

allCLEAR Terms and Conditions

IMPORTANT NOTICE:

BY CLICKING ON THE "ACCEPT" BUTTON BELOW YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU AND YOUR ORGANISATION. THESE TERMS AND CONDITIONS INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSES 2.1(i) and 9.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MUST CLICK ON THE "REJECT" BUTTON BELOW AND YOU MAY NOT SUBMIT A REQUEST IN RESPECT OF THE allCLEAR SERVICES.

["ACCEPT" BUTTON]S

["REJECT" BUTTON]

You should print a copy of this Agreement for future reference.

Agreed terms

1. Introduction, definitions and interpretation

- 1.1 This agreement (the “**Agreement**”) is entered into by either the organisation or entity: (i) whose iCLEAR account was used to make this allCLEAR service request; or (ii) whose details have been provided to Clearcast in relation to this Agreement, (referred to in this Agreement as “**you**”, “**your**” or “**your organisation**”) and Clearcast Limited of 4 Roger Street, 2nd Floor, London, WC1N 2JX (company no. 06290241) (referred to as “**we**”, “**us**”, “**our**” and “**Clearcast**” in this Agreement). Each of Clearcast and your organisation is referred to as a “**Party**”, and together, the “**Parties**”.
- 1.2 This Agreement governs the terms upon which Clearcast will provide you with the allCLEAR Services.
- 1.3 Clearcast also provides services including clearance by reference to the BCAP Code, delivery, subtitling, TV admin, copy development, fast track clearance, pitch scripts and other clearance services, including iCLEAR. These services are each subject to a separate agreement. Please contact us at help@clearcast.co.uk for further details.
- 1.4 In this Agreement, the following expressions have the meaning set opposite:

Agreement	has the meaning given in Clause 1.1.
allCLEAR Services	means the clearance services provided to you by Clearcast under this Agreement, as described at Clause 3.2 below.
Asset	each digital advertisement file that you provide or otherwise make available to us in relation to the allCLEAR Services.
Clearcast Background Intellectual Property	means all technical know-how and information known to Clearcast at the date of this Agreement together with all Intellectual Property Rights owned by or licensed to Clearcast at the date of this Agreement, all technical know-how and information and Intellectual Property Rights owned

	by or licensed to Clearcast that are not Foreground Intellectual Property Rights.
Clearcast Confidential Information	has the meaning given in Clause 5 below.
Clearcast Materials	any input materials provided by Clearcast in relation to the allCLEAR Services including, but not limited to, any Clearcast Confidential Information, Clearcast's Intellectual Property Rights, Reports, data and other documentation.
CAP Code	the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing as amended or replaced from time to time.
Commercially Reasonable Efforts	means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a determined, prudent and reasonable manner to achieve the particular result.
Company Confidential Information	has the meaning given in Clause 6.4.
Data Protection Legislation	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal data (including the privacy of electronic communications).
Dispute	has the meaning given in Clause 13.2.
Dispute Notice	has the meaning given in Clause 13.2.
Fee	means the fee set out at https://clearcast.co.uk/clearance-services/non-broadcast-ads-iclear-allclear/ .
Force Majeure Event	any event outside either Party's reasonable control that prevents or restricts its ability to comply with its obligations under the Agreement, including: the allCLEAR Services not being available due to mechanical breakdown, maintenance, or hardware or software upgrades; telecommunication connectivity problems; outages by service provider(s); power shortage; network failure; server crashes; deletion, corruption, loss or removal of data; war, fire, flood, earthquake, storm, explosion or accident; epidemic or pandemic; acts of terrorism; civil commotion; labour or industrial dispute; or any act or omission (including laws, regulations, disapprovals or failures to approve) of any government or government agency.

