

### The Client's attention is drawn in particular to the provisions of Clause 12 (Limitation of Liability)

#### 1. Interpretation

1.1 The following definitions and rules of interpretation apply in this Agreement:

**ADR Notice:** has the meaning given in clause 26.1(b).

**Agency:** DRP (UK) Limited (company number 03653794) whose registered office is situated at Unit 212 Ikon Industrial Estate, Droitwich Road, Hartlebury, Kidderminster, Worcestershire, DY10 4EU, or any Group Company who will provide the Services to the Client.

**Agency's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Agency to the Client and used directly or indirectly in the supply of the Services, including any such items specified in a Project Plan but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Client.

**Agency's Policies:** any policy or procedure written by the Agency or Third-party Supplier which is notified to the Client at any time.

**Agreement:** the agreement made between the Agency and the Client in accordance with clause 2.2 which incorporates these Conditions.

**App:** the application software to be developed as is further described in the Project Plan.

**Applicable Laws:** all applicable laws, statutes, regulation from time to time in force.

**Artificial Intelligence (AI):** Refers to the use of computer systems or software that perform tasks typically requiring human intelligence, such as visual perception, speech recognition, decision-making, and language translation. In the context of this Agreement, AI includes any third-party tools or technologies used by The Agency to generate, modify, or enhance content.

**AI-Generated and Gen-AI Generated Content:** content that has been created, modified, or enhanced through the use of Artificial Intelligence tools or technologies, as provided by third-party vendors. This may include, but is not limited to, text, images, videos, and other digital media.

**Available Services:** the services that the Agency makes available to clients which shall include Media Services, Live Events and Communication Services.

**AVBs:** is as defined in clause 5.3(c)

**Billing Schedule:** any written statement provided by the Agency to the Client setting out the payment schedule of the Charges (including but not limited to a project acceptance form, a billing schedule, or an itemised payment statement).

**Brand Design Services:** means designing the visual identity for the Client's business, brand or product to include but not limited to designing fonts, logo, illustrations, names, icons, characters, music etc. Branding Design Services shall also include Nomenclature Services.

**Branding Deliverables:** the output of the Brand Design Services produced by the Agency which the Client approves for use but excluding any Excluded Deliverables.

**Brief:** a Client's request to the Agency to provide certain of the Available Services which shall contain sufficient information as the Agency reasonably requires to enable it to understand the Client's requirements.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 9:00am to 5:00pm on any Business Day.

**Charges:** the sums payable for the Services as set out in the Client Estimate as may be amended by a Project Change Notice or as otherwise agreed in writing by the parties.

**Client:** the person to whom the Agency will provide the Services.

**Client's Brand Guidelines:** the Client's guidelines for the use of its Trademarks and brands as may be amended from time to time by the Client and notified to the Agency.

**Conditions:** these terms and conditions.

**Content:** any image, text, video, audio file, tweet, status update, or any other media types that are distributed, shared or otherwise published on a social media site.

**Control:** The meaning is given in section 1124 of the Corporation Tax Act 2010.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures:** as defined in UKGDPR.

**Client's Equipment:** any equipment, including tools, systems, cabling or facilities provided by the Client, its agents, suppliers, subcontractors or consultants which is used directly or indirectly in the supply of the Services, including any such items specified in a Project Plan.

**Client Materials:** all documents, information, items and materials (to include video and audio) in any form, whether owned by the Client or a third party, which are provided by the Client to the Agency in connection with the Services, including the items provided pursuant to Clause 4.1(e).

**Client's Own Supplier:** a Third-party supplier appointed or engaged by the Client itself or by the Agency on the Client's behalf with whom the Client contracts directly, to provide the Client with goods and services to be used in conjunction with the Services.

**Client Personal Data:** any personal data which the Agency processes in connection with this agreement, in the capacity of a processor on behalf of the Client.

**Cloud Hosting:** services provided by a cloud computing provider or facility to host data, services and/or solutions necessary to enable the Agency to provide certain of the Services to the Client.

