

## **INCISIVE MEDIA STANDARD TERMS AND CONDITIONS FOR ONLINE ADVERTISING**

### **GENERAL**

All advertisements accepted for publication by Incisive Media ("Incisive") in any of its online products are accepted subject to these terms and conditions. Any other conditions proposed by the other

contracting party(ies) (Agency or Advertiser ("Client")) shall be void unless accepted by Incisive in writing.

These terms and conditions, in conjunction with the relevant Incisive Insertion Order ("IO") form the agreement

between Incisive and the Client.

### **I. INSERTION ORDERS**

a. Parties may negotiate Campaign Insertion Orders ('IO's) under which Incisive will deliver advertisements ('Ad(s)') provided by Agency or Advertiser ('Client') on Incisive's website(s) ('Site') for the benefit of the Client. In each case, an IO will be submitted in writing (which, unless otherwise

specified, for purposes of these Terms and Conditions shall include paper, fax, or e-mail communication) to

the Client by Incisive.

b. Each IO shall specify;

i) the type(s) and amount(s) of inventory to be delivered (e.g., impressions, clicks or other desired actions)

('Deliverables');

ii) the price(s) for such Deliverables;

iii) the maximum amount of money to be spent pursuant to the IO (if applicable);

iv) the start and end dates of the campaign;

v) the identity of and contact information for any third party ad server ('3rd Party Ad Server'), if applicable.

Other items that may be included are, but are not limited to: reporting requirements such as impressions or

other performance criteria; any special Ad delivery scheduling and/or Ad placement requirements; and

specifications concerning ownership of data collected.

c. Revisions to accepted IOs must be made in writing and acknowledged by the other party in writing.

d. IOs should be signed within 48 hours of receipt.

### **II. AD PLACEMENT AND POSITIONING**

a. Incisive will endeavour to display/transmit the Advertising copy during the Campaign Period in accordance

with the terms of the IO.

b. If Advertising Copy is not transmitted/displayed in accordance with the agreed performance criteria specified in the IO within the Campaign Period for reasons other than the default of the Client, Incisive will

endeavour to achieve such performance level within one month of the end of the Campaign Period. The

Client will be entitled to an appropriate pro-rata rebate of the Total Cost based on the number of impressions

actually transmitted after the additional three month period.

c. Incisive will submit or otherwise make electronically accessible to Client within two business days of acceptance of an IO final technical specifications, as agreed upon by the parties. If Incisive changes the

specifications of the already-purchased Ads after that two business day period it will allow Client to suspend

(without impacting the end date unless otherwise agreed by the parties) delivery of the affected Ad for a

reasonable time in order to either (i) send revised artwork, copy, or active URLs ('Advertising Materials'); (ii)

allow Incisive to resize the Ad at Incisive's cost, and with final creative approval of Client, within a reasonable time period to fulfil the guaranteed levels of the IO; (iii) accept a comparable replacement; or (iv) if the parties are

unable to negotiate an alternate or comparable replacement in good faith within 5 business days, immediately cancel the remainder of the IO for the affected Ad without penalty.

d. Ad delivery shall comply with editorial adjacencies guidelines stated on the IO. As Client's sole remedy for a violation of the foregoing sentence, after Client notifies Incisive that specific Ads are in violation of such editorial adjacencies guidelines, Incisive will make commercially reasonable efforts to correct within three working days such violation. In the event that such correction materially and adversely impacts such IO, the parties will negotiate in good faith mutually agreed changes to such IO to address such impacts.

e. Campaigns to be delivered in full within the dates specified, within IAB guidelines relating to under delivery, that is under delivery based on 3rd party server reports of less than 5% of the total booking is considered acceptable and not to be compensated.

### **III. PAYMENT AND PAYMENT LIABILITY**

a. Incisive shall render invoices to the Client for all sums due to Incisive pursuant to this Agreement in accordance with the IO. For the avoidance of doubt the Total Cost is exclusive of any applicable VAT or sales tax; where such tax is payable it will be the obligation of the Client to pay it. The Client will not be entitled to deduct any amounts from the Total Cost paid to Incisive except that, in the event that the Client is the Advertising Agency, the Total Cost may be subject to an Agency discount.

b. All invoices shall be settled by the Client not later than thirty (30) days from the date of the invoice. If the Client is in default of payment by the due date Incisive, shall without prejudice to its other rights, be entitled to refuse to transmit the Advertising Copy and Incisive's obligations generally will be reduced pro-rata to the delay in payment including the number of guaranteed impressions or plays obliged to be transmitted/displayed, without affecting the Client's financial responsibility for all impressions and plays ordered and inventory reserved.