Foreground Intellectual Property	means all Intellectual Property Rights that relate specifically to the Submissions and are created, obtained or developed by or on behalf of Clearcast in the course of the provision of the allCLEAR Services.
Group Companies	any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with your organisation from time to time, where “control” means the power to direct the management and policies of your organisation or ownership of at least fifty percent (50%) of the common stock or other voting interests in your organisation.
iCLEAR	the automated online risk assessment services offered by Clearcast concerning compliance with the CAP Code, available at www.iclear.ai .
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer products, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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.
Indemnified Party	has the meaning given in Clause 8.6.
Indemnifying Party	has the meaning given in Clause 8.6.
Personnel	means, in relation to a Party, its officers, directors, employees, contractors and consultants.
Publisher(s)	entities that publish and/or broadcast Assets.
Report	any decision, advice, report or material, whether written or verbal, provided by Clearcast in connection with the allCLEAR Services.
Request	means a request by you to Clearcast, via the iCLEAR platform or in another manner, for Clearcast to provide the allCLEAR Services to you in respect of an Asset.
Submissions	means: any scripts of advertising copy, supporting materials to back up claims made in the Assets, rough cuts of advertising copy, and metadata, each as provided or otherwise made available by your

	organisation to Clearcast in connection with the allCLEAR Services, together with any Assets.
Support Services	any support services relevant to the allCLEAR Services, as set out at clearcast.help/support from time to time.
Term	has the meaning given in Clause 1.13 below.
UK Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data.
Working Days	Monday to Friday inclusive (excluding English public holidays and bank holidays).
Working Hours	from 09:00 to 17:00 UK time each Working Day.
1.5	A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
1.6	Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
1.7	Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
1.8	A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
1.9	A reference to writing or written includes email but not fax.
1.10	References to Clauses are to clauses of this Agreement.
1.11	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.
1.12	If Clearcast has agreed to provide the allCLEAR Services to one or more of your Group Companies, the rights and obligations under this Agreement will apply to those Group Companies. Where the context permits, the words you , your and your organisation include any such Group Companies.
1.13	This Agreement shall commence on the date of your first Request, and will continue indefinitely until: (i) either Party gives the other Party at least 30 days' written notice of termination; or (ii) this Agreement is otherwise terminated in accordance with its terms,

whichever occurs first (the “**Term**”).

2. Your obligations

2.1 Your organisation agrees to:

- (i) take full responsibility, and liability, for:
 - (a) the acts and omissions of your personnel with regard to their access to and use of the allCLEAR Services; and
 - (b) all information and materials (including all Submissions) that you provide or make available to us, or in respect of which you submit a Request; and
- (ii) keep any relevant contact details in your iCLEAR account up to date.

2.2 Your organisation agrees not to:

- (i) upload or provide to Clearcast any informational or material that infringes, violates or misappropriates any person’s Intellectual Property Rights, that is breach of applicable binding or mandatory regulation or guidance, or is otherwise unlawful, harmful, threatening, defamatory, obscene, harassing, facilitates illegal activity, promotes unlawful violence or causes damage or injury to any person or property; or
- (ii) copy, reverse-engineer or attempt to develop any product or service using any part of the allCLEAR Services or any Clearcast Materials; or
- (iii) license, sell, rent, transfer, assign, distribute, display, disclose or otherwise commercially exploit or otherwise make the allCLEAR Services available to any third party; or
- (iv) introduce to Clearcast or the allCLEAR Services any program, virus, worms, logic bombs, time locks, time bombs, trojan horse, bugs or software that might harm or affect the security or function of Clearcast or any of our computer systems; or
- (v) use the allCLEAR Services for phishing, fraud or other unlawful purpose.

2.3 You agree promptly to notify us if you become aware of (or have reasonable grounds to believe that there might have been) any breach of Clause 2.2(i) or 2.2(iv) above.

2.4 You acknowledge and agree that you are solely responsible for ensuring that any Submissions provided to us are in a form that has been approved by your organisation and are free of non-technical errors, and that Clearcast shall have no liability in respect of any such failure save to the extent that Clearcast is in breach of this Agreement.

3. Clearcast’s obligations

3.1 Clearcast shall use Reasonable Commercial Efforts to review Requests to determine whether they are suitable for the allCLEAR Services. If a Request requires more extensive review or specialist consultation, or is otherwise deemed unsuitable for the allCLEAR Services by Clearcast (acting in its sole discretion), then Clearcast may reject the Request and no Fee will be incurred by you for that Request. Clearcast will use reasonable efforts to discuss an alternative option with you.