**Commencement Date:** has the meaning given in clause 2.2

**Communication Services:** Services provided by the Agency shall include, without limitation, account direction and management, creative direction, editorial, content and digital marketing, design of both two-dimensional and three-dimensional design, print media, social media, research and insight, planning and marketing strategies and media buying (via Third-party Suppliers).

**Content:** has the meaning given in clause 4.1(i).

**Data Protection Legislation:** to the extent that UKGDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data and to the extent that EUGDPR applies, the law of the European Union or any member state of the European Union to which the Agency is subject, which relates to the protection of personal data.

**Deadline Date:** the date specified by the Agency, by which the Client must supply the Required Materials to the Agency.

**Deliverables:** any output of the Services to be provided by the Agency to the Client as specified in the order.

**Deposit:** a payment in advance towards the Charges, paid by the Client to the Agency in accordance with Clause 8.

**Disbursement(s):** any Third-party Fees or Client Own Supplier Fees that are invoiced to the Client as disbursements.

**Dispute:** has the meaning given in clause 26.1

**Dispute Notice:** has the meaning given in clause 26.1(a)

**Event:** an event where the Agency is to provide Services.

**Excluded Deliverables:** means any output of the Brand Design Services which the Client does not approve for use or anything owned by a third-party licensor.

**EUGDPR:** the General Data Protection Regulation (*EU* 2016/679) as it has effect in EU law.

**Generative Artificial Intelligence (Gen-AI):** Refers to a class of artificial intelligence systems that are capable of generating new content, such as text, images, music, code, and other data, based on patterns learned from existing datasets. Gen-AI models, such as large language models or generative adversarial networks (GANs), can create outputs that are often indistinguishable from human-created content. These systems are used for a variety of creative and functional applications, but they may also produce outputs that are biased, inaccurate, or unexpected, depending on the quality and nature of the data they have been trained on.

**Group:** in relation to the Agency, the Agency, any subsidiary or holding company from time to time of the Agency, and any subsidiary from time to time of a holding company of the Agency.

**GUI:** the graphical user interface of any Software, App or Website consisting of any textual, graphical and design elements, including the positions of such elements on a Website but excluding the functionality of any such Website and the software underlying such textual, graphical, and design elements.

**Group Company:** in relation to the Agency, any member of its Group.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, Trademarks, business 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 software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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.

**Live Event Services:** services provided by the Agency to include, without limitation, venue finding services, events, exhibition and experiential services (creative design, content development, project direction, project management, logistics management, delegate communications, consultancy services, scripting, content production services and technical production).

**Media Buying Services:** means the services of strategically planning, negotiating, and executing advertising campaigns on various media channels on behalf of the Client.

**Media Services:** services provided by the Agency shall include digital, video and graphics (creative design, usability, content development, scripting, project direction, project management, producing, coding and development, testing, maintenance, filming, editing, sound engineering, graphical creation, animation, consultancy, and technical production), and development of Websites, Software and/or Apps, but excludes Media Buying Services.

**Milestone:** a date by which a part or all of the Services is to be completed, as set out in a Project Plan.

**Minor Discrepancies:** any failure to provide any facility or function not specified in a Specification or on account of deviations from the Specifications which do not materially affect a user's ability to use the Software or Website or App.

**MSS Code:** means the Market Services Society code of conduct, as in force from time to time.

**Nomenclature Services** means the services the Agency provides to the Client to generate Potential Brand Names.

**Open-Source Software:** any Software which is developed, tested, or improved through public collaboration and distributed with the idea that it must be shared with others, ensuring an open future collaboration.

**Order:** the Client's order for Services as set out in the Client's purchase order form or the Client's written acceptance of a Project Plan as the case may be.

**PCN:** a project change notice agreed in accordance with clause 7.

**Potential Brand Names:** business names, brand names or other names proposed by the Agency when providing the Nomenclature Services.

**Production Schedule:** the timeline for co-ordinating various production teams for the delivery of Services.

**Project Delivery Date:** the date the Services are supplied by the Agency to the Client or, in the event of the Services being supplied over a period of time, the final date those Services are supplied.

