

## **GENERAL TERMS AND CONDITIONS OF USE FOR ADLUDIO ADVERTISERS**

This page (together with the documents referred to on it) tells you the terms and conditions on which we supply any of the services (Services) listed on our website [www.adludio.com](http://www.adludio.com)

This agreement is entered by and between Adludio Ltd (we), where the company number is 8227542 and the registered office is I Hardwick Street, London, EC1R 4R

Upon mutual acceptance (by signing on paper or electronically or by acknowledging acceptance online through an email acknowledgement of services) of a Commercial Terms Schedule (the “**IO**”), these Terms of Business and the terms stipulated in the Commercial Terms (together, the “**Contract**”) shall become a binding contract between Adludio and the party identified as the “Advertiser” in the IO (the “**Advertiser**”).

All advertisers should print a copy of these terms and conditions for future reference.

### **1 DEFINITION OF TERMS**

- 1.1 **Adludio Network** : Our network of online publishers, online applications and persons controlling the publication of content on the web
- 1.2 **Briefs**: Details of the advertising campaigns as set out in memoranda prepared by the Advertiser
- 1.3 **Affiliates**: An Online publisher, online application or person(s) controlling the publication of content on the web, who are paid a fee for placing advertisements within their online property
- 1.4 **IO** - "the Insertion Order" or email acknowledgement of acceptance of terms of service, shall mean the order form in effect at the Order Date
- 1.5 **Campaign** - Means an advertising and marketing campaign that we undertake for one or more of our Advertisers via the display of certain content
- 1.6 **Adludio Player** - means the software media player or other applet that is rendered on an end-user's browser via the javascript (or other) code that we make available to our affiliates to insert into the code of online publications or applications, in order to serve the advertisers content.
- 1.7 **Code of Conduct** – The specific terms of use that Adludio requires all affiliates to adhere to when displaying any of an advertisers content
- 1.8 **Advertiser IP**: the trade marks, trading names, brand names, logos and other designs, slogans, signs or designations of origin and any literary or artistic work, images, films, illustrations, drawings, sound recordings and other works provided by the Advertiser to Adludio for the purpose of developing and building Content.
- 1.9 **Engagement**: active engagement of an end-user with Content delivered by Adludio through the Adludio Network.
- 1.10 **Adludio IP**: all IPR subsisting in or relating to the Service and the IPR in the Adludio platform on which Content is built or designed, including the structure, design and layout of the Service, the screens, interfaces, functionalities, the computer code that operates the Service, know-how and other system elements, all template games, ideas, methods, designs, design methods, rules and interfaces for games or user interactions, literary or artistic works, images, films, illustrations, drawings, sound recordings and other works, as may be developed or created by Adludio from time to time (including such things created in the course of the design and built of Content under the Contract); all data captured by the Service; the trade marks PLAYCAPTCHA, FUTURE AD LABS and MAD SCIENCE DIVISION and ADLUDIO and any other trade marks, trading names, brand names, logos and other designs, slogans, signs or designations of origin (other than Advertiser IP) adopted or used from time to time by Adludio or with its consent in connection with the Service.
- 1.11 **Intellectual Property Rights (or IPR)**: all intellectual and industrial property rights whether registered or not including rights in confidential information and know-how and any right of equivalent or similar effect anywhere in the world.
- 1.12 **Fees**: the fees payable to Adludio in connection with the Service as set out in the Commercial Terms.
- 1.13 **Content**: content in digital form incorporating or using Advertiser IP, which is to be designed or built using The Adludio Studio and platform for delivery to the public through the Adludio Network.
- 1.14 **Disclaimer** – The clear and unambiguous labelling of all paid for content as sponsored

### **2 INFORMATION ABOUT US**

- 2.1 We enable the advertiser or agency to submit advertising campaigns to the Adludio platform which, if we accept them, we then make available to our network of online publishers, online applications and persons controlling the publication of content on the web (Affiliates). The Affiliates can then choose to post material consistent with the advertiser or agencies advertising campaigns on their online publication or application. If they choose to post such material, you agree to pay us in accordance with these terms and conditions and we agree to pass on an agreed payment to the applicable Affiliate(s) in accordance with our General Terms and Conditions of use for Adludio Publishers
- 2.2 All Affiliates are registered with us and are subject to our General Terms and Conditions of Use for Adludio Affiliates, but they are not employees, agents or subcontractors of adludio – they are independent third parties.