- 3.2 Subject to Clearcast's approval of a Request, in consideration of the payment of the Fees set out in Clause 4, Clearcast shall, during Working Hours during the Term use Reasonable Commercial Efforts to:
- (i) review the relevant Asset(s)/Submission(s) by reference to the CAP Code; and
 - (ii) provide you with a Report providing an opinion on whether, based on the Asset/Submission and any further information deemed relevant by Clearcast, an Asset is considered compliant with the CAP Code, and, where appropriate, suggest suitable modifications.
- 3.3 Clearcast shall use Commercially Reasonable Efforts to perform the allCLEAR Services in accordance with the timeframes set out at <https://clearcast.co.uk/clearance-services/non-broadcast-ads-iclear-allclear/>.
- 3.4 Clearcast shall:
- (i) use Reasonable Commercial Efforts to ensure that its advice and decisions in respect of the Assets reflect the CAP Code; and
 - (ii) provide the allCLEAR Services with reasonable skill and care and procure that the allCLEAR Services will be performed by reasonably skilled individuals.
- 3.5 In the event of any intervention or investigation by Ofcom or the ASA in respect of any Asset which Clearcast deemed compliant with the CAP Code, unless otherwise agreed with you, Clearcast shall, on your request, use Commercially Reasonable Efforts to provide you (at your cost) with reasonable assistance in responding to any such intervention or investigation, but you acknowledge that you shall be solely responsible for the consequences of any adverse intervention or investigation.

4. Fees and Payment

- 4.1 In return for receiving the allCLEAR Services, your organisation will pay the Fees.
- 4.2 You acknowledge and agree that:
- (i) the Fees are payable per Request; and
 - (ii) the allCLEAR Services does not detect duplicate Assets.
- 4.3 The Fees shall be payable by your organisation within thirty (30) days of your organisation receiving a valid written invoice. Payment may be made by payment card, direct bank transfer or by any other method agreed by the Parties from time to time.
- 4.4 All sums payable to Clearcast under this Agreement:
- (i) are exclusive of VAT, which shall be payable by your organisation in addition at the rate and in the manner for the time being prescribed by law; and
 - (ii) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

- 4.5 Clearcast shall be entitled to set off or withhold any amount owed to your organisation under this Agreement against any amount payable by your organisation to Clearcast.
- 4.6 Without prejudice to any other right or remedy it might have, if your organisation fails to pay Clearcast any sum due under this Agreement on the due date for payment, Clearcast may:
- (i) charge your organisation for any additional administration and legal costs that Clearcast may incur as a consequence of such late payment;
 - (ii) charge your organisation from the date due for payment to the actual date of payment at the rate of 3% above the Bank of England base rate of from time to time in force (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); and
 - (iii) at its election, either suspend the supply of all or part of the allCLEAR Services under this Agreement until payment has been made, or terminate this Agreement with immediate effect and without liability on written notice to your organisation.
- 4.7 In the event that Clearcast wishes to increase the Fees, Clearcast shall notify you of such increase(s) in writing at least thirty (30) days prior to the date of such increase(s) coming into effect ("**Increase Date**"). If you do not wish to accept the increase(s) to the Fees, you may give notice to terminate this Agreement (such notice to take effect prior to the Increase Date), failing which you shall be deemed to have accepted the relevant increase on the Increase Date.

5. **Intellectual Property**

- 5.1 As between the parties, all of Clearcast's Background Intellectual Property in the Clearcast Materials and the provision of the allCLEAR Services is and shall remain the exclusive property of Clearcast.
- 5.2 Subject to Clearcast receiving payment of all Fees associated with any allCLEAR Services, the Foreground Intellectual Property relating to such allCLEAR Services shall be owned by you.
- 5.3 You hereby grant to Clearcast, or shall procure the grant to Clearcast, of a fully paid-up, non-exclusive, royalty-free, perpetual, sub-licensable licence to access, host, copy, modify and otherwise use the Submissions and the Foreground Intellectual Property for the purposes of Clearcast performing its obligations and exercising its rights under this Agreement. If your use of the allCLEAR Services is linked with your iCLEAR account, or you provide Submissions via a third party service or platform (such as a file-sharing site), this includes the right for Clearcast to access and receive the relevant Submissions via iCLEAR or such platform or site.
- 5.4 You acknowledge and agree that Clearcast may create and collect anonymised and aggregated information about the Submissions, the Foreground Intellectual Property and your organisation's use of the allCLEAR Services:
- (a) for our own internal business purposes, including understanding and analysing our users' use of the allCLEAR Services;
 - (b) in order to develop, improve and provide products and services; and
 - (c) to ensure there is an audit trail of activity and for use in connection with any legal or regulatory investigation. This is intended to protect us and you.

