

## **Snack Media**

### **Online Advertising Network: Terms and Conditions for Publishers**

These terms and conditions for publishers (“**Terms and Conditions**”) and supplementary proposal (“**Proposal**”) shall govern the relationship between the owner of a website or mobile application (“**Publisher**”) and Snack Media Limited (“**Snack Media**”) in relation to the participation by the Publisher in Snack Media’s online advertising network (“**Snack Media Network**”). By participating in the Snack Media Network, the Publisher gives Snack Media the exclusive right to sell and syndicate advertising, social media activity and content on its behalf in accordance with and subject to these Terms and Conditions and the Proposal. In the event of any inconsistency between the Terms and Conditions and the Proposal, the Proposal shall prevail.

#### **1. DEFINITIONS**

“**Advertiser**” means a potential or actual Advertising customer of the Publisher.

“**Advertiser Social Media Activity**” means content produced and/or posted by Snack Media (under the instruction of the Advertiser) on a Publisher Website, in accordance with and subject to clauses 5.15 to 5.17.

“**Advertising**” means any advertising, sponsorship, social media or other paid content or other commercial revenue-generating activity.

“**Approved Costs**” means administrative and ad-serving costs reasonably incurred by Snack Media in connection with the sale of Advertising to an Advertiser on behalf of a Publisher.

“**Commission**” means the consideration payable to Snack Media for the Services, calculated as the percentages of Incoming Advertising Revenue and Publisher Content Revenue stipulated in the Proposal.

“**Contract**” means the Proposal incorporating these Terms and Conditions.

“**Fan Engagement Tools**” means such products and services as may be provided or made available by Snack Media to the Publisher from time to time, which are intended to increase the time spent by users on the Publisher Websites and the number of Publisher Pages viewed.

“**Forecast**” means the number of Impressions the parties anticipate shall be delivered in any given campaign, as set out in the Proposal.

“**FTBL**” is the online platform connecting and disrupting the football industry, which is operated through several entities including Project FTBL Limited, Project FTBL GP Limited, Project FTBL LP and any other associated or group entities incorporated or established from time to time.

“**FTBL Commission**” means the commission payable by the Publisher to Snack Media pursuant to and in accordance with clause 12, calculated as a percentage of the Publisher’s FTBL Revenue. If there is no express agreement in the Proposal as to the underlying percentage applicable to the FTBL Commission, unless agreed otherwise in writing such percentage shall be 5%.

“**FTBL Revenue**” means any and all revenues generated by the Publisher arising out of its relationship with FTBL, including without limitation revenue from on-going FTBL activity and proceeds of sale on a disposal of some or all of the Publisher’s equity stake in FTBL.

“**Impressions**” means the exact number of times a Publisher Website has been accessed or viewed by a user.

“**Incoming Advertising Revenue**” means revenue from an Advertiser (or its agency) for the Advertising, which shall be payable by an Advertiser (or its agency) to Snack Media (as agent for a Publisher) less the Advertiser’s agency fees.

“**Intellectual Property Rights**” means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“**Marks**” means a party’s trademarks (registered or unregistered), logos, trade dress and any other form of visual identity of that party’s brand.

**“Net Advertising Revenue”** means the Incoming Advertising Revenue and Publisher Content Revenue less the Approved Costs.

**“Net Balance”** means the balance of the Net Advertising Revenue after Snack Media has deducted the Commission.

**“Network Tags”** means scripts provided by Snack Media that are designed to be inserted into the code of the Publisher Pages, which scripts communicate with servers designated by Snack Media.

**“Prohibited Content”** means any content that: (i) contains or promotes concepts that are hateful or disparaging towards any race, religion, gender, sexual orientation or nationality; (ii) promotes firearms, bombs and other weapons or how-to guides for any of the foregoing; (iii) contains or promotes pornography or graphic sexual depictions; (iv) contains, promotes or links to indecent, obscene or highly explosive subject matter; or (v) facilitates or promotes any illegal activity including without limitation hacking, phreaking, illegal file-sharing (MP3s, copyright protected video, or the equivalent).