### **3 SERVICE AVAILABILITY**

- 3.1 The Adludio platform is intended for use by affiliates resident in the target territory for an advertiser's campaign.
- 3.2 An end-user is determined as visiting from within a Target Territory if we determine that (in our sole opinion) his IP address is located within that Target Territory

#### 4 YOUR STATUS

- 4.1 By placing an order for our services, you warrant and represent that:
  - 4.1.1 You are legally capable of entering into binding contracts;
  - 4.1.2 You have authority to sign the io;
  - 4.1.3 You agree to these terms and conditions;
  - 4.1.4 If you are an individual, you are at least 17 years old;
  - 4.1.5 You are resident or incorporated in the United Kingdom; and
  - 4.1.6 You are accessing our site from the United Kingdom.
- 4.2 If any of the details provided in the io change or require updating, you agree to inform us immediately
- 4.3 We reserve the right to suspend or terminate your campaign and use of the Adludio platform and / or network or, if appropriate, to take legal action against you if:-
  - 4.3.1 you fail to update or inform us of any company detail that requires updating
  - 4.3.2 you fail to make any payment to us on the due date for payment; or

#### 5 TERM

- 5.1 The Service will commence on the date indicated in the Commercial Terms (the "IO") until the expiry of the period indicated in the Commercial Terms for the provision of the Service or such additional periods as may be agreed from time to time in writing between Adludio and the Advertiser (the "Term").

#### 6 CONTENT DESIGN AND BUILD SERVICES

- 6.1 Subject to the Advertiser's compliance with the Contract and payment of the Fees, Adludio shall design and build the Content using the Adludio platform including using its stock of tools, templates, user interaction methods, games, software code and other know-how.
- 6.2 Adludio shall design and build the Content using the Advertiser IP and in accordance with the Advertiser's written instruction and such creative brief as may be agreed in writing between Adludio and the Advertiser.
- 6.3 Upon completion of the design work, Adludio shall submit the Content for the Advertiser's approval. If any modifications or additions are reasonably required by the Advertiser, Adludio shall use reasonable efforts to complete and deliver such modifications or additions within a reasonable time and upon completion of such modifications or additions shall submit the revised Content to the Advertiser for approval. Modifications or additions exceeding the initial creative brief as agreed by the parties or which require exceptional or significant resources or time, may be subject to additional fees.
- 6.4 Unless any named individual is designated by the Advertiser in the Commercial Terms (or otherwise in writing) as the Advertiser's representative for the purpose of approval of Content, the approval of Content by the Advertiser's usual point of contact shall be deemed to be the Advertiser's approval and shall authorise the delivery of such Content through the Adludio Network.
- 6.5 Following the Advertiser's approval (paragraph 2.4 above), Adludio reserves the right to present the Content to a testing sample of users. Results of such testing may be used to make modifications to the Content. The Advertiser understands that such modifications are for the benefit of the Service (e.g. improve successful completion rate) and hereby authorises the delivery of such Content through the Adludio Network.

#### 7 ADVERTISER'S RESPONSIBILITIES

- 7.1 THE ADVERTISER SHALL GIVE ADLUDIO CLEAR AND TIMELY BRIEFINGS AND ALL NECESSARY COOPERATION AND SUPPORT AS MAY BE NECESSARY TO ENABLE ADLUDIO TO CARRY OUT ITS OBLIGATIONS UNDER THE CONTRACT AND SHALL ACT IN A TIMELY MANNER TO APPROVE CONTENT SUBMITTED BY ADLUDIO, OR TO INDICATE THE REQUIRED MODIFICATIONS OR ADDITIONS TO CONTENT SUBMITTED BY ADLUDIO
- 7.2 THE ADVERTISER SHALL FURNISH ADLUDIO WITH ALL ARTWORK, IMAGES OR OTHER WORKS, IN SUCH FORMAT AS ADLUDIO MAY REASONABLY REQUIRE, INCORPORATING ANY ADVERTISER IP THAT THE ADVERTISER DESIRES TO BE USED IN CONTENT TO BE DESIGNED AND BUILT BY ADLUDIO.
- 7.3 WHERE INVENTORY ID BOUGHT BY THE ADVERTOSER OR AGENCY THE ADVERTISER WILL MAINTAIN UP TO DATE SLA'S (SERVICE LEVEL AGREEMENTS) WITH 3<sup>RD</sup> PARTY INVENTORY DELIVERY MECHANISMS, SUCH AS MANAGED DSP'S (DEMAND SIDE PLATFORMS). ADLUDIO CAN NOT BE HELD ACCOUNTABLE OR RESPONSIBLE FOR ANY DELAY IN CAMPAIGN ACTIVATION DUE TO DELAYED QA PROCESS AT ADVERTISER DESIGNATED DSP

