to comply with an order, instruction or request of any government or other competent administrative authority.

#### **8. LIABILITY**

- 8.1 The Client hereby agrees that without limiting any other provision of these Terms and Conditions: 8.1.1 to the maximum extent permitted by law, Beam's entire liability for breach of any express provision of these Terms and Conditions, or any terms, warranties or conditions implied in these Terms and Conditions by operation of law, including liability for

- negligence (except where such negligence results in death or personal injury) are excluded;
- 8.1.2 under no circumstances shall Beam be liable for any consequential loss whatsoever (including damages for loss of business profits, business interruption or other indirect pecuniary loss of any kind);
- 8.1.3 Beam's entire liability for any direct loss suffered by the Client, as a result of Beam's breach of these Terms and Conditions and for which Beam shall notwithstanding any other provision of these Terms and conditions be liable, shall be limited to the amount actually paid by the Client by way of charges for use of the Beam Service during the immediately preceding 3 month period;
- 8.1.4 the amounts charged to the Client for use of the Beam Service reflect the limit on Beam's liability pursuant to this condition 8.1; and
- 8.1.5 this condition 8.1 is reasonable and necessary in the circumstances and that having regard to that fact, this condition does not work harshly or unreasonably against the Client.
- 8.2 The Client shall indemnify Beam from and against:
- 8.2.1 all claims or proceedings taken against Beam arising out of the acts and/or omissions of the Client, the Client's agents or sub-contractors, any Permitted User, whether negligent or otherwise;
- 8.2.2 any loss or damage suffered by Beam or any third party that results from the actions of any person that gains unauthorised access to the Beam Service and/or any Client Data using any password issued to the Client or any Permitted User;
- 8.2.3 any loss or damage suffered by Beam or any third party that results from any bugs introduced to the Beam Site from the Client's or any Permitted User's computer system;
- 8.2.4 all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any Client Data infringing any copyright or other third party rights of any kind, being defamatory or otherwise breaching any laws of any country of the world and against any actions, claims, costs, charges, expenses and proceedings which otherwise arise as a result of or in connection with the Client's and/or any Permitted User's use of the Beam Service to specifically include any breach of conditions 5.3 and/or 5.4.
- 8.3 The Client acknowledges and agrees that the Client's and/or any Permitted User's use of the Beam Service could cause the Client significant loss and the Client expressly agrees that the Client will at all times maintain and keep effective insurance policies with reputable insurers and for adequate levels of cover which protect the Client against any loss or liability which may be incurred or suffered by the Client arising out of use of the Beam Service.
- 8.4 Notwithstanding and without limiting condition 8.1, Beam shall not be responsible for and shall have no liability to the Client or any third party for:
- 8.4.1 any loss or damage that results from any person gaining unauthorised access to the Beam Service including use of any password by any person other than the Permitted User to which it shall have been issued;
- 8.4.2 use or disclosure of any Client Data obtained by any third party as a result of the same having gained unauthorised access to the Beam Service or having intercepted any Client Data as it passes between the Client, Beam or any third party;
- 8.4.3 any loss or damage resulting from any malfunction of or the introduction of any Bugs to the Client's equipment, software or links as a result of using the Beam Service;
- 8.4.4 deletion of any Client Data whilst the Client's access to the Beam Service has been suspended or following termination of the Client's access, including any termination pursuant to condition 6.2.
- 8.5 The Client acknowledges that use and availability of the Beam Service involves reliance upon third party data carriers over which Beam have no control and accordingly (notwithstanding and without limiting condition 8.1), Beam shall not be responsible for and shall have no liability to the Client or any third party for:
- 8.5.1 the loss or corruption of any data transferred to or from Beam;
- 8.5.2 the unavailability of the Beam Service;
- 8.5.3 the Client's and any Permitted User's inability to access or to use the Beam Service;
- 8.5.4 any delay in accessing any Client Data Uploaded to the Beam Service. howsoever any of the foregoing shall have been caused and further Beam shall have no liability to the Client or any third party, if access to or use of the Beam Service is prevented, delayed, or in any way interfered with by any action or ruling of any government, war, industrial action, breakdown of machinery or equipment, accident, fire or other cause beyond Beam's control.