**“Publisher Content”** means any content published on a Publisher Website which Snack Media may license to a third party pursuant to and in accordance with clause 5.

**“Publisher Content Revenue”** means any and all revenues generated from the licensing of Publisher Content by Snack Media on behalf of the Publisher.

**“Publisher Page”** means a page on a Publisher Websites.

**“Publisher Website”** means any website and/or mobile application owned or operated by the Publisher whether referred to in the Proposal or launched/published since the date of the Proposal.

**“Services”** means the services provided by Snack Media under the Contract including without limitation the sale and syndication of Advertising on one or more Publisher Websites on behalf of the Publisher, and the Fan Engagement Tools.

1.2 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

## **2. APPOINTMENT AND BASIS OF CONTRACT**

2.1 The Proposal, once signed and dated by the Publisher, shall constitute an offer by the Publisher to purchase the Services in accordance with the terms of the Contract.

2.2 The Proposal shall be deemed to be accepted upon the earlier of Snack Media's written acceptance of the Proposal or Snack Media's commencement of the Services, at which point these Terms and Conditions shall be deemed to be incorporated ("**Commencement Date**").

2.3 At the Commencement Date the Publisher appoints Snack Media, and Snack Media agrees to act, as the sole and exclusive provider of the Services to the Publisher during the term of the Contract.

## **3. PUBLISHER OBLIGATIONS**

3.1 The parties acknowledge that Snack Media's ability to generate long term revenues for the Publisher shall rely on the accuracy of the information supplied by the Publisher in relation to the Publisher Websites and efficient control over the relevant ad-serving systems and processes.

3.2 In consideration of clause 3.1, during the term of the Contract the Publisher warrants that it shall:

3.2.1 ensure that the terms of the Proposal are complete and accurate;

3.2.2 provide to Snack Media such technical information to assist in the design, implementation and selling of Advertising as requested by Snack Media within twenty four (24) hours of Snack Media's request; provide to Snack Media HTML codes as requested that provide click-through access to the Advertising from the Publisher Websites;

3.2.4 provide Snack Media with all reasonably relevant information as requested by Snack Media for the proper performance of the Services within twenty four (24) hours of its request being made;

3.2.5 not manipulate the use of a Publisher Website by generating unjustified traffic or clicks through technical or other unjustified, unnatural or unsustainable means. The Publisher shall at any time upon written request give Snack Media access within seven (7) days to log files of a Publisher Website to verify compliance with this;

- 3.2.6 at its own expense procure, maintain and operate all hardware, software, networks, systems and third-party services (e.g., internet access) necessary to (i) operate the Publisher Website(s), (ii) use the Network Tags, (iii) display the Advertising, (iv) access and use the Snack Media Network services, and (v) not obstruct Snack Media from performing the Services;
  - 3.2.7 enable Snack Media to access its live traffic statistics from Google Analytics (or any other traffic measurement system that Snack Media agrees to in writing) or otherwise provide any reasonable traffic statistics information in a low maintenance way;
  - 3.2.8 ensure that the Network Tags are live on all of the Publisher Websites' ad placement positions at all times. If any Advertising or Network Tags are removed or displaced by the Publisher, the Publisher shall be liable to Snack Media for the value of such removed or displaced Advertising or Network Tags, and such value shall be the greater of the pro rata value of the Forecast and the average of the number of Impressions delivered in the three (3) months prior to such removal or displacement. The Publisher shall immediately inform Snack Media in writing if any Advertising or Network Tags are removed or displaced;
  - 3.2.9 within fourteen (14) days of the Commencement Date provide Snack Media with full details of all available inventory on the Publisher Websites;
  - 3.2.10 provide Snack Media promptly and accurately with any reasonable information it may request;
  - 3.2.11 incorporate promptly and accurately any demographics tools into the Publisher Website as may reasonably be required by Snack Media to maximise the Incoming Advertising Revenue (including without limitation Comscore and Quantcast), and the Publisher hereby agrees to provide any and all consents relating to information and ranking tools or similar that Snack Media may require to maximise the Incoming Advertising Revenue;
  - 3.2.12 immediately following the Commencement Date, name Snack Media as the advertising sales contact on all of the Publisher's materials using such contact details as set out in the Proposal; and
  - 3.2.13 add a Snack Media Network banner to the Publisher Website, so that it is visible to the user when he first enters the Publisher Website. Such Snack Media Network banner shall link back to the Snack Media Network website or such other website as Snack Media may direct in writing from time to time.
  - 3.2.14 add the Snack Media Network widget to the sidebar of the Publisher Website
  - 3.2.15 consider using the Fan Engagement Tools.
- 3.3 The Publisher authorises and consents to Snack Media's use of and reference to the Marks, and licenses any such rights pursuant to clause 6.3.
- 3.4 The Publisher hereby acknowledges that Snack Media shall not be liable for any and all losses incurred as a result of any breach by the Publisher of any of the warranties listed in clause 3.2 or any breach of its obligations under the Contract.