c. The existence of a valid query on any individual item in an invoice will only affect the due date of payment of that individual item. The Client must notify Incisive of any such query within seven working days from the date of the invoice and no other queries will be deemed to be valid after such time.

d. It will not be open to the Client to claim any rights of set off in respect of any invoices.

e. If payment has not been received by the due date then Incisive shall have the right to levy interest at the rate of four per cent (4%) per annum above the base rate for the time being in force at the Royal Bank of Scotland plc in London and such interest shall be calculated from the date such sums become due until they are paid.

f. For the avoidance of doubt, any discounts or rebates offered by Incisive shall only be available in respect of the advertising campaign contracted under this Agreement and shall not be available to any parent, associate or subsidiary company of the Client.

g. For the avoidance of doubt, where the Advertising Agency is the Client, it is contracting as principal in all respects and as such will be personally liable for the payment of the Total Cost and for all other obligations under this Agreement.

h. Incisive reserves the right that in the case of overdue payment from an agency that Incisive may inform the agency's client of the failure of the agency to pay for advertisements supplied by Incisive.

### **IV. POSTPONEMENT**

If the Client wishes to postpone the Campaign Period Incisive shall consider such request in good faith but shall have no obligation to consent to such postponement. Any acceptance of such postponement shall require immediate pre-payment of the Total Cost less any payments already made.

### **V. CANCELLATION AND REVISION**

- a. At any time, Client may cancel the IO with 30 days prior written notice, without penalty. For clarity and by way of example, if Client cancels the IO 15 days prior to the serving of the first impression, Client will only be responsible for the first 15 days of the IO.
- b. In the event that a Client seeks to revise an IO then Client must provide 30 days prior written notice of such revision. In this event, billable rates will automatically revert to the appropriate published rate (the 'ratecard') for the revised impressions.

#### **VI. TERMINATION**

Either party may terminate an IO at any time if the other party is in material breach of its obligations hereunder that is not cured within 10 days after written notice thereof from the non-breaching party, except as otherwise stated in this Agreement with regard to specific breaches.

#### **VII. BONUS IMPRESSIONS**

Where Client utilises a 3rd Party Ad Server, Incisive will not bonus more than 10% above the Deliverables specified in the IO without prior written consent from Client. Permanent or exclusive placements shall run for the specified period of time regardless of over-delivery, unless the IO establishes an impression cap for 3rd Party Ad served activity. Advertiser will not be charged by Incisive for any additional Ads above any level guaranteed or capped in the IO. If a 3rd Party Ad Server is being used and Advertiser notifies Incisive that the guaranteed or capped levels stated in the IO have been reached, Incisive will use commercially reasonable efforts to suspend delivery within 2 business days.

#### **VIII. FORCE MAJEURE**

- a. Excluding payment obligations, neither party will be liable for delay or default in the performance of its obligations under this Agreement if such delay or default is caused by conditions beyond its reasonable control, including but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labour disputes. In the event that Incisive suffers such a delay or default, Incisive shall make reasonable efforts within five business days to recommend a substitute transmission for the Ad or time period for the transmission. If no such substitute time period or make good is reasonably acceptable to Client, Incisive shall allow Client a pro rata reduction in the space, time and/or programme charges hereunder in the amount of money assigned to the space, time and/or programme charges at time of purchase. In addition, Client shall have the benefit of the same discounts that would have been earned had there been no default or delay.
- b. If Client's ability to transfer funds to third parties has been materially negatively impacted by an event beyond the Client's reasonable control, including, but not limited to, failure of banking clearing systems or a state of emergency, then Client shall make every reasonable effort to make payments on a timely basis to Incisive, but any delays caused by such condition shall be excused for the duration of such condition. Subject to the foregoing, such excuse for delay shall not in any way relieve Client from any of its obligations as to the amount of money that would have been due and paid without such condition.
- c. To the extent that a force majeure has continued for 10 business days, Incisive or Client has the right to cancel the remainder of the IO without penalty.

#### **IX. ADVERTISING MATERIALS**

- a. It is the Client's obligation to submit Advertising Materials at least 5 working days before the commencement of the Campaign Period in accordance with Incisive's then existing advertising criteria or specifications (including content limitations, technical specifications, privacy policies, user experience policies, policies

regarding consistency with Incisive's public image, community standards regarding obscenity or indecency

(taking into consideration the portion(s) of the Site on which the Ads are to appear), other editorial or advertising policies, and material due dates) (collectively "Policies") in accordance with Section II(c). Incisive's

sole remedy for a breach of this provision is set forth in paragraphs (b and c) below and Section X(b). If Advertising Materials are late, Incisive will comply with late copy deadlines in line with IAB guidelines, a separate document is available to detail this but in brief:

1) Copy is officially late at 12 noon the day before the campaign is due to start. If the copy has not arrived by this time, the advertiser will lose impressions on a daily pro-rata basis until copy arrives and Incisive can test and post it.