## 8 LICENCE TO USE THE ADVERTISER IP AS PART OF CONTENT

- 8.1 The Advertiser hereby grants to Adludio and its affiliates a non-exclusive, royalty-free, personal licence for the Term to use the Advertiser IP solely in the design, built and delivery of Content through the Adludio Network and to do all such things as are reasonably required to enable Adludio to fulfil its obligations under the Contract. Such licence shall be non-transferable and non-sublicensable save that Adludio and its affiliates shall be entitled to permit their consultants and subcontractors and affiliates to use such Advertiser IP in connection with the design, built and delivery of Content in accordance with the Contract.

## 9 CONTENT DELIVERY SERVICES

- 9.1 Subject to the Advertiser's compliance with the Contract and payment of the Fees, Adludio shall, during the Term, arrange for the Content to be delivered through the Adludio Network and shall use all reasonable efforts to optimise delivery of Content through Channels and Engagement by end-users up to the maximum number of Engagements or other limits set out in the Commercial Terms.
- 9.2 Except where the Advertiser indicates in writing that any particular Channels should be excluded from the Service, Adludio shall have full discretion to decide which Channels are best used for delivery of Content in order to achieve optimal exposure to the Content and Engagement by end users. The Advertiser acknowledges and understands that some affiliates within the Adludio Network may have the right to refuse to deliver any particular Content and upon an affiliates request Adludio shall cause such Content not to be delivered through the affiliates Channel. The Advertiser acknowledges and understands further that the make-up of the Adludio Network may vary from time to time.

## 10 CONTENT

- 10.1 The Advertiser shall ensure that Advertiser IP and any Content incorporating or using Advertiser IP and approved by the Advertiser does not include anything that may or may be alleged as being unlawful, defamatory, infringing of third party rights (including any third party IPRs) or in breach of any duty (including confidentiality duties) to third parties, or otherwise giving rise to third party liability, offensive, misleading, obscene, discriminatory, racist or otherwise contrary to generally acceptable ethical or moral standards in the United Kingdom, or contrary to any applicable advertising code or industry code or otherwise objectionable ("**Inappropriate Material**").
- 10.2 ADLUDIO reserves the right at its discretion to withhold or to discontinue the delivery of any Content that contains or is alleged by any third party to contain Inappropriate Material.
- 10.3 ADLUDIO shall not knowingly or deliberately incorporate any Inappropriate Material in Content designed or built by it.
- 10.4 Except to the extent it is in breach of an express covenant or warranty under these Terms of Business and then subject to the limitations on ADLUDIO's liability as set out in these Terms of Business, ADLUDIO shall not be liable for any loss, cost or expense or any liability incurred by the Advertiser or any claim brought or threatened against it arising out of Content delivered through the ADLUDIO Network as part of the Service including any liability arising out of the delivery of Content containing Inappropriate Materials.
- 10.5 The Advertiser shall indemnify ADLUDIO, its affiliates, officers, directors, employees and agents ("**Indemnified Persons**") and shall keep the Indemnified Persons indemnified on demand against any loss, liability or cost (including reasonable legal costs) arising to the Indemnified Persons as a result of any claim, demand or proceedings brought or threatened against the Indemnified Persons in connection with the delivery of Content through the ADLUDIO Network as part of the Service (including in connection with any Inappropriate Material contained in such Content), save where such claim or allegation arises out of the breach by ADLUDIO of an express covenant or warranty under these Terms of Business.