#### **4. SNACK MEDIA OBLIGATIONS**

- 4.1 During the Term and subject to clause 3, Snack Media shall:
- 4.1.1 generate revenue by selling Advertising and licensing out Publisher Content for the Publisher at prices to be agreed from time to time between Snack Media and the Advertisers or third parties (as appropriate);
  - 4.1.2 collect the Incoming Advertising Revenue from the Advertisers and the Publisher Content Revenue from the licensees of the Publisher Content and account to the Publisher for the Net Balance in accordance with the terms of the Contract;
  - 4.1.3 procure the delivery of Advertising via Snack Media's ad-serving platform; and
  - 4.1.4 provide the Publisher with access to the Fan Engagement Tools.
  - 4.1.5 provide the Publisher with a monthly report showing Incoming Advertising Revenue and Publisher Content Revenue.

#### **5. REVENUE, COMMISSION AND PAYMENTS**

##### **Incoming Advertising Revenue**

- 5.1 Snack Media shall be responsible for monitoring Publisher Website statistics and calculating the Incoming Advertising Revenue, however the parties acknowledge that such responsibility shall be limited to the extent that such statistics shall be provided by the Publisher.

##### **Publisher Content Revenue**

- 5.2 Snack Media may license Publisher Content to Advertisers and/or third parties on behalf of the Publisher at its discretion, and Publisher Content Revenue received shall be taken into account when calculating the Commission, as further defined in clause 5.3.

##### **Commission and Approved Costs**

- 5.3 The percentage of the Incoming Advertising Revenue and Publisher Content Revenue payable as the Commission shall be stipulated in the Proposal. Upon receipt of the Incoming Advertising Revenue and Publisher Content Revenue, Snack Media shall deduct from them any Approved Costs, then calculate the Commission, and finally remit the Net Balance to the Publisher.

#### **Payment of Net Balance to Publisher**

- 5.4 Snack Media shall remit payment to the Publisher of the Net Balance within 30 days of the month-end in which Snack Media receives payment in full of the Incoming Advertising Revenue from the Advertiser and/or the Publisher Content Revenue from the third party licensees.
- 5.5 Snack Media does not guarantee payment by Advertisers or third party licensees and shall not be liable to the Publisher in respect of non-payment or late payment by Advertisers or third party licensees.
- 5.6 Snack Media shall use reasonable endeavours to procure payment of the Incoming Advertising Revenue and Publisher Content Revenue.
- 5.7 Where an Advertiser fails to pay the Incoming Advertising Revenue, or where a third party licensee of Publisher Content fails to pay the Publisher Content Revenue, within thirty (30) days of the due date for payment on an invoice issued by Snack Media, Snack Media may at its sole discretion take such steps as it deems appropriate to recover such Incoming Advertising Revenue and/or Publisher Content Revenue, including without limitation sending pre-action letters, serving statutory demands and commencing debt recovery proceedings.
- 5.8 If, at ninety (90) days following the due date for payment on an invoice issued by Snack Media to an Advertiser and/or a licensee of Publisher Content, the Advertiser and/or licensee of Publisher Content has failed to pay sums sought by Snack Media, the parties hereby acknowledge that it may be appropriate to and Snack Media may assign such debt to the Publisher in order for the Publisher to pursue the Advertiser directly.
- 5.9 In the event Snack Media assigns a debt to the Publisher pursuant to clause 5.8, the consideration for such assignment shall be the Commission, which the Publisher shall pay on the date of such assignment unless agreed otherwise in writing.
- 5.10 If either party fails to make any payment due to the other party under the Contract by the due date for payment then, without limiting either party's remedies under clause 11, the paying party shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The paying party shall pay the interest together with the overdue amount.