2) IAB workflow guidelines for receiving and testing copy are 3 days for UAP (Universal Advertising Package) formats and 5 working days for Rich Media formats, however Incisive will endeavour to set up the campaign as soon as possible assuming that copy has arrived correct to Incisive specifications.. In the event that Client does not agree to the above, then Client remains responsible for full payment as specified in the original IO.

b. Incisive reserves the right within its discretion to reject or remove from its Site(s) any Ads where the Advertising Materials or the site to which the Ad is linked do not comply with its Policies, or that in Incisive's sole

reasonable judgment, do not comply with any applicable law, regulation or other judicial or administrative

order. In addition, Incisive reserves the right within its discretion to reject or remove from its Site(s) any Ads

where the Advertising Materials or the site to which the Ad is linked are or may tend to bring disparagement,

ridicule, or scorn upon Incisive or any of its Affiliates (Affiliate – any holding or subsidiary company of Incisive Media and any subsidiary company of any such holding company as the context may require), provided that if Incisive has reviewed and approved such Ads prior to their use on the Site, Incisive will not immediately remove such Ads before making commercially reasonable efforts to acquire mutually

acceptable alternative Advertising Materials from Client.

c. If Advertising Materials provided by Client are damaged, not to Incisive's specifications, or otherwise unacceptable, Incisive will use commercially reasonable efforts to notify Client within 5 business days of its

receipt of such Advertising Materials.

d. Incisive shall at all times retain all right and title in any Advertising copy produced on behalf of the Client by Incisive.

e. Incisive, on one hand, and Client on the other, will not use the other's trade name, trademarks, logos or Ads

in a public announcement (including, but not limited to, through any press release) regarding the existence

or content of these Terms and Conditions or an IO without the other's prior written approval.

## **X. INDEMNITIES**

The Client hereby warrants, represents and undertakes to Incisive that:

a. In respect of the Advertising Copy or any part thereof supplied by the Client or any other material provided

to Incisive by the Client (including the Client's brand) it will not infringe the copyright, trade mark or any other

rights or be defamatory of any third party and their broadcast by Incisive will not give rise to a right for any third

party to claim payment and/or damages;

b. The Client has obtained and paid for all necessary consents, licenses, and permissions to advertise on

the site;

c. The Client has taken or will take all necessary steps to ensure that its advertising on the site will not be illegal or actionable for any reason in any territory and shall comply with all applicable legislation, rules and

regulations including for the avoidance of doubt any applicable advertising standards and codes, including

for the avoidance of doubt the Codes, privacy laws or any relevant legislation and/or regulation, with respect

of (and without limitation to) data protection, sex discrimination, race discrimination, disability, and including

any legislation or regulation relating to the provision of Financial Services, which apply to specific Clients,

products or services

d. If any Advertising Copy contains the name or pictorial representation (photographic or otherwise) of any

living person and/or any part of any living person and/or copy by which any living person is or can be readily

identified, the Client warrants that the Client has obtained the authority of such living person to make use of

such name, representation and/or copy.

e. The Client is solely responsible for fulfilling and dealing with any orders or enquiries relating to the goods,

services or promotion to which the Advertising Copy relates and will indemnify and hold Incisive harmless

accordingly.

#### **XI WARRANTIES**

a. The Client will fully indemnify and keep Incisive and its directors, officers and employees fully indemnified

against all actions, proceedings, costs (including legal fees), damages, expenses, fines, losses (including loss of profits) penalties, claims, demands and liabilities directly or indirectly suffered or incurred by

Incisive (or

its directors, officers or employees) howsoever arising from any breach of the Client's warranties, obligations

or agreements contained herein.

b. The Client will provide Incisive with full co-operation in defending any claim or complaint concerning the

Advertising Copy including, but not limited to, providing evidence in support of advertising claims and copies

of underlying rights clearances.

c. The Client acknowledges and confirms that Incisive has not provided it with any guarantees concerning reach

of the site or target audience. Any statistics related to the site provided to the Client are provided as an estimate based on current available research only and should not be relied on by the Client.

#### **XII. LIMITATION OF LIABILITY**

a. Incisive shall not be liable to the Client, under or in connection with this Agreement, whether in contract, tort

(including negligence) or otherwise, for any loss of profit, goodwill, business opportunity, anticipated saving

or any type of special, indirect or consequential loss or damage.

b. Subject to Clause XI(c) below, Incisive's entire liability (if any) to the Client, under or in connection with this

Agreement, whether in contract, tort (including negligence) or otherwise, shall be limited to the amount

actually paid by the Client to Incisive.

c. Neither party's liability to the other for (a) death or personal injury resulting from the negligence of itself, its

servants or agents (b) fraud or (c) any other liability the exclusion of which is prohibited or limited by law,

shall be excluded or limited by the provisions of this Agreement, save to the extent permitted by law.