## 11 DATA AND ANALYTICS OBTAINED THROUGH THE SERVICE

- 11.1 ADLUDIO shall be entitled to capture and use data comprising the IP addresses and other data (including personal data) of end-users who Engage with Content via the Channels for the purpose of administering and improving the functionality of the Service, performing analytics and obtaining statistical data, including for the purpose of providing security for the Service. The data and all statistics and analysis deriving from it shall be deemed ADLUDIO IP.

## 12 INTELLECTUAL PROPERTY

- 12.1 As between the parties, ADLUDIO is and shall remain the sole owner of and shall have the exclusive right to exploit, use, license, sell, reproduce, modify or adapt any and all parts of the Service and the ADLUDIO IP (including any ADLUDIO IP created in the course of the design or built of Content under the Contract). The Advertiser agrees and acknowledges that, save as expressly provided below, it shall not acquire and it irrevocably disclaims any right, title, interest or licence in or under any of the ADLUDIO IP.
- 12.2 The foregoing notwithstanding, and for the avoidance of doubt, ADLUDIO shall not use any Advertiser IP incorporated or used in Content for any purpose other than for internal use or to fulfil its obligations under the Contract.

- 12.3 As between the parties, the Advertiser is and shall remain the sole owner of and shall have the exclusive right to exploit, use, license, sell, reproduce, modify or adapt any and all parts of the Advertiser IP. ADLUDIO agrees and acknowledges that, save as expressly licensed under the Contract, it shall not acquire and it irrevocably disclaims any right, title, interest or licence in or under any of the Advertiser IP

### 13 WARRANTIES

- 13.1 ADLUDIO warrants to the Advertiser as set out below:
- 13.1.1 it has the right to provide the Service and owns or has the right to use the ADLUDIO IP.
  - 13.1.2 it shall use all reasonable care, diligence and skill and sound judgment in providing the design services and Content delivery services to the Advertiser in accordance with the Contract.
  - 13.1.3 ADLUDIO IP used in the design of Content or incorporated in Content does not infringe any third party copyright.
  - 13.1.4 it shall use reasonable efforts to ensure that
    - 13.1.4.1 Content shall be free of computer viruses, worms, trojans, spyware or other malicious code; and
    - 13.1.4.2 ADLUDIO IP incorporated in Content does not include any Inappropriate Material.
- 13.2 The Advertiser acknowledges and agrees that the proper operation of the Service (and ADLUDIO's warranty in paragraph 2 above) are subject to Channels and their systems operating without disruption and in accordance with the technical specifications provided by ADLUDIO to Channels from time to time.
- 13.3 Other than the warranties, covenants and representations expressly set out above, ADLUDIO gives no warranty nor makes any representation in relation to the Service, the Content or the ADLUDIO IP. The parties expressly disclaim to the fullest extent permitted by law any representation or warranty by ADLUDIO relating to Service, the Content or the ADLUDIO IP that may be implied by the Contract, by custom, or by law or otherwise and which is not expressly set out herein, including any implied warranties of quality, merchantability, title or entitlement, fitness for a particular purpose, ability to achieve a particular result or functionality, absence of computer viruses or other malicious code, or non-infringement of third party rights.