#### **The Fan Engagement Tools**

- 5.11 Snack Media intends to provide the Fan Engagement Tools to the Publisher. If there is no charge cited in the Proposal then the assumption shall be that Snack Media shall provide the Fan Engagement Tools as a free-of-charge, added value Service., subject always to Snack Media's rights under clause 5.12.
- 5.12 Notwithstanding clause 5.11, Snack Media unconditionally reserves its right to charge the Publisher a fee to use the Fan Engagement Tools.
- 5.13 Snack Media shall provide the Publisher with one (1) month's written notice in the event it decides to charge a fee in accordance with clause 5.12.

#### **Advertiser Social Media Activity**

- 5.14 An Advertiser may engage Snack Media to produce content for, and run, Advertiser Social Media Activity.
- 5.15 For any Advertiser Social Media Activity, the Publisher may earn a commission based on fees received by Snack Media from the Advertiser for the Advertiser Social Media Activity.
- 5.16 the rate of any such commission as referred to in clause 5.15 shall be set out in the Proposal or may otherwise be agreed between Snack Media and the publisher in writing.

#### **Over-delivery by Snack Media**

- 5.17 The parties acknowledge that it is the aim of Snack Media to over-deliver on campaigns because of the detrimental time and cost impact on both parties of under-delivery.
- 5.18 Snack Media shall incur no liability to the Publisher for the first 10% of over-delivery on any campaign, regardless of the level of demand experienced by the Publisher at any given time.

## **6. INTELLECTUAL PROPERTY**

- 6.1 Save for as expressly granted to the Publisher in the Contract, Snack Media retains all Intellectual Property Rights in and to the Snack Media Network, the technology utilised by Snack Media in connection with the Snack Media Network, the Network Tags and any Advertising as appropriate.
- 6.2 Save as provided in clause 6.3, each party hereby authorises the other party to disclose the participation of the Publisher in the Snack Media Network and each party grants to the other party a non-exclusive, worldwide, royalty-free license to use, reproduce and display the other party's Marks for the sole purpose of performing their respective obligations under the Contract.
- 6.3 The Publisher hereby grants to Snack Media a non-exclusive licence to use the Publisher's Marks and content and/or imagery from the Publisher Websites for the purposes of generating Publisher Content Revenue and for its own publicity and marketing.

## 7. CONFIDENTIALITY

A party ("**receiving party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("**disclosing party**"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Contract.

## 8. LIMITATION OF LIABILITY: THE PUBLISHER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 8.1 Snack Media's liability under the Contract shall be excluded to the fullest extent permitted by law.
- 8.2 For the avoidance of doubt:
- 8.2.1 Snack Media shall not be liable to the Publisher for non-payment or late payment by Advertisers and/or licensees of the Publisher Content;
  - 8.2.2 the Publisher understands and acknowledges that there is no guarantee of any minimum level of revenue under this agreement;
  - 8.2.3 Snack Media shall not be liable to the Publisher for losses incurred by the Publisher where the Publisher has breached any of its obligations under clause 3.2;
  - 8.2.4 Snack Media shall under no circumstances be liable to the Publisher, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - 8.2.5 Snack Media's total liability to the Publisher in respect of all other losses arising under or in connection with the Contract shall in no circumstances exceed the aggregate of the Commission from the six months prior to the date on which Snack Media's liability has been agreed between the parties or decided by a court of competent jurisdiction.
- 8.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.4 This clause 8 shall survive termination of the Contract.