## **9. OTHER SERVICES**

- 9.1 These Terms and Conditions apply only to the provision and use of the Beam Service and separate terms shall apply to the provision by The Mill (Facility) Limited of all other goods, services and facilities.

## **10. GENERAL**

- 10.1 These Terms and Conditions constitute the entire agreement between the Client and Beam insofar as relating to the use of and access to the Beam Service (but not otherwise) and the Client confirms that the Client has not relied upon any representation whether oral or in writing which is not repeated in these Terms and Conditions. Nothing in these Terms and Conditions shall operate to relieve Beam from any liability for any fraudulent misrepresentation made to the Client at any time.
- 10.2 Beam reserves the right to vary these Terms and Conditions at any time. Any variation shall be notified to Client via the Beam Site.
- 10.3 No failure, delay, relaxation or forbearance on the part of Beam in exercising any power or right under these Terms and Conditions shall operate as a waiver or in any way prejudice such power or right unless agreed in writing by a duly authorised representative of Beam.
- 10.4 Beam shall have the free of charge right to utilise the Client's name and identifying logos in connection with publicising the availability of the Online Service unless the Client makes a specific written request to the contrary.
- 10.5 The Client shall not use Beam's name or any trading name or mark without Beam's prior written consent.

- 10.6 The Client acknowledges and agrees that use of the Beam Service may be subject to export control or like regulations which the Client undertakes to Beam that the Client will comply with.
- 10.7 If any provision of these Terms and Conditions as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of these Terms and Conditions or the validity or enforceability of these terms and conditions generally.
- 10.8 These Terms and Conditions shall not operate to create an agency, joint venture or partnership between the Client and Beam.
- 10.9 Beam shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under these Terms and Conditions.
- 10.10 Nothing in these Terms and Conditions provides for any third party to have any right to enforce any term hereof and for the avoidance of doubt the Client and Beam do not intend these Terms and Conditions to be enforced by or to confer any benefit upon any third party under the Contracts (Rights of Third Parties) Act 1999.
- 10.11 The Client shall not be entitled to assign, novate, sub-licence or otherwise dispose of the whole or any part of these Terms and Conditions or its rights hereunder without Beam's prior written consent. Beam shall have the right to assign its agreement with the Client and all its rights and obligations pursuant to these Terms and Conditions in whole or in part.
- 10.12 The words "include" and "including" shall not be construed restrictively. 10.13 These Terms and Conditions shall be governed and interpreted exclusively according to the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales only.

## **TERMS AND CONDITIONS - DISTRIBUTION**

### **1. DEFINITIONS**

- 1.1 In these Terms and Conditions, the following terms shall have the following meanings: "Advertisement" means the audio-visual advertisement(s) supplied to Beam under these Terms & Conditions for distribution to Broadcasters;
- "Beam Service" means Beam's online digital asset management service ("DAM") primarily intended for businesses operating in the advertising sector and operated through and/or via the Beam Site;
- "Beam Site" means the website located at <http://www.beam.tv> or such other address as Beam may from time to time be substituted, therefore together with all other websites which may from time to time be operated by Beam (whether alone or with one or more others) in connection with DAM and distribution;
- "Beam Technical Specification" means the technical specification that each Advertisement is required to meet for the specific country selected;
- "Broadcaster" means a television broadcaster, website operator, wireless platform operator or any other entity capable of broadcasting and/or making advertisements available to the public by wire or wireless means;
- "Broadcast Delivery Order" all information required to complete the Broadcast Delivery Order form accessed via the Beam Site completed and submitted online; "Client" means the individual client of Beam, including its agents, licensees, employees and freelancers, using the Beam Site; "Client Data" means all data owned or controlled by the Client and Uploaded by or on behalf of the Client to the Beam Site; "Delivery Materials" means for each Advertisement to be distributed by Beam, the Advertisement in the format required to comply with the technical specification of the relevant Broadcaster(s) and meeting the Beam Technical Specification;
- "Digital Delivery" means the delivery of advertisements in a digital format through a digital distribution and content processing system operated by Beam or by a third party on Beam's behalf
- "Permitted User" means those persons nominated by the Client (at the time of Upload or at any time thereafter) to whom access privileges are granted by the Client in respect of specific Client Data; "Physical Delivery" means distribution of an advertisement in a physical tape format;
- "Ratecard and SLA" means Beam's ratecard and service level agreement for advertisement distribution as updated from time to time, a copy of the current form of which is available on request; 'Terms and Conditions' means these terms and conditions as may change from time to time; "Upload" means the upload of data to the Beam Site and "Uploaded" and "Uploading" shall be construed accordingly.
- 1.2 Words denoting the singular shall include the plural and vice versa; words denoting any gender shall include all genders; words denoting persons shall include corporations and vice versa.
- 1.3 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as is from time to time amended extended or re-enacted.
- 1.4 The headings in these Terms and Conditions are inserted of convenience only and shall not affect the construction of these Terms and Conditions.
- 1.5 Unless otherwise stated a reference to a clause is a reference to a clause in these Terms & Conditions.
- 1.6 The words "include" and "including" shall not be given a restrictive meaning.
- 1.7 These Terms & Conditions shall not apply to the Client's use of the Beam Service, use of which is subject to the Terms and Conditions set out above.