5.5 You understand and agree that 'iCLEAR' and 'allCLEAR' are Clearcast's trade marks. Save as expressly permitted by this Agreement, you agree not to use any trade mark of Clearcast (including, without limitation, 'iCLEAR' or 'allCLEAR') without our written consent.

6. Confidential Information

6.1 Subject to Clauses 6.2 and 6.3, your organisation will hold all Clearcast Confidential Information provided by Clearcast in the strictest confidence and will not (whether during or after the Term) disclose the Clearcast Confidential Information to any third party. For the purposes of this Agreement, "**Clearcast Confidential Information**" is defined as anything that is marked as "confidential" or that could reasonably be considered to be confidential and includes, but is not limited to, any confidential information relating to the business, affairs, strategies or staff of Clearcast.

6.2 The confidentiality obligations in Clause 6.1 shall not apply to:

- (i) any disclosures that your organisation is required to make by law or by any regulatory body, but only to the minimum extent required, and provided that:
 - (a) your organisation first notifies Clearcast of the requirement (if not prohibited by applicable law); and
 - (b) upon Clearcast's request, your organisation uses Commercially Reasonable Efforts to assist Clearcast, at Clearcast's sole expense, in seeking an appropriate protective order;
- (ii) information that has come into the public domain through no fault of your organisation; and
- (iii) information that your organisation develops independently (without the benefit of Clearcast Confidential Information) or receives from a third party (which is not in breach of a continuing obligation of confidentiality to Clearcast).

6.3 Your organisation may share Clearcast Confidential Information with its Personnel, professional advisors and auditors, provided in each case that:

- (i) your organisation has a confidentiality agreement in place with such recipient(s) prior to disclosing such details or information (the terms of which agreement are at least equivalent to this Clause 6); and
- (ii) you inform the recipient(s) of the confidential nature of such Clearcast Confidential Information prior to its disclosure; and
- (iii) you will be fully liable and responsible for any misuse or unauthorised disclosure of such Clearcast Confidential Information by such recipient(s).

6.4 Subject to Clauses 6.5, Clearcast will hold in the strictest confidence your Submissions (other than any Assets that have been made available to the public), plus all other information you submit to us regarding your Request or otherwise that is expressly marked as confidential, is notified to us as being confidential or could reasonably be considered to be confidential ("**Company Confidential Information**") and will not (whether during or after the Term) disclose the Company Confidential Information to any third party. We have put in place and shall maintain appropriate ethical walls and confidentiality restrictions to preserve the

confidentiality of the Company Confidential Information and Clearcast shall be fully liable and responsible for any misuse or unauthorised disclosure of any Company Confidential Information by any recipient(s) to whom we have disclosed it.

6.5 The confidentiality obligations in Clause 6.4 shall not apply to:

- (i) any disclosures that Clearcast is required to make by law or by any regulatory body, but only to the minimum extent required, and provided that:
 - (a) Clearcast first notifies your organisation of the required disclosure (if not prohibited by applicable law); and
 - (b) upon your organisation's request, Clearcast uses Commercially Reasonable Efforts to assist your organisation, at your organisation's sole expense, in seeking an appropriate protective order;
- (ii) information that has come into the public domain through no fault of Clearcast; and
- (iii) information that Clearcast develops independently (without the benefit of the Company Confidential Information) or receives from a third party (which is not in breach of a continuing obligation of confidentiality to your organisation).

6.6 Clearcast may share Company Confidential Information with our Personnel, suppliers, professional advisors and auditors, each of whom will be informed of the confidential nature of the Company Confidential Information and instructed to treat such information confidentially, and Clearcast shall be liable to your organisation if any such Party should fail to comply with the terms of this confidentiality obligation.

6.7 You acknowledge and agree that Clearcast may retain any confidential information disclosed by you for use in connection with any legal or regulatory investigation.