**Project Plan:** the written document issued by the Agency to the Client (as may be amended by a PCN from time to time) describing such matters as the Services to be provided by the Agency, the Services specifications, Deliverables to be provided, the timetable for their performance and all related matters which will depend upon the Services that are to be provided and the Charges. It may be headed up "client estimate", "scope of works" or "statement of works" and shall include a Billing Schedule.

**Purpose:** has the meaning given in clause 10.5(a).

**Rejection Notice:** has the meaning given in clause 5.7(f)(i).

**Required Materials:** any documents, information, items and materials specified by the Agency to be supplied by the Client, in order for the Agency to supply the Services.

**Research and Insight Services:** means services that consist of the research and analytics of the subjects as set out in the Project Plan to enable business decisions. Subject matters may include markets, audiences, competitors, channels, content and creative assets.

**SEO Services:** means services that consist of keyword research, site auditing, consultancy and media management across social media sites and search engines.

**Services:** the services, including Deliverables, supplied by the Agency to the Client as set out in the Project Plan.

**Social Media Services:** the services to be provided by the Agency in respect of social media that are set out in a Project Plan.

**Software:** the software to be developed as described in the Project Plan, which may include Open-Source Software, together with the GUI which shall be incorporated into the Deliverables.

**Specification:** the functional specification for the Software, App and/ or Website (as applicable) as shall be agreed between the parties in writing.

**Standard Charges:** the Agency's standard charges for the Available Services at the rate in force from time to time.

**Third-Party AI or AGI Solution Provider:** any external entity or service provider that offers Artificial Intelligence tools or technologies used by The Agency in the development, modification, or enhancement of content under this Agreement.

**Third-party Fees:** fees, charges and costs payable to third parties relating to the provision of the Services and which are payable by the Client in accordance with Clause 8.4.

**Third-party Licences:** licences granted by Third-party licensors in respect of any Intellectual Property Rights used by the Agency in connection with the provision of the Services and Deliverables together with all Open-Source software and Third-party Licence Fees (as defined in clause 8.4) shall be the licence fees payable to the said licensors.

**Third-party Suppliers:** suppliers, agents, subcontractors, contractors or freelancers used by the Agency to provide some or all of the Services.

**Trademarks:** any registered or unregistered Trademarks and logos, specified in a Project Plan and/ or notified to the Agency from time to time.

**UKGDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

**Venue:** the premises where an Event is taking place or where the Services are to be performed as set out in the Project Plan.

**Video:** the provision of video, film, graphical or animation production services by the Agency.

**Wasted Costs:** any costs, time or expenses incurred or committed to by the Agency in relation to a Project Plan which has been changed to the extent that the goods and/ or services to which such costs or expenses relate cannot be used, and such costs or expenses are irrecoverable by the Agency.

**Website:** the website to be developed (including any GUI) as described in the Project Plan.

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.5 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

- 1.7 A reference to **writing** or **written** includes email but not fax.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 A reference to **this Agreement** or to any other agreement or document is a reference to this Agreement or such other agreement or document, in each case as varied or novated from time to time.

## **2. Basis of Agreement**

- 2.1 The Order constitutes an offer by the Client to purchase the Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Agency issues a written acceptance of the Order at which point and on which date the Agreement shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Agreement, to the exclusion of any other terms that the Client seeks to impose or incorporate or which are implied by law, trade custom, practice or course of dealing.
- 2.4 Any quote given by the Agency shall not constitute an offer, and will only be valid for 5 Business Days from the date of its issue. All quotes are subject to change or withdrawal without prior notice to Client.
- 2.5 Prices of materials and logistics are based on the relevant industry price market index at the date of the quote. The Agency reserves the right to increase its charges in accordance with its terms and conditions.
- 2.6 The Agency shall provide the Services from the date specified in the relevant Project Plan or as otherwise agreed between the parties in writing.
- 2.7 Where the Agency is engaged to provide the Client with the Services on an exclusive basis, this shall be set out in the Project Plan.
- 2.8 The Client acknowledges that The Agency may utilise Artificial Intelligence (AI) and Generative Artificial Intelligence (Gen-AI) tools and technologies provided by third-party vendors in the creation of content, deliverables, products, or services offered under this Agreement. The use of AI and Gen-AI is discretionary and may be incorporated into various aspects of the products or services provided by The Agency.