### **2. FORMS OF DISTRIBUTION**

- 2.1 Subject to the provisions of these Terms & Conditions, Beam shall distribute Advertisements to Broadcasters in accordance with each relevant Broadcast Delivery Order.

### **3. DELIVERY OF THE ADVERTISEMENT AND DELIVERY MATERIALS TO BEAM**

- 3.1 For each Advertisement to be distributed by Beam, the Client shall deliver to Beam, a completed Broadcast Delivery Order, identifying the Advertisement to be distributed, the source of the Advertisement and the Broadcasters to which

distribution is to be effected.

- 3.2 For each Advertisement, the Client shall deliver or procure the delivery to Beam of the applicable Delivery Materials. The Client shall be solely responsible for ensuring that the Delivery Materials comply with the technical specification of the applicable Broadcaster(s) and the Beam Technical Specification.
- 3.3 Notwithstanding any other provision of these Terms & Conditions, it shall remain the Client's sole responsibility to ensure that all Advertisements and applicable Delivery Materials are delivered to Beam in sufficient time to meet schedules (taking into account the checking process referred to in clause 4.1 below) and the Client is advised to check copy deadlines with Broadcasters so as to avoid late copy surcharges.
- 3.4 The Client shall be solely responsible for the content of the Delivery Materials supplied to Beam and the Client warrants and undertakes to Beam that no such material shall contain any viruses, worms, logic bombs, time locks, time bombs, Trojan horses and/or bugs, infringe any copyright or other third party rights of any kind, be defamatory or otherwise transgress any laws of any country of the world.

#### **4. DISTRIBUTION OF THE ADVERTISEMENT BY BEAM**

- 4.1 On receipt of all Delivery Materials for each Advertisement, Beam shall run quality control checks on the same to ensure that the materials delivered comply with the relevant Beam Technical Specification for the specific country. If Beam reasonably believes that any of the Delivery Materials do not comply with the preceding sentence of this clause 4.1, Beam shall promptly inform the Client and it shall be the Client's responsibility to reformat the Advertisement as necessary and to re-deliver the relevant Delivery Materials to Beam.
- 4.2 On receipt in full of the Delivery Materials complying with the Beam Technical Specification for an Advertisement, Beam shall deliver or shall procure delivery of the Advertisement to the applicable Broadcaster as required by the relevant Broadcast Delivery Order and subject to receipt of the same by the time specified in the Ratecard and SLA by the guaranteed times provided for in the Ratecard and SLA.
- 4.3 Beam shall determine the method of delivery of each Advertisement which may be by Physical Delivery or where available, Digital Delivery.

#### **5. PRICE ADJUSTMENT**

- 5.1 Charges quoted in the Ratecard and SLA, as available on request, may be subject to adjustment in the event that:
  - 5.1.1 additional costs are incurred by Beam due to materials supplied by the Client or any third party being in any way defective, in an unsuitable format (or a different format to that which Beam are expecting to receive the same) or of an unsuitable quality such that Beam cannot subject the same to normal processing; or
  - 5.1.2 any information supplied by the Client or any third party on its behalf in connection with distribution of an Advertisement is inadequate, inaccurate or misleading; or
  - 5.1.3 the Client varies its distribution requirements.