## 9. RESTRICTIONS

- 9.1 The Publisher shall not:
- 9.1.1 alter, reverse engineer, decompile, disassemble, sell, rent, lease, sublicense, transfer, or otherwise make available the Network Tags or any copies thereof to any third party, or create derivative works therefrom;
  - 9.1.2 copy the Network Tags, except for performance of the Contract or for backup, archival and disaster recovery purposes;
  - 9.1.3 place Network Tags on blank web pages or on web pages with no content, or in a fashion that may be deceptive to the visitor in that it causes the Advertising to look like editorial content;
  - 9.1.4 serve Advertising from any location other than Snack Media's designated server (stored images that are loaded from a different location will not count towards any statistic or payment);
  - 9.1.5 induce persons to click based on incentives (e.g. rewards programs);
  - 9.1.6 use unsolicited email with regard to the Advertising;
  - 9.1.7 use auto-spawning browsers, or automatic redirecting of visitors, blind text links, misleading links, forced clicks (i.e. requiring a visitor to click because their browser has been hijacked, or because

- Advertising has been altered so that it is impossible to close without clicking it); or any other method that may lead to artificially high numbers of delivered clicks; or
- 9.1.8 use of any method that may lead to falsely generated or an artificially high number of Impressions.
- 9.2 The Publisher shall procure that during the term of the Contract none of the Publisher Websites shall contain or promote any Prohibited Content. Snack Media reserves the right to reject or block any Publisher Page or Publisher Website at any time at its sole discretion.
- 9.3 If Snack Media's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Publisher or failure by the Publisher to perform any relevant obligation or breach by the Publisher of any of the restrictions in clause 9.1 ("**Publisher Default**"):
- 9.3.1 Snack Media shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Publisher remedies the Publisher Default, and to rely on the Publisher Default to relieve it from the performance of any of its obligations to the extent the Publisher Default prevents or delays Snack Media's performance of any of its obligations;
- 9.3.2 Snack Media shall not be liable for any costs or losses sustained or incurred by the Publisher arising directly or indirectly from Snack Media's failure or delay to perform any of its obligations as set out in this clause 9.3; and
- 9.3.3 the Publisher shall reimburse Snack Media on written demand for any costs or losses sustained or incurred by Snack Media arising directly or indirectly from the Publisher Default.

## 10. DATA PROTECTION

- 10.1 For the purposes of this clause 10, the following definitions shall apply:
- "**Data Controller**" has the meaning set out in section 1(1) of the DPA.
- "**Data Processor**" has the meaning set out in section 1(1) of the DPA.
- "**Data Subject**" means an individual who is the subject of Personal Data.
- "**DPA**" means the Data Protection Act 1998.
- "**Personal Data**" has the meaning set out in section 1(1) of the DPA and relates only to personal data, or any part of such personal data, which the Publisher provides to Snack Media in connection with this agreement.
- "**Processing and Process**" have the meaning set out in section 1(1) of the DPA.
- 10.2 The Publisher and Snack Media acknowledge that for the purposes of the DPA, each party may be both a Data Processor and Data Controller in respect of the Personal Data which the Publisher provides to Snack Media (and which Snack Media provides to Advertisers) in connection with this Agreement.
- 10.3 Each party shall:
- 10.3.1 process the Personal Data only to the extent, and in such a manner, as is necessary for the performance of this Agreement (which in the case of Snack Media shall include the provision of Personal Data to Advertisers) and shall not process the Personal Data for any other purpose;
- 10.3.2 keep a record of any processing of the Personal Data it carries out;
- 10.3.3 notify the other party immediately if it becomes aware of any
- (a) unauthorised or unlawful processing, loss of, damage to or destruction of the Personal Data or
- (b) advance in technology and methods of working which may affect the measures that either party is obliged to take under clause 10.5.2.
- Processor's employees.**
- 10.4 Each Party shall take reasonable steps to ensure:
- 10.4.1 the reliability of all its employees who have access to the Personal Data; and
- 10.4.2 that access to the Personal Data is limited to those employees who need access to the Personal Data to meet that party's obligations under this Agreement and that in the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee's duties; and
- 10.4.3 that all employees who are able to access the Personal Data are:
- (a) informed of the confidential nature of the Personal Data and
- (b) have undertaken training in the laws relating to handling personal data and
- (c) aware both of the relevant party's duties and obligations under such laws and this Agreement.