## **3. Agency's Responsibilities**

- 3.1 The Agency shall use reasonable endeavours to manage and complete the Services and deliver the Deliverables to the Client, using reasonable skill and care, in accordance with the Project Plan in all material respected.
- 3.2 The Client consents to the Agency using Third-party Suppliers at the Agency's discretion. The Agency shall not be liable to the Client for any act or omission of a Third-party Supplier but it shall use its reasonable endeavours to mitigate the effect any act or omission of the Third-party Supplier may have on the provision of the Services. Where the Agency is aware

that a failure of a Third-party Supplier's services could disrupt the provision of the Services (e.g. cloud hosting), the Agency will inform the Client of the risk in the Project Plan.

- 3.3 The Agency shall use reasonable endeavours to meet any performance dates set out in the Project Plan but any such dates shall be estimates only and time for performance by the Agency shall not be of the essence in respect of performance dates.
- 3.4 The Agency shall appoint a manager in respect of the Services to be performed under the Project Plan, such person as identified in the Project Plan. That person shall have authority to contractually bind the Agency on all matters relating to the relevant Services. The Agency shall use all reasonable endeavours to ensure that the same person acts as the Agency's manager throughout the term of the relevant Project Plan, but may replace that person from time to time where reasonably necessary in the interests of the Agency's business.
- 3.5 The Agency shall use reasonable endeavours to observe all health and safety and security requirements that apply at any Venue or premises where the Services are to be performed or Deliverables delivered which have been communicated to it under clause 4.1(f) provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement.
- 3.6 The Agency reserves the right to amend the Project Plan if necessary to comply with any applicable law or regulatory requirement or is the amendment will not materially affect the nature or quality of the Services, and the Agency shall notify the Client in any event.
- 3.7 The Agency shall use the Trademarks in accordance with the Client's Brand Guidelines.
- 3.8 In performing its obligations under this Agreement, the Agency shall comply with the Applicable Laws.
- 3.9 The Agency commits to using reasonable endeavours to mitigate and reduce the likelihood of biases, hallucinations, or inaccuracies in the outputs generated by AI or Generative AI systems. This includes applying appropriate data management practices, regular system evaluations, and, where feasible, implementing corrective measures.

#### **4. Client's Obligations**

- 4.1 The Client shall:
  - (a) co-operate with the Agency in all matters relating to the Services;
  - (b) comply in all material respects with the Agency's Policies;
  - (c) appoint a manager in respect of the Services to be performed under the Project Plan, such person as identified in the Project Plan. That person shall have authority to contractually bind the Client on all matters relating to the relevant Services (including by changes made in accordance with Clause 7);
  - (d) provide, for the Agency, its agents, subcontractors, freelancers, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as required by the Agency including any such access as is specified in a Project Plan;
  - (e) provide to the Agency in a timely manner all documents, information, items and materials in any form (whether owned by the Client or a third party) required under a Project Plan or otherwise reasonably required by the Agency in connection with the Services and ensure that they are accurate and complete;

- (f) Comply and inform the Agency of all health and safety and security requirements that apply at the Venue or at any of the Client's premises. The Agency will suspend or refuse to provide any Services where it forms the reasonable opinion that the health and safety of its personnel or any Third-party Supplier personnel may be compromised in any way;
- (g) ensure that all the Client's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- (h) obtain and maintain all necessary licences and consents and comply with all Applicable Laws as required to enable the Agency to provide the Services, including in relation to the installation of the Agency's Equipment, the use of all Client Materials and the use of the Client's Equipment;
- (i) where the Client Materials include video, audio and design content (**Content**), the Client will be responsible for ensuring that this Content will play on the Client's Equipment or the Agency's Equipment deployed for the purposes of playing that Content. The Agency will not be responsible if there is insufficient time to check that the Content will play correctly before it is used;
- (j) ensure that the Client materials shall be free of any virus, worm, trojan or any other form of malicious code or anything otherwise, that might corrupt any of the files or equipment that is deployed for the purposes of providing the Services;
- (k) keep, maintain and ensure the Agency's Equipment is in good condition and not dispose of or use the Agency's Equipment other than in accordance with the Agency's written instructions or authorisation; and
- (l) comply with any additional responsibilities of the Client as set out in the relevant Project Plan.
- (m) In the event the Client is to deliver any element of the Project or an activity related to the Project through its own personnel or a third party, the Client will ensure that any such person is appropriately trained, insured and qualified to so.