#### **6. BEAM INDEMNITY AND LIABILITY**

- 6.1 Subject to clause 6.2, Beam agrees to indemnify the Client for any loss or damage suffered by the Client as a result of:
  - 6.1.1 a failure by Beam to deliver an Advertisement within the guaranteed times specified in clause 4.2 above;
  - 6.1.2 a failure to deliver an Advertisement in the formats in which it is received from the Client and approved by Beam
- 6.2 Beam's indemnity in clause 6.1:
  - 6.2.1 shall only apply, if the loss or damage suffered by the Client is caused solely by one or both of the failures referred to clause 6.1 above, and if not solely caused as aforesaid the indemnity shall relate to a portion of the loss or damage only, such portion to be negotiated in good faith between the parties; and
  - 6.2.2 shall not apply if the Client has failed to deliver the Delivery Materials for the applicable Advertisement in accordance with clause 3 above; and
  - 6.2.3 shall not apply where failure to deliver any Advertisement or Delivery Materials or delay in delivery is the result of events beyond the reasonable control of Beam such as any action or ruling of any government, war, industrial dispute, strike, breakdown of machinery or equipment, accident, fire or by any other cause beyond Beam's control; and
  - 6.2.4 shall be limited to the amount equal to any airtime cancellation charges and/or late copy surcharges incurred by the Client as a direct result of either or both of the failures referred to in clause 6.1 above.
- 6.3 The Client hereby agrees that the indemnity provided in clause 6.1 shall be the Client's sole remedy in respect of any failure by Beam to perform any of its obligations and/or in respect of any breach by Beam of the provisions of these Terms and Conditions and that the provisions of this clause 6 are reasonable and necessary in the circumstances and that having regard to that fact, this clause 6 does not work harshly or unreasonably against the Client.
- 6.4 Beam shall take reasonable and appropriate care of all Delivery Materials whilst in its possession but shall not be liable to the Client for any loss of or damage to any of the Delivery Materials.
- 6.5 The Client undertakes to Beam that the Client shall or shall ensure that its client shall retain a back up copy of the Delivery Materials for each Advertisement submitted to Beam for distribution (in a format that will enable recreation of the Advertisement in the event of its loss or corruption).
- 6.6 In the event that for any reason delivery of an Advertisement shall fail, Beam shall use its reasonable endeavours to find an alternative means of delivery within the required schedules.

#### **7. CONFIDENTIALITY**

- 7.1 If Beam is advised that an Advertisement is to remain confidential until its first airing, Beam shall use its reasonable endeavours to maintain that confidentiality but the Client acknowledges that Beam is not responsible for the acts or defaults of any third party supplier (such as a courier or third party data carrier) or any Broadcaster once in receipt of any Delivery Materials.

#### **8. CLIENT'S INDEMNITY**

- 8.1 The Client agrees to indemnify Beam in respect of any loss, liability, claim costs or damages arising out of the receipt, distribution or broadcast of the Advertisement or (as relevant) the Delivery Materials or arising out of the fact that the

Advertisement or the Delivery Materials (or any part of them) or their receipt, distribution or broadcast: 8.1.1 infringes any copyright or other intellectual property rights or any privacy, publicity, personality and/or confidentiality right of any third party; or

8.1.2 gives rise to any action for libel or defamation; or

8.1.3 is contrary to any statutory or common law principle or infringes any other applicable rules or codes of practice; or

8.1.4 is shown to be the cause of any loss or damage referred to in clause 3.3 above.

## **9. CHARGES AND PAYMENT**

9.1 Subject to clause 5.1, Beam shall charge for the distribution of an Advertisement and Delivery Materials on the basis set out in the Ratecard and SLA, copies of which are available on request.

9.2 Beam may issue a new Ratecard and SLA at any time and the distribution charges which appear on any new Ratecard and SLA will apply to any Advertisement distributed on behalf of the Client as from the date stated on the new Ratecard and SLA or (if none) the date of receipt by the Client of the new Ratecard and SLA.

9.3 Beam shall invoice the Client in respect of the distribution of an Advertisement immediately after distribution. It is an essential condition of these Terms and Conditions that the invoice (together with VAT thereon) is paid within 28 days of the date of the invoice.

9.4 Any changes to instructions or Delivery Materials received by Beam after distribution of the Advertisement to which they relate will be ignored for the purpose of charging and Beam will be entitled to charge for distribution actually carried out in accordance with the Client's original instructions even if the Advertisement is not broadcast by Broadcasters because of the later instructions.