#### **XIII. NON-DISCLOSURE, DATA OWNERSHIP, PRIVACY AND LAWS**

a. Any marked confidential information and proprietary data provided by one party, including the Ad description, and the pricing of the Ad, set forth in the IO, shall be deemed "Confidential Information" of the

disclosing party. Confidential Information shall also include information provided by one party, which under

the circumstances surrounding the disclosure would be reasonably deemed confidential or proprietary.

Confidential Information shall not be released by the receiving party to anyone except an employee, or agent

who has a need to know same, and who is bound confidentiality obligations. Neither party will use any portion of Confidential Information provided by the other party hereunder for any purpose other than those

provided for under this Agreement.

b. Notwithstanding anything contained herein to the contrary, the term "Confidential Information" shall not

include information which: (i) was previously known to a party; (ii) was or becomes generally available to the

public through no fault of the receiving party ("Recipient"); (iii) was rightfully in Recipient's possession free of

any obligation of confidence at, or subsequent to, the time it was communicated to Recipient by the disclosing party ("Discloser"); (iv) was developed by employees or agents of Recipient independently of and

without reference to any information communicated to Recipient by Discloser; or (v) was communicated by

Discloser to an unaffiliated third party free of any obligation of confidence. Notwithstanding the foregoing,

either party may disclose Confidential Information in response to a valid order by a court or other governmental body, as otherwise required by law or the rules of any applicable securities exchange or as

necessary to establish the rights of either party under this Agreement; provided, however, that both parties

will stipulate to any orders necessary to protect said information from public disclosure.

c. All personally identifiable information provided by individual web users who are informed that such information is being gathered solely on behalf of Client pursuant to the Client's posted privacy policy is the

property of Client, is subject to the Client's posted privacy policy, and is considered Confidential Information.

Any other use of such information must be set forth in the IO signed by both parties.

d. Incisive and Client shall post on their respective Web sites their privacy policies and adhere to their privacy

policies, which abide by the applicable laws. Failure by Incisive on one hand or Client on the other, to continue

to post a privacy policy or non-adherence to its own privacy policy is grounds for immediate cancellation of

the IO by the other parties.

e. Client and Incisive will comply with at all times, all applicable UK law, ordinances, regulations and codes

which are relevant to their performance of their respective obligations under this agreement.

#### **XIV. MISCELLANEOUS**

a. Incisive represents and warrants that Incisive has all necessary permits, licenses, and clearances to sell the

inventory represented in the IO subject to the terms and conditions of this agreement, including any applicable Policies. Client represents and warrants that Client has all necessary licenses and clearances to

use the content contained in their Ads and Advertising Materials.

b. Client may not resell, assign or transfer any of its rights or obligations hereunder, and any attempt to resell, assign or transfer such rights or obligations without Incisive's prior written approval will be null and void.

All terms and provisions of these Terms and Conditions and each IO will be binding upon and inure to the

benefit of the parties hereto and their respective permitted transferees, successors and assigns.

c. These Terms and Conditions and the related IO constitute the entire agreement of the parties with respect

to the subject matter and supersede all previous communications, representations, understandings, and

agreements, either oral or written, between the parties with respect to the subject matter of the IO. The IO

may be executed in counterparts, each of which shall be an original and all of which together shall constitute

one and the same document.

d. In the event of any inconsistency between the terms of an IO and these Terms and Conditions, the terms of the IO shall prevail. All IOs shall be governed by the laws of the England. Incisive and Client agree that any claims, legal proceeding or litigation arising in connection with the IO (including these Terms and Conditions) will be brought solely in the England, and the parties consent to the jurisdiction of such courts. No modification of these Terms and Conditions or any IO shall be binding unless in writing by both parties. If any provision herein is held to be unenforceable, the remaining provisions shall remain in full force and effect. All rights and remedies hereunder are cumulative.

e. Any notice required to be delivered hereunder shall be delivered three days after deposit in the Royal Mail, (recorded mail), one business day if sent by overnight courier service, and immediately if sent electronically or by fax. All notices to Incisive and Client shall be sent to the contact as noted in the IO with a copy to the Legal Department. All notices to Client shall be sent to the address specified on the IO.

f. Sections III, IX, X, XI, XII, and XIV shall survive termination or expiration of this Agreement and Section IV shall survive for 30 days after the termination or expiration of this Agreement. In addition, each party shall return or destroy the other party's Confidential Information and remove Advertising Materials and Ad tags.