### 14 PAYMENTS

- 14.1 Fees shall be payable by the Advertiser in accordance with the IO. Unless otherwise specified in the IO, or where an IO is not present (programmatic campaigns), in accordance with the tracked views as recorded through the Adludio platform.
- 14.2 Payment is due fifteen (15) calendar days from the date of invoice.
- 14.3 Invoices will be sent out to the address of either the advertiser or the agency as set out in the io.
- 14.4 Failure for Adludio to send out a timely invoice, for whatever reason, in accordance with the io, in no way effects the advertisers obligation to pay the invoice in its entirety
- 14.5 All invoices created by Adludio for work performed and delivered shall be in accordance with measurement and tracking performed by Adludio In addition, all payments will be based upon Adludio's measurements and not based upon the advertiser or agencies tracking or any third party's measurements, unless expressly outlined in the IO.
- 14.6 The Advertiser or Agency may, at its or their cost, use a third party to track an Ad upon Adludio's prior written consent, which shall be given or withheld at Adludio's sole discretion
- 14.7 In the unlikely event that the number of engagements, impressions, clicks or other defined metric are not delivered in the timescale as defined in the IO, the advertiser agrees to pay Adludio for engagements, impressions, clicks that have been delivered as defined by the measurement and tracking performed by Adludio within the timescale as defined on the io.
- 14.8 When payment is being delivered for technical and creative services and delivered through an agency or advertisers 3<sup>rd</sup> party DSP (Programmatic campaigns), the payments schedule is calculated at the end of each month, based on the impressions as measured through the Adludio platform. Payment is due immediately upon receipt of invoice.
- 14.9 All amounts payable under this Contract shall be paid in full without any withholding or deduction on account of any taxes, duties, levies or charges, unless the party due to make the payment is required by law to make such deduction or withholding. If it is so required it shall duly deduct or withhold the amount as required by law, provided that it shall give the other party such assistance and co-operation, including the provision of documentation as may be required by any tax authority, as may be reasonably necessary to enable the other party to obtain an exemption, reduction, repayment or tax accreditation in regard to any such deduction or withholding.
- 14.10 Neither party shall be entitled to assert any credit, set-off or counterclaim against any payment obligations (or part thereof) under this Contract, except undisputed amounts due from the other party to the paying party, if such undisputed debts are due and payable by the due date of payment of the amount due under this Contract.
- 14.11 Without prejudice to any other right or remedy available to ADLUDIO, if the Advertiser fails to pay an amount of Fees within 15 days from the due date for payment, ADLUDIO shall be entitled to interest on the outstanding amounts at an annual rate equal to the three (3) month London Interbank Offered Rate (LIBOR) denominated in British pounds plus five per cent. (5%), calculated on a daily basis, from the date on which the payment originally fell due until the date of receipt of payment in cleared funds.

### 15 LIMITATIONS ON LIABILITY

- 15.1 In no event shall ADLUDIO be liable to the Advertiser under this Contract or in connection with its performance or breach, or in connection with any warranties hereunder, or in connection with the provision of the Service, including for its negligence, for any indirect, incidental, consequential or special damages, including any loss of profits or savings or anticipated profits or savings, loss of data, loss of opportunity, loss or reputation, goodwill or business, even if ADLUDIO has been advised in advance of the possibility of such damages.
- 15.2 ADLUDIO shall have no liability whatsoever for any damage, liability or loss (including loss of revenue) that the Advertiser may incur, or to any other undesirable consequences, resulting from any temporary suspension or disruption of the Service, including where such temporary suspension or disruption results from ADLUDIO's negligence.
- 15.3 ADLUDIO's maximum aggregate liability for any single event (or a series of related events) giving rise to a claim in connection with this Contract or in relation to the Service, either for breach of contract, breach of warranty, misrepresentation or negligence shall be limited to a sum equal to the total Fees payable to ADLUDIO.
- 15.4 ADLUDIO shall not be in breach of the Contract, nor liable for any failure or delay in performance of any of its obligations under the Contract where such failure or delay arises from or is attributable to acts, events, omissions or accidents beyond its reasonable control including an act of God, fire, flood, earthquake, windstorm or other natural disaster, explosion or accidental damage, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, terrorist attack, civil war, civil commotion or riots, shortage of raw materials or supplies, industrial action or strike, power cuts electronic or communication network breakdowns including any disruption, suspension or breakdown of any 'cloud', hosting or network services ("**Force Majeure Events**"). If a Force Majeure Event prevents the proper performance of ADLUDIO's obligations under the Contract and such disruption continues for a continuous period of more than 30 days, either ADLUDIO or the Advertiser may terminate the Contract by giving the other 15 days' prior written notice which shall take effect on the expiry of such notice period unless by that date ADLUDIO can resume the proper performance of its obligations.
- 15.5 Notwithstanding anything to the contrary in the Contract, nothing herein shall be deemed to limit a party's liability for death or personal injury caused by that party's negligence or for that party's fraud or fraudulent misrepresentation or for any other liability that cannot be limited or excluded by law.