4.2 If the Agency's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Agency shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client.

4.3 The Agency shall have the right to charge the Client for any extra time incurred and additional materials necessary to complete the delayed obligations. The charges for extra time and materials shall be communicated to the Client in writing and shall be based on the Agency's prevailing rates and costs. The Client agrees to promptly reimburse the Agency for such charges upon receipt of an invoice.

4.4 The Client acknowledges that the Agency will schedule certain parts of its Services on a specific date to meet the requirements of the Production Schedule. The Client undertakes to provide the Required Materials to the Agency by the Deadline Date. Any delay by the Client in providing the Required Materials by the Deadline Date will mean that the Services cannot then be supplied by the Agency (or Third-party Supplier) in accordance with the Production Schedule. If the Client fails to give the Agency more than 48 hours written notice prior to the Deadline Date that it cannot provide the Required Materials by the Deadline Date, the Production Schedule will have to be cancelled and the Client will remain liable to pay 100% of the Charges for the Services that would otherwise have been performed as part of the Production Schedule even where the Agency or the Third-party Supplier agrees



to provide the same Services on a later date. If there is more than one Deadline Date, the provision of this clause shall apply in respect of each Deadline Date.

- 4.5 The Client acknowledges that content, deliverables, products, or services developed or enhanced using AI or Gen-AI tools may not always be accurate, complete, or current. It is the Client's responsibility to independently verify the accuracy, completeness, and suitability of such content or deliverables before its use or publication. The Agency shall not be held liable for any inaccuracies, omissions, or errors in AI or Gen-AI generated materials.
- 4.6 The Client agrees to ensure that any AI-generated content or AI-integrated deliverables, products, or services do not infringe the intellectual property rights of any third party, including but not limited to copyrights, trademarks, and patents. The Client is responsible for conducting necessary checks and obtaining the appropriate permissions or licenses where required.
- 4.7 The Client understands that due to the learning nature of AI or Generative AI systems, there is a potential for outputs to be influenced by biases inherent in the data or for the systems to generate information that may not be accurate, known as "hallucinations." The Client accepts that such outcomes are possible and are inherent risks associated with the use of AI or Generative AI technologies.

## **5. Supply of Services**

- 5.1 This clause 5.1 applies to the provision of Social Media Services only. Where there is a discrepancy between the provisions of this clause 5.1 and any other terms in these Conditions, the provisions of this clause 5.1 shall take precedence.
- (a) The Agency will use its reasonable endeavours to ensure that when providing the Social Media Services:
- (i) it complies with the terms and conditions of any social media site that is used to deliver Content and that it keeps the Client informed of any material risk of which it becomes aware that the Content delivered may be non-compliant;
  - (ii) it shall keep administrative passwords safe and secure from unauthorised access, which shall include changing passwords regularly;
  - (iii) it shall ensure that any personnel who leave the Agency do not have administrative access rights and keep the Client informed of any changes to any administrative passwords; and
  - (iv) it shall ensure that any Deliverables will be reasonably transparent to users as being marketed in accordance with good practice by using hashtag disclosures where reasonably necessary.
- 5.2 This clause 5.2 applies to the provision of SEO Services only. Where there is a discrepancy between the provisions of this clause 5.2 and any other terms in these Conditions, the provisions of this clause 5.2 shall take precedence
- (a) Where the Agency is providing SEO Services, the Client shall:
- (i) provide relevant keywords;
  - (ii) be responsible for the determination of infringement or non-infringement of any trademarks as a result of the use of keywords;

- (iii) accept and acknowledge that the Agency shall have no control over the exact positioning and traffic from search results and cannot guarantee any placing, rank or position within search engine results; and
- (iv) be responsible for any coding necessary to its websites which may be necessary to enable the Agency to perform the SEO Services.