9.5 No charge will be made for any distribution made in error or where distribution is not made or for late distribution except where such non or late distribution is due to the Client's failure to observe the delivery requirements referred to in clause 3 above.

9.6 In the event that any payment due to Beam from the Client is more than 28 days overdue Beam shall, without further notice and without prejudice to any of Beam's other remedies, be entitled to be paid interest on the sums outstanding from the date payment was originally due at a rate of 4% per annum above LIBOR for the period such sums remain unpaid, and in addition Beam shall be entitled to be reimbursed for any reasonable costs that may be incurred by Beam in recovering such sums.

9.7 Payment of all charges shall only be made in the currency in which they are invoiced. The Client shall pay all amounts owing to Beam in full and shall not exercise any rights of set off or counterclaim against invoices submitted.

9.8 The Client shall be solely responsible for the payment of all air time fees and charges payable to any Broadcaster including without limitation cancellation fees and late copy surcharges unless the surcharge is imposed due to a failure by Beam to deliver an Advertisement on time in circumstances where such Advertisement and its Delivery Materials have been duly delivered to Beam on time by the Client.

## **10. GENERAL**

10.1 Beam reserves the right to make changes to these Terms and Conditions at any time and revised Terms and Conditions will apply as from the date they appear on the Beam Site. The receipt of a Broadcast Delivery Order following any changes to these Terms and Conditions shall be deemed acceptance of the changes.

10.2 These Terms & Conditions and the Ratecard and SLA contain the entire understanding of the parties relating to the distribution of Advertisements by Beam and supersede in all respects any previous or other existing arrangements, agreements, terms and conditions, or understandings between the parties whether oral or written in relation to the distribution of Advertisements by Beam.

10.3 A modification of these Terms and Conditions may only be made in accordance with clause 10.1 above.

10.4 Nothing in these Terms and Conditions provides for any third party to have any right to enforce any term hereof and neither the Client nor Beam intend any provision of Terms and Conditions to be enforced by or to confer any benefit upon any third party under the Contracts (Rights of Third Parties) Act 1999.

10.5 In the event that any provision of these Terms and Conditions shall be held to be illegal, invalid, unenforceable or against public policy pursuant to an adjudication of a court of competent jurisdiction, such provision shall be deemed deleted and the remainder of these Terms and Conditions shall remain full force and effect.

10.6 The Client shall not be entitled to assign, transfer or sub-license any of its rights or obligations hereunder. Beam shall have the unrestricted right to assign its rights and obligations pursuant to these Terms and Conditions (in whole or in part) to any group company of Beam. 10.7 No failure on the part of Beam to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof. 10.8 Beam shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations pursuant to these Terms and Conditions.

10.9 Nothing in these Terms and Conditions shall operate to relieve Beam from any liability for any fraudulent misrepresentation made to the Client at any time.

10.10 These Terms and Conditions shall be read and construed in accordance with the laws of England and Wales and the Client agrees to submit to the exclusive jurisdiction of the Courts of England and Wales. The rights of Beam hereunder shall be additional to any rights arising at common law or otherwise.

## **TERMS AND CONDITIONS – TV ADMIN BUSINESS AFFAIRS**

### **1. INTERPRETATION**

**1.1** In these Terms and Conditions, the following words have the following meanings:

"Advertisement" means the audio-visual advertisement(s) supplied to Beam under these Terms and Conditions for distribution to Broadcasters;

"Contract" means either these Terms and Conditions or a bespoke service agreement, incorporating these Terms and Conditions;

"Client" means the legal person who engages Beam to provide the Services under the Contract;

"Client Supplier" any third party supplier of goods or services to the Client or agent of the Client (including, without limitation, any Media Destination, music agent, artist's agent, media buying house, production house, independent film producer and the Broadcast Advertising Clearance Centre);

"Deadlines" means deadlines imposed by the Media Destination for receipt of Advertisements and associated documents;

"Instructions" a brief detailing the Services required by the Client together with full supporting information and schedules, delivered by e-mail;

"Media Destination" means the appropriate Media Platforms which includes all distribution points

"the Price" has the meaning given to it in clause 2.2;

"the Services" means the services supplied by Beam under the Contract in accordance with the Instructions;

"Beam" means The Mill (Facility) Limited (whose registered office is at 11-14 Windmill Street, London, W1T 2JG)

## **2. FORMATION OF CONTRACT**

**2.1** Any quotation given by Beam will be based on the Instructions provided by the Client and shall be deemed to be Beam's invitation to treat.