7. **Data protection**

7.1 For the purposes of this Clause 7, the terms "**Controller**", "**Processor**", "**Data Subject**", "**Personal Data**", "**Personal Data Breach**", "**process**", "**processing**" and "**appropriate technical and organisational measures**" shall have the meanings given in the Data Protection Legislation.

7.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 7.2 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

7.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, you are the Controller and Clearcast is a Processor in respect of any Personal Data provided by your organisation and processed in accordance with this Agreement, except in respect of Clearcast's use of your Personal Data for Clearcast's business, operational or administrative purposes (other than the provision of the allCLEAR Services), in which case Clearcast shall act as a Controller.

7.4 The anticipated scope of your Personal Data, and the nature and purpose of Clearcast's processing activities, are set out at clearcast.co.uk/privacy-policy.

7.5 Clearcast shall, when acting as a Processor in respect of Personal Data provided by you:

- (i) process the Personal Data only in accordance with this Agreement and/or your written instructions from time to time, and shall not process the Personal Data for any purposes other than those expressly authorised in writing by you or this Agreement, unless required to do so by Applicable Law. Where Clearcast is relying on any applicable law (other than the Data Protection Legislation) as the basis for processing such Personal Data, Clearcast shall promptly notify you of this before performing the processing required by the applicable law unless the applicable law prohibits Clearcast from so notifying you;
- (ii) take appropriate technical and organisational measures against the unauthorised or unlawful processing or destruction of or damage to the Personal Data to ensure a level of security appropriate to:
 - (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;
- (iii) ensure that all of its Personnel who have access to and/or process the Personal Data are obliged to keep the Personal Data confidential;
- (iv) not transfer any such Personal Data outside of the UK unless the following conditions are fulfilled:
 - (a) you or Clearcast has provided appropriate safeguards in relation to the transfer;
 - (b) the relevant Data Subjects have enforceable rights and effective legal remedies; and
 - (c) Clearcast complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
- (v) provide you, at your cost, with reasonable assistance in responding to any request from any individual whose Personal Data forms part of the Personal Data and in ensuring your compliance with your obligations under Data Protection Legislation with respect to security, Personal Data Breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (vi) notify you without undue delay on becoming aware of any security breach in respect of such Personal Data;
- (vii) at your written direction, delete or return the Personal Data and copies thereof to you on termination of this Agreement, except to the extent required by applicable law;
- (viii) maintain complete and accurate records and information to demonstrate our compliance with this Clause 7 and shall make such records available to you to the extent necessary to demonstrate Clearcast's and/or your compliance with Data Protection Legislation. Prior to making any such records and information available to you, Clearcast may redact any commercially sensitive or confidential information contained therein to the extent it considers necessary;

- (ix) on reasonable notice, and upon reasonable terms (including your execution of a non-disclosure agreement and agreeing to pay both Parties' costs of any such audit or inspection) permit you to audit and/or inspect the records specified in Clause 7.5(viii) above for compliance with Data Protection Legislation; and
 - (x) notify you immediately if, in Clearcast's opinion, any of your instructions infringes Data Protection Legislation.
- 7.6 You agree that Clearcast may:
- (i) transfer Personal Data out of the UK, provided that the conditions set out in Clause 7.5(iv) are satisfied; and
 - (ii) appoint subcontractors as third-party processors of your Personal Data under this Agreement. Clearcast confirms that it has entered or (as the case may be) will enter with such third-party processors into written agreements substantially in conformance with Clearcast's obligations under Clause 7.5 of this Agreement. As between you and Clearcast, Clearcast shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this Clause 7.6(ii).
- 7.7 Where your organisation provides Personal Data to Clearcast under or in connection with this Agreement, your organisation warrants to Clearcast that it has all necessary rights and has issued all necessary notices to do so.
- 8. Warranties and indemnities**
- 8.1 Each Party warrants to the other that:
- (i) it has the full power, capacity and authority to enter into this Agreement and to perform its obligations under this Agreement; and
 - (ii) it will perform its obligations under this Agreement in compliance with all applicable laws.
- 8.2 You warrant to Clearcast that you have, and agree that you will maintain during the Term, all necessary rights, consents and permissions to grant to Clearcast (or, as applicable, procure the grant to Clearcast of) any and all licences under this Agreement.
- 8.3 Clearcast shall use Commercially Reasonable Efforts to provide the allCLEAR Services in accordance with this Agreement. Save as expressly provided in this Agreement, and the allCLEAR Services are provided on an 'as-is' and 'as- available' basis and, to the extent permitted by law, we exclude all warranties, conditions and other terms, express or implied (by statute or otherwise).
- 8.4 Your organisation will indemnify on demand, and keep fully and effectively indemnified, Clearcast from and against any liability, losses, damages, costs (including reasonable legal fees) and expenses of any nature incurred by Clearcast directly or indirectly arising from:
- (i) any claim (whether threatened or actual) alleging that the Submissions infringe the Intellectual Property Rights of a third party; and/or
 - (ii) a breach of your confidentiality obligations under Clause 6 of this Agreement; and