5.3 This clause 5.3 applies to the provision of Media Buying Services only. Where there is a discrepancy between the provisions of this clause 5.3 and any other terms in these Conditions, the provisions of this clause 5.3 shall take precedence.

- (a) the Agency shall invoice media costs payable by the Client for media space booked by the Agency based on the negotiated gross cost of media less the standard agency discount given by the media owner or as otherwise as approved by the Client in the Project Plan together any associated fees and any industry related charges;
- (b) the Client acknowledges and understands that media costs, ratings and/ or other campaign metrics as set out in any Project Plan represent estimates based on market predictions and that the final actual pricing, channel share and/or ratings performance may therefore differ from that set out in the relevant estimate. The Client agrees to pay the final charges based on these factors;
- (c) the Agency purchases media on behalf of its clients as principal and at its own risk and may, on occasion, receive from the media owner's volume or other discounts, bonuses, free or discounted media space or any other equivalent benefit ("**AVBs**") derived from the Agency's aggregate spend across many clients. The Client hereby agrees that the charges incurred by the Agency in relation to the Media Buying Services may be aggregated in any such Agency AVB arrangements with media suppliers. The Agency reserves the right to utilise such AVBs to discount media costs to the Agency and, in such instances, the final media costs payable by the Agency to relevant media owners may differ from the Charges payable by the Client pursuant to the Agreement. The Agency will always act in media neutral manner in the delivery of the Media Buying Services hereunder; and
- (d) unless otherwise stated in the applicable Project Plan, where the Agency verifies the placement of advertisements, it is the Clients' responsibility to notify the Agency in writing within 30 days of date of insertion of media, pursuant to the relevant Project Plan, if the Client advertisement does not appear or is to a different specification than that agreed in the Project Plan. In the absence of such notification, the advertisements will be deemed to have appeared as specified and Charges are payable in full by the Client.

5.4 This clause 5.4 applies to the provision of Research and Insight Services only. Where there is a discrepancy between the provisions of this clause 5.4 and any other terms in these Conditions, the provisions of this clause 5.4 shall take precedence.

- (a) the Agency will comply with the requirements of the MSS Code when providing these Services to the Client, save where amended by the Conditions; and
- (b) where the Agency is under a duty to protect the anonymity of any respondents to the research (for example in accordance with the MSS Code) the Agency shall only provide the Client with anonymised data. The Client warrants and undertakes that it shall not attempt to link any data to the identity of any respondent.

5.5 This clause 5.5 applies to the provision of Brand Design Services only. Where there is a discrepancy between the provisions of this clause 5.5 and any other terms in these Conditions, the provisions of this clause 5.5 shall take precedence.

- (a) If the Brand Design Services include Nomenclature Services, the Client will be responsible to pay the Agency in respect of the Nomenclature Services even where the Client decides that none of the Potential Brand Names are suitable for its use.
- (b) Subject to clause 5.5(c) all Intellectual Property Rights in or arising out of or in connection with the Brand Design Services shall be owned by the Agency or its licensors;
- (c) The Agency will, in so far as it is able and upon payment of the Charges arising in respect of the Brand Design Services, assign to the Client the Intellectual Property Rights in the Branding Deliverables. The Agency will not assign any Intellectual Property Rights contained within the Branding Deliverables which are owned by a Third-party Licensor but will use its reasonable endeavours to procure a licence for the Client to use them in connection with its business. The Client will be responsible to pay the Third-party Licensor's Fees in respect of any licence granted;
- (d) Before using the Branding Deliverables, the Client must investigate and satisfy itself that the Branding Deliverables do not in any way infringe the Intellectual Property Rights of any Third-party. The Agency does not conduct such investigations. The Agency shall not be liable for any dispute arising from or in connection with the use or infringement of any Intellectual Property Rights of any Third-party, arising from the provision of Brand Design Services;
- (e) the Agency will not provide legal advice upon how the Client may protect the Intellectual Property Rights in the Brand Deliverables and the Client must seek its own legal advice on protecting their Intellectual Property Rights in the Brand Deliverables including copyright in any branding, design, logos or other images or content that may arise as a result of the Agency's performance of the Services.