**2.2** Acceptance by the Client of any quotation given pursuant to clause 2.1 shall be deemed the Client's offer to engage the Services of Beam to carry out the Instructions provided for the quoted amount ("the Price").

**2.3** Acceptance of the Client's offer will be deemed to take place at the point that Beam accepts the Client's Instructions in writing.

**2.4** In the event that the Client wishes at any time to amend its Instructions it shall notify Beam of such changes in writing and Beam shall have the right to submit a revised quotation based on those revised Instructions and clauses 2.2 and 2.3 shall apply.

**2.5** In any event, any changes to the Instructions requested by the Client shall only form part of the Contract once they have been agreed in writing by Beam.

## **3. SERVICES**

**3.1** The Client acknowledges and agrees that Beam shall not be responsible for making any payments to any third parties on behalf of the Client (including, without limitation, any Client Suppliers or any artists appearing in the Advertisements) unless expressly stated in the Instructions accepted by Beam in accordance with clause 2.2 or 2.5 or otherwise agreed in writing signed and dated by both parties.

**3.2** The Client acknowledges and agrees that Beam accepts no liability and shall not be responsible for any terms, including but not limited to usage terms, agreed and negotiated on behalf of the Client in any clearance agreements. All usage and/or clearance terms shall be based on the Client's instructions and requests. The Services in respect of usage and/or clearance are administrative only. Beam is not acting as an advisor, legal representative or otherwise.

**3.3** Beam warrants that the Services shall be carried out by personnel who are appropriately and adequately trained exercising due care and skill and according to good practice in the industry.

**3.4** Save in respect of clause 3.2 and to the fullest extent permitted in law, Beam makes no further warranties in respect of the Services.

## **4. WARRANTIES AND OBLIGATIONS OF THE CLIENT**

**4.1** The Client shall supply all additional information reasonably requested by Beam in order to supply the Services in accordance with the Instructions, and shall ensure that such information is true and accurate in all respects.

**4.2** The Client shall ensure that:

**4.2.1** all Instructions are complete and accurate; and

**4.2.2** the Instructions are delivered to Beam and the Advertisements are complete and ready to be broadcasted to meet broadcast deadlines

**4.3** Without prejudice to any other right or remedy of Beam, in the event of failure of the Client to comply with clause 4.2.2, Beam shall be entitled to pass on to the Client any charges imposed by a Media Destination for failure to meet the Deadlines.

**4.4** The Client warrants that the Advertisements will comply with all relevant legislation and codes of practice and with best industry practice.

**4.5** Without prejudice to any other rights or remedies of Beam, the Client shall indemnify and hold harmless Beam against any losses, liabilities, costs, damages, claims, fines and expenses (including, without limitation, legal expenses) which Beam suffers as a result of or arising out of:

**4.5.1** any breach by the Client of the warranties and obligations set out in clause 4; and

**4.5.2** any breach by the Client of any of its statutory obligations, including (without limitation) its liabilities to Beam, its employees, agents or sub-contractors under the Occupiers' Liability Act 1957.

## **5. PRICE AND PAYMENT**

**5.1** In consideration of Beam providing the Services to the Client, the Client shall pay the Price and any other sums payable to Beam under the Contract or an agreed rate card, available on request.

**5.2** Unless otherwise stated, the Price is exclusive of any value added tax which shall be charged by Beam to the Client.

**5.3** Beam will raise its invoices in accordance with any arrangement agreed separately with the Client in writing and where no such arrangement exists on completion of the Services.

**5.4** Beam's invoices are payable within thirty (30) days of issue.

**5.5** Beam may charge interest on any overdue payment at a rate of 4% over The Bank of England base rate in accordance with the Late Payment of Commercial Debts (interest) Act 1998, as amended and supplemented by the late Payment of Commercial Debts Regulations 2002.

## **6. LIMITATION OF LIABILITY**

**6.1** Beam shall not be liable to the Client for any loss of profit (direct or indirect), indirect or consequential loss or damage, cost, or expenses or other claims for consequential compensation, whatsoever (howsoever caused) which arises out of or in connection with the Contract.