- (iii) any breach of your organisation's obligations under Clause 7 (Data Protection).

The indemnities in this Clause 8.4 shall remain in full force and effect notwithstanding the termination or expiry of this Agreement.

- 8.5 Subject to Clause 9.1, Clearcast will indemnify on demand, and keep fully and effectively indemnified, your organisation from and against any liability, losses, damages, costs (including legal fees) and expenses of any nature incurred by your organisation arising directly or indirectly from Clearcast's breach of its confidentiality obligations under Clause 6.4 of this Agreement. The indemnity in this Clause 8.5 shall remain in full force and effect notwithstanding the termination or expiry of this Agreement.
- 8.6 If any third party makes a claim, or notifies a party (the "**Indemnified Party**") that it is intending to make a claim against the Indemnified Party, which may reasonably be considered to be likely to give rise to a liability under an indemnity given under Clause 8 of this Agreement, the Indemnified Party will give the other Party (the "**Indemnifying Party**") written notice of such claim and allow the Indemnifying Party to have sole authority to dispute, compromise or defend such claim with the assistance of the Indemnified Party as reasonably requested by the Indemnifying Party (and the Indemnifying Party agrees to reimburse the Indemnified Party for all such assistance).

9. **Limitations of liability**

- 9.1 Subject to Clause 9.2, neither Party's total liability to the other arising out of, or in connection with, this Agreement (whether in contract, tort (including for negligence or breach of statutory duty howsoever arising) or otherwise) shall exceed:
 - (i) in the case of any single liability, the total Fees paid or payable by your organisation to Clearcast in the twelve (12) month period prior the date of the event giving rise to the liability; and
 - (ii) in aggregate, the total Fees paid or payable by your organisation to Clearcast under this Agreement.
- 9.2 Subject to Clauses 9.3 and 9.4, the Parties shall have no liability to each other in any circumstances, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise in respect of any: (i) loss of income, sales, business or revenue; (ii) loss of profits; (iii) loss or corruption of data or information; (iv) loss of business opportunity, goodwill or reputation; (v) business interruption; (vi) loss of anticipated savings; or (vii) for any indirect or consequential loss or damage of any kind.
- 9.3 Notwithstanding anything contained in this Agreement, neither Party excludes or limits its liability for: (i) personal injury or death resulting from its negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other liability which cannot be excluded or limited by English law.
- 9.4 The limitations of liability set out in Clause 9.1 shall not apply to:
 - (i) the indemnities given by your organisation under Clause 8.4 of this Agreement; or
 - (ii) the indemnities given under Clause 8.5 to the extent that the breach of Clause 6.4 was due to the wilful misconduct, recklessness or negligence of Indemnifying Party and/or

its Personnel, in which case the Indemnifying Party's liability shall be limited to £1 million per claim.

9.5 You acknowledge and agree that:

- (i) any Report is advisory, not mandatory, and your organisation is not bound to comply with any decision or advice from Clearcast;
- (ii) any Report represents Clearcast's opinion in respect of the CAP Code, and does not constitute legal advice, regulatory approval, formal broadcast clearance, or a guarantee against future complaints or regulatory challenges;
- (iii) the allCLEAR Services do not include advice on compliance with the BCAP Code, and where an Asset will run on Ofcom-licensed services, under the terms of those licences it is the licensee's responsibility to ensure that regulatory compliance occurs;
- (iv) it is the responsibility of your organisation to decide whether or not to publish an Asset (and if so, where such Asset is placed). Clearcast shall not be liable in any way if an Asset is inappropriately or illegally placed;
- (v) your organisation (or the third party it represents), as an advertiser, is responsible for holding evidence for any claims made in an advertisement and that Clearcast has no such responsibility; and
- (vi) Clearcast shall not be in any way liable in the event that your organisation or any Publisher elects to publish any Asset in a form that does not comply with or reflect the decision or advice of Clearcast.