5.6 This clause 5.6 applies to the provision of Live Event Services only. Where there is a discrepancy between the provisions of this clause 5.6 and any other terms in these Conditions, the provisions of this clause 5.6 shall take precedence.

- (a) The Client shall:
  - (i) ensure that its employees, agents, consultants, subcontractors and representatives shall comply with the terms and conditions of any third parties sub-contracted by the Agency, including any venue, presenters, actors or entertainers;
  - (ii) comply and inform the Agency of all health and safety rules and regulations and any other reasonable security requirements that apply at any of its premises or the Venue;
  - (iii) be responsible for any equipment issued to it on a day-hire basis while it is in its possession and it shall insure any such equipment against the risks of theft, fire, accidental damage, personal injury and public liability to such levels as required by the Agency;
  - (iv) ensure that the Venue is suitable for the provision of the Services in all respects and conforms to all regulatory and other legal requirements;
  - (v) ensure that its project manager or another duly authorised representative is available throughout the duration of any Event, is readily accessible to us

- and is authorised to receive and provide instructions and information and make decisions on the Client's behalf in relation to that Event;
- (vi) ensure that where the Agency's personnel are required to be accommodated overnight and the Client is providing accommodation to that personnel, that accommodation shall be located either within the Venue or no more than a five-minute walk away from it; and
  - (vii) provide and continue to provide the Agency with all necessary, up to date and complete information about participants attending an Event and in particular shall inform the Agency if, to the best of the Client's knowledge, any participant or participants are disabled, incapacitated or have limited mobility or have any special dietary or medical needs or requires special assistance for any reason.
- (b) Where the Client engages the Agency to source a Venue on its behalf, the Client:
- (i) acknowledges that all information given to it by the Agency has been supplied by the Venue itself and that it does not rely upon any representation made by the Agency as to the suitability of the Venue to meet the Client's requirements;
  - (ii) will comply in all respects with the Venue's own terms and conditions and will indemnify the Agency against all liabilities, costs, expenses, damage and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest penalties and legal costs suffered or incurred by the Agency) arising from the Client's failure to comply in all respects with the Venue's terms and conditions;
  - (iii) (having engaged the Agency to source a Venue) shall not enter into a contract directly with the Venue without the Agency's prior written consent. If the Client acts in breach of this clause 5.6(b)(iii), the Client shall pay the Agency's Charges which shall be calculated as the greater of either 10% of the hire charge made by of the Venue or £2,000, plus VAT at the applicable rate.
- (c) Access times to the Venue shall be confirmed in writing and if these are changed through no fault of the Agency, then the Client shall be liable for any additional costs and expenses incurred by the Agency's, its staff and its subcontractors staff as well as the staff of any relevant Third-party Supplier affected by such change. The Agency shall not be liable for the late starting of an Event and any loss arising where the late starting arises as a result of the changes made to the agreed access times.
- (d) The Client shall not require the Agency's personnel or any Third-party Supplier's personnel to work for more than 12 consecutive hours without adequate rest breaks. In addition, the Agency's personnel or any Third-party Supplier's personnel shall be entitled to a minimum of 12 hours rest in each 24-hour period. These periods cannot be exceeded without the Agency's prior written consent which, if given, will entitle the Agency to increase its Charges to reflect the additional costs arising.
- (e) To ensure safety procedures are adhered to, the Client shall be liable for any additional Charges incurred by the Agency to provide personnel required to deliver the Event in situations where the Event requires a night or early hour build up, followed by a show. Such Charges shall be agreed in writing in advance.
- (f) The Agency shall not be liable for any costs, charges or losses sustained or incurred by the Client directly or indirectly from radio frequency interference of such

items of equipment as radio microphones, computers, sound systems, projection units etc., caused by a substandard electrical supply or radio frequency equipment.