## 16 CONFIDENTIALITY

- 16.1 Each party (the "**Receiving Party**") shall, for the duration of the Terms and for an unlimited period of time thereafter, keep confidential all information (whether or not marked as confidential) received from the other party (the "**Disclosing Party**") or otherwise obtained by the Receiving Party in connection with the Service relating to the Disclosing Party's business ("**Confidential Information**") and shall not use or disclose such information to any third parties other than as permitted by the Disclosing Party.
- 16.2 ADLUDIO shall be deemed to be the Disclosing Party in relation to any information relating to the Service or the ADLUDIO IP, or ADLUDIO's business or financial affairs and business plans. The Advertiser shall be deemed to be the Disclosing Party in relation to any information relating to the Advertiser IP, the Advertiser's business or financial affairs and business plans.
- 16.3 The financial details of this Contract and other details set out in the Commercial Terms shall be deemed to be Confidential Information of both parties and each party shall treat such information as a Receiving Party.
- 16.4 The requirements of this section shall not apply: (i) to any information to the extent that it is or becomes (not as a result of a breach of this section) generally available to the public; or (ii) to any disclosure of information required by operation of law or any stock exchange regulations or any binding judgment or order of a court of law, or by any requirement of any competent authority, governmental regulatory agency or stock exchange, subject where possible to reasonable prior consultation with the Disclosing Party and provided that in the event that such disclosure is required, the Receiving Party shall take reasonable steps to protect the confidentiality of the information and to limit the disclosure as much as possible

## 17 TERMINATION

- 17.1 A party (the "**Terminating Party**") shall be entitled to terminate the Contract by written notice with immediate effect to the other party (the "**Breaching Party**") in the event that:
- 17.1.1 the Breaching Party commits a material breach of its obligations, representations or warranties under this Contract; provided, however, where such breach is capable of cure, that the Breaching Party shall have 15 days from the date of receipt of a notice from the Terminating Party to cure such breach, following which time, unless such breach is materially cured, the Terminating Party shall be entitled to serve notice terminating this Contract with immediate effect; or
- 17.1.2 the Breaching Party is unable to pay its debts as they become due or bankruptcy proceedings are initiated against it or an order for its winding up is made against it (except voluntary winding up for the purpose of reorganisation).
- 17.2 ADLUDIO shall be entitled to terminate this Contract by written notice with immediate effect to the Advertiser in the event that
- 17.2.1 the Advertiser challenges, opposes or seeks to invalidate or revoke any of the ADLUDIO IP or makes any claims relating to ADLUDIO's title or entitlement or licensed rights to the ADLUDIO IP, or if the Advertiser assists another person to do any of those things, or

17.3 the Advertiser fails to pay the Fees within 7 days of the due date for payment. The termination or expiry of this Contract shall not affect any accrued rights or liabilities of any party and shall not affect any provision of this Contract intended to have effect after termination or necessary for its interpretation and in particular it shall not affect the confidentiality or intellectual property provisions hereunder or the general provisions below

## 18 PUBLIC ANNOUNCEMENTS

18.1 Neither party shall make or send a public announcement, communication or circular concerning the Contract unless it has first obtained the other party's written consent, which may not be unreasonably withheld or delayed

## 19 GENERAL

19.1 The Contract is personal to the parties and neither party shall be entitled to assign or transfer its rights or obligations without the other's prior written consent.

19.2 Nothing in this Contract shall create, or be deemed to create, a partnership or joint venture and shall not be construed as giving rise to the relationship of principal and agent between the parties.

19.3 If any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect the legality, validity or enforceability in that jurisdiction or any other jurisdiction of any other provision of these Terms.

19.4 A person who is not a party to this Contract shall have no rights to enforce the provisions of this Contract under the Contracts (Rights of Third Parties) Act 1999.

19.5 No modification, alteration or waiver of any of the provisions of this Contract shall be effective unless in writing and signed on behalf of each of the parties.

19.6 No omission or delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or of any other right, power or privilege. The rights and remedies herein provided are cumulative with and not exclusive of any right or remedies provided by law.

19.7 These Terms of Business together with the Commercial Terms constitute the entire agreement between the parties and supersede all other agreements, statements, letters and other arrangements between the parties in relation to the subject matter hereof. Each party acknowledges that it has not relied on or been induced to enter this Contract by a representation other than those expressly set out in this Contract. This clause does not affect a party's liability in respect of a fraudulent misrepresentation.

19.8 This Contract and any dispute between the parties arising out of the subject matter of this Contract including as to its formation, interpretation and effect and including claims based on non-contractual grounds shall be governed by English law and the parties submit to the exclusive jurisdiction of the courts of England.