10. **Termination, Suspension and Force Majeure Events**

10.1 Either Party may terminate this Agreement immediately by written notice if the other Party:

- (i) commits any material or persistent breach of any of its obligations under this Agreement or any part of this Agreement and, in the case of a breach which is capable of remedy, fails to remedy it within thirty (30) days of being required to do so by notice in writing from the other Party; or
- (ii) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if it has a receiver, administrator or administrative receiver appointed over it or over any part of its undertaking or assets, or if it passes a resolution for winding-up (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or if a court of competent jurisdiction makes an order to that effect, or if it becomes subject to an administration order, or if it enters into any voluntary agreement with its creditors, or if any similar process to any of the above is begun in any jurisdiction, or if it ceases or threatens to cease to carry on business.

10.2 If you fail to comply with your obligations and responsibilities as set out in this Agreement for any reason, Clearcast reserves the right on written notice to you to suspend Clearcast's performance of its obligations under this Agreement. As soon as your organisation resumes compliance with this Agreement, Clearcast will resume its performance of its obligations under this Agreement (as applicable) within a reasonable time.

- 10.3 If Clearcast is prevented from performing its obligations under this Agreement by a Force Majeure Event, then provided it has complied with its obligations set out in Clause 10.4 below, Clearcast shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations, and the time for performance of such obligations shall be extended accordingly.
- 10.4 As soon as reasonably practicable after the start of a Force Majeure Event, and no later than 3 Working Days from Clearcast becoming aware of the Force Majeure Event, Clearcast shall:
- (i) so far as is reasonably practicable, notify you in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on Clearcast's ability to perform its obligations under this Agreement; and
 - (ii) use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 10.5 If any Force Majeure Event continues for more than ninety (90) days, Clearcast will be entitled to terminate this Agreement immediately on written notice without and liability to you.
- 11. Consequences of termination**
- 11.1 The termination or expiry of this Agreement (howsoever caused) will not affect any rights and/or liabilities of either Party which have accrued before termination or expiry.
- 11.2 Upon termination of this Agreement (for any reason):
- (i) all allCLEAR Services shall immediately cease;
 - (ii) your organisation agrees (at Clearcast's request and election) to promptly return to Clearcast, or render permanently inaccessible (so far as is technically feasible), all Clearcast Confidential Information, together with all other materials in its possession that were disclosed to it by Clearcast under this Agreement ;
 - (iii) you shall immediately pay to Clearcast all of Clearcast's outstanding unpaid invoices and interest and, in respect of allCLEAR Services supplied but for which no invoice has been submitted, Clearcast shall submit an invoice, which shall be payable by you immediately on receipt;
 - (iv) Clearcast shall not be required to delete or return digital files in its possession; and
 - (v) Clearcast's obligations to your organisation under this Agreement, and all licences granted under the Agreement, shall immediately cease.
- 11.3 The termination of this Agreement (howsoever caused) will not affect any rights and/or liabilities of either Party which have accrued before termination or expiry, or any provision of this Agreement which expressly, or by implication, is intended to come into, or continue in, effect on or after termination or expiry (including Clauses 1, 2.1, 2.3, 4.3-4.6 inclusive, 5, 6, 9, 11, 12 and 13).

12. **Non-solicitation**

Your organisation shall not during the Term, nor for a period of twelve (12) months following the termination or expiry of this Agreement for any reason, on its own behalf or on behalf of any third party directly induce or attempt to induce any person employed by Clearcast in a senior capacity who has been engaged in the provision of the allCLEAR Services to leave the employment of Clearcast or employ or engage in any capacity any such employee, provided that this restriction shall not apply to any such person who makes an unsolicited reply to a bona fide public advertisement.