- (g) The Agency shall not be liable for any services or utilities outage or failure outside of its control.

5.7 This clause 5.7 applies to the provision of Media Services only. Where there is a discrepancy between the provisions of this clause 5.7 and any other terms in these Conditions, the provisions of this clause 5.7 shall take precedence.

- (a) It is acknowledged that Agency may use Open-Source Software as part of the Deliverables.
- (b) The Client's use of Open-Source Software shall be governed by the terms of the applicable Open-Source licence(s). The Client warrants and undertakes that it will comply with the terms of the applicable Open-Source licence(s) as such terms apply to Client's use of the applicable Open-Source Software.
- (c) The Agency shall, in collaboration with Client, commence the preparation of the Specification for the Software, Website or App as appropriate and Agency shall submit the completed Specification to the Client for approval (which shall not be unreasonably withheld or delayed).
- (d) Upon approval of the Specification by the Client, the Agency shall then develop the Software and/ or Website and/ or App based upon the Specification.
- (e) When developing an App, the Agency shall use reasonable endeavours to ensure that the App complies with any relevant platform operating system terms and conditions as at the time of development and to obtain the relevant permissions from the platform operators in order that the App may be published and used on such platform operating system.
- (f) Approval by the Client of Deliverables consisting of Software or a Website or Apps shall occur in accordance with this clause 5.7(f):
  - (i) promptly, and in any event within 14 Business Days of completion of stages of Deliverables for each part of the Software and/ or Website and/ or App or such other period as agreed by the parties, the Client shall issue the Agency with written notice of any material deviation from the Specification (**Rejection Notice**). The Client shall only be entitled to issue a Rejection Notice upon the basis that (and by detailing the manner in which) each part of the Software and/ or Website and/ or App exhibits a fault which materially affects the functionality of the Software and/ or Website and/ or App to the extent that a user's ability to use the Software and/ or Website and/ or App is materially impaired.
  - (ii) **the** Client acknowledges that acceptance of each part of the Software and/ or any Website and/ or App shall be deemed to occur on the earliest of the following events:
    - (A) the expiry of the time period for the Client to serve a Rejection Notice; or
    - (B) the date of which the Client states that the Software and/or any Website and/or any App is accepted;
    - (C) the date on which the Client puts the Software or Website or App to any live operational use, other than for the purposes of testing.
- (g) if the Client shall serve a valid Rejection Notice in accordance with clause 5.7(f)(i), the Agency shall correct and/ or replace the defective Deliverables within the

timeframe agreed by the parties in writing so that they perform in accordance with the relevant Specifications in all material respects and re-deliver the same to the Client.

- (h) For the avoidance of doubt the Client shall not be entitled to reject Software or a Website or App Deliverables by reason of Minor Discrepancies. The Client and Agency shall co-operate with one another to try to rectify such Minor Discrepancies.
- (i) The Agency warrants that on the date of delivery to Client, to the extent that the Deliverables comprise Software, Website or Apps such Deliverables will comply in all material respects with their Specifications and/ or this Agreement. This warranty is in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this Agreement. Without limitation, the Agency specifically denies any implied or express representation that the Supplier will be fit:
  - (i) the Software will be fit to operate in conjunction with any hardware or software products other than those which are identified in the Project Plan as being compatible with the Software;
  - (ii) the Software will operate uninterrupted or error-free; or
  - (iii) the Supplier will undertake any updates and upgrades in relation to Open-Source Software.
- (j) Where certain of the Services require Cloud Hosting, the Client acknowledges that the Charges are calculated on the basis of usage. Usage is determined by a number of factors which may include: number of users, duration of use, levels of integration, data storage requirements and volume of downloads. Any estimate given or Charges raised by the Agency in respect of Cloud Hosting is based upon the information given to the Agency by the Client in respect of its processing requirements. If, as a result of surges in estimated use (number of users etc.), the Agency incurs additional charges from the Cloud Hosting Third-party Supplier, the Agency shall be entitled to raise a further invoice in respect of these additional charges.
- (k) Where