**6.2** The Client acknowledges and accepts that in its dealings with any Client Supplier, Beam is acting as an intermediary only and any contractual relationship with such Client Supplier is between such Client Supplier and the Client and in no

circumstances will Beam be held liable to the Client for that part of any claim arising under the Contract as a result (in whole or in part) of the negligent acts or omissions or breach of contract of any Client Suppliers.

**6.4** In the event that the Client fails, to:

**6.4.1** deliver the Instructions to Beam; and/or

**6.4.2** make the Advertisements ready and complete by broadcast Deadlines Beam shall use reasonable endeavors to deliver such Advertisement to the Media Destination by the Deadlines, but Beam shall not be held liable to the Client for any losses whatsoever suffered by the Client or any third party resulting from failure to meet such Deadlines.

**6.5** Beam shall not be held liable to the Client for any losses whatsoever suffered by the Client or any third party, where such losses arise from mistakes appearing in any documentation produced by Beam as part of the Services that are as a result of inaccuracies in:

**6.5.1** the Instructions provided to Beam by the Client in breach of the Client's obligations under clause 4.2.2; or

**6.5.2** any information or documentation provided to Beam by any Client Supplier.

**6.6** Nothing in these Conditions shall exclude or limit the liability of either party for its negligent acts or omissions which cause death or personal injury or for fraudulent misrepresentation.

## **7. TERMINATION AND CONSEQUENCES OF TERMINATION**

**7.1** Beam shall be entitled to terminate the Contract in whole or in part, without liability to the Client, by giving notice to the Client at any time if:

**7.1.1.** the Client has a bankruptcy order made against him or her or makes an arrangement or composition with his or her creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the notice of intention to appoint an administrator is given by the Client or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Client or for the granting of an administration order in respect of the Client, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client, or the Client suffers or allows any execution, whether legal or equitable, to be levied on his, her or its property or obtained against him, her or it, or fails to observe or perform any of his, her or its obligations under the Contract or any other contract between Beam and the Client, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act of 1986 or the Client ceases to trade.

**7.1.2** Beam reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly.

**7.1.2** Following completion of the Services of termination of the Contract in accordance with clause 7.1, unless requested by the Client to return all instructions and other documents supplied by the Client under the Contract at the Client's cost, Beam shall be entitled to retain all such documents until collected by the Client or destroyed by Beam.

## **8. NON-SOLICITATION**

**8.1** During this term of the Contract Agreement and for a period of twelve (12) months following the termination of it for any reason, the Client shall not directly or indirectly offer employment or engagement to, or employ or engage, any person employed or engaged by Beam who has been materially involved in the provision of the Services.

**8.2** If the Client breaches the terms of clause 8.1 it shall pay Beam by way of liquidated damages an amount equal to one half of the final gross annual salary of the person so employed or engaged, and the parties hereby acknowledge that such amount is a reasonable assessment of the costs which would be incurred in the loss of such a person.

**8.3** In addition to any other rights which Beam may have it shall, for the avoidance of any doubt, be entitled to seek injunctive relief for any threatened or actual breach of clause 8.1.

## **9. FORCE MAJEURE**

**9.1** Neither Beam nor the Client shall be liable to the other in any manner whatsoever for any failure or delay in performing its obligations due to force majeure which expression means any cause beyond the control of either party, which includes without limitation, an Act of God, governmental actions, restrictions or prohibitions, war, sabotage, riots, civil commotion, fire, flood, epidemic, currency restrictions or atmospheric conditions.

## **10. GENERAL**

**10.1** These terms shall not be deemed to create a partnership or agency relationship between the Parties.

**10.2** If any part of this Agreement is or becomes unenforceable, such part will be construed as far as possible to reflect the parties' intentions and the remainder of the provisions will remain in full force and effect.

**10.3** No waiver, failure or delay by either party to enforce its rights shall prejudice or restrict its rights in future.

**10.4** These terms are made and shall be construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.

**10.5** Beam reserves the right to vary these Terms and Conditions at any time. Any variation shall be notified to the Client via the Beam site.

**10.6** These Terms and Conditions shall be governed and interpreted exclusively according to the law of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales only.