13. **General**

- 13.1 This Agreement governs our relationship with you and does not create any third party rights. We do not permit any assignment, novation, charge or transfer of your rights and obligations under this Agreement without our prior written consent, which we will not unreasonably withhold or delay. Clearcast may assign, novate or otherwise transfer its rights and/or obligations under this Agreement to any third party without restriction.
- 13.2 If you have any concerns in relation to this Agreement, please contact us and we will work with you to resolve them. If a dispute arises out of, or in connection with, this Agreement or the performance, validity or enforceability of it (a “**Dispute**”), the Parties shall follow the procedure set out in this Clause 13.2:
- (i) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a “**Dispute Notice**”), together with relevant supporting documents. On service of the Dispute Notice, a representative of each Party shall attempt in good faith to resolve the Dispute; and
 - (ii) if the Parties’ representatives are for any reason unable to resolve the Dispute within fourteen (14) days of service of the Dispute Notice, the Dispute shall be referred to a senior management representative of each Party who shall attempt in good faith to resolve it for a further period of at least fourteen (14) days.
- 13.3 The commencement of discussions under Clause 13.2 shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under Clause 13.4, which Clause shall apply at all times.
- 13.4 The Parties irrevocably agree that any dispute arising out of, or in relation to, this Agreement (including any non-contractual dispute) shall be subject to the exclusive jurisdiction of the courts of England and Wales. This Agreement is governed by the laws of England and Wales.
- 13.5 This Agreement represents the entire agreement between you and us in respect of your access and use of the allCLEAR Services. Neither of us is relying on, and may not obtain any remedy in respect of, any statement or representation that is not set out in this Agreement.
- 13.6 By accepting this Agreement on behalf of your organisation you are agreeing to the terms contained therein, so please make sure that you are authorised to do so and you understand both Clearcast's and your organisation's legal obligations.
- 13.7 Either Party's waiver of any breach of any of the provisions of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed a waiver of any subsequent breach. The rights of either of the Parties shall not be prejudiced or restricted by any time, indulgence or forbearance extended to the other.

- 13.8 A person who is not Party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- 13.9 This Agreement may be amended as follows:
- (i) except as set out in the Agreement, no variation of the Agreement will be effective unless it is in writing and signed by the Parties (or their authorised representatives).
 - (ii) Clearcast may vary this Agreement from time-to-time by posting an updated version at <https://clearcast.co.uk/clearance-services/non-broadcast-ads-iclear-allclear/> but, unless otherwise expressly agreed in writing by the parties (or their authorised representatives), no variation will apply to Assets already submitted prior to that variation.
- 13.10 Clearcast may make reasonable variations to the allCLEAR Services and the Support Services from time to time. Please check them frequently to ensure you are familiar with the latest versions. We shall give you notice of any variations that we consider to be particularly significant.
- 13.11 Neither Party shall make any public statements or announcements in relation to its relationship with the other Party under this Agreement without the other Party's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, your organisation may make the following public statement in relation to any Asset that has been reviewed by Clearcast under this Agreement: "On [date], this [Asset] was reviewed and assessed by Clearcast against the provisions of the CAP Code that relate to "less healthy foods" (as defined by the Committee of Advertising Practice from time to time), and the result was that [specify food product] is "[likely/unlikely] to be classified as a Less Healthy Food".
- 13.12 Any notices to be given by Clearcast under this Agreement shall, unless otherwise expressly stated, be in writing and shall be given by sending the same by email to the primary email address associated with your organisation's iCLEAR account, or, the email address from which your first Request originated, unless otherwise notified to Clearcast in writing by you from time to time; if to Clearcast, to help@clearcast.co.uk or such email address as Clearcast may notify you from time to time during the Term. Any notice by email shall be deemed to have been delivered on the same day (if sent before 17:00) and with a valid read receipt that is successfully returned to the sender. If a read receipt is not received by the sender, the email shall not be deemed to be received. This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 13.13 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 13.14 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between either Party, constitute either Party the agent of the other Party, or authorise either Party to make or enter into any commitments for or on behalf of any other party. Save as expressly permitted by Clause 1.12, each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 13.15 The invalidity or unenforceability of any provision or any right arising under this Agreement shall not affect the validity or enforceability of any other provisions or rights. If any provision

is adjudged to be invalid or unenforceable, but would be adjudged valid or enforceable if any part(s) of their wording were deleted or modified, the relevant provisions shall apply with such deletions or modifications as may be necessary to make them valid and effective.