## Warranties

- 10.5 Each party warrants to the other that:
- 10.5.1 it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments;
  - 10.5.2 having regard to the state of technological development and the cost of implementing any measures, it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to the following, and will take reasonable steps to ensure compliance with those measures:
    - (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
    - (b) the nature of the data to be protected;
  - 10.5.3 it will not export or transfer the Personal Data outside of European Economic Area without the prior written consent of the other party; and
- 10.5.4 if it receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the DPA and the data protection

## **11. TERM AND TERMINATION**

- 11.1 The Contract shall commence on the Commencement Date.
- 11.2 Unless terminated earlier in accordance with this clause, the Contract shall continue for the period stipulated in the Proposal ("**Initial Term**") and may automatically extend as stipulated in the Proposal ("**Extended Term**") at the end of the Initial Term and at the end of each Extended Term.
- 11.3 Either party may give written notice to the other party, not later than 30 days before the end of the Initial Term or the relevant Extended Term, to terminate the Contract at the end of the Initial Term or the relevant Extended Term, as the case may be.
- 11.4 If the Publisher serves notice to terminate the Contract earlier than permitted under this clause 11, it shall be liable to Snack Media for the value of the Commission which Snack Media has a reasonable expectation of earning in the period between receipt of termination notice and the end of the Initial Term or the Extended Term (as the case may be). The parties acknowledge and agree that "reasonable expectation of earning" shall be calculated as the greater of the pro rata value of the Forecast and the average of the number of Impressions delivered in the three (3) months prior to receipt of such termination notice.
- 11.5 In the event of termination of the Contract, the following clauses shall survive: 5, 6, 7, 8, 10, 11 and 12.

## **12. FTBL COMMISSION**

- 12.1 As an added incentive for the Publisher to participate in the Snack Media Network and therein agree to these Terms and Conditions, Snack Media shall introduce the Publisher to FTBL.
- 12.2 The parties acknowledge that the association with FTBL represents a significant opportunity for the Publisher to grow revenue and brand.
- 12.3 As consideration for the introduction by Snack Media of the Publisher to FTBL, the Publisher hereby agrees to pay the FTBL Commission.
- 12.4 In relation to the FTBL Commission, the Publisher shall:
- 12.4.1 pay the FTBL Commission for so long as there may be FTBL Revenue;
  - 12.4.2 account to Snack Media quarterly, the first such accounting date being the date 13 weeks following the Commencement Date.
- 12.5 Snack Media may at its cost appoint an auditor or accountant to audit the Publisher's accounts in relation to revenues generated from or in association with FTBL. If such audit reports a shortfall of more than 5%:
- 12.5.1 Snack Media may require the Publisher by written notice to pay such shortfall, in which case the publisher shall be so obliged and shall make such payment within 14 days of such written notice; and
  - 12.5.2 The Publisher shall bear the cost of the audit and, if Snack Media has paid the auditor already, reimburse Snack Media within the same timeframe as set out in clause 12.5.1.
- 12.6 All payments of and associated with the FTML Commission shall be subject to the late payment provisions of clause 5.10.

12.7 This clause 12 shall survive termination of the Contract.

### 13. GENERAL

- 13.1 **Entire Agreement.** These Terms and Conditions and the Proposal constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 13.2 **Variation.** Snack Media may change, modify or amend these Terms and Conditions as it may determine in its reasonable discretion. To make such a variation, Snack Media shall post revised Terms and Conditions on its website not less than five (5) days prior to the effective date of such variation. If the Publisher considers any proposed variation to be unreasonable, it shall notify Snack Media in writing. The Publisher's continued use of the Snack Media Network following the effective date of such variation shall constitute the Publisher's deemed acceptance of the revised Terms and Conditions.
- 13.3 **Force Majeure.** Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for thirteen (13) weeks, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.
- 13.4 **Governing Law and Jurisdiction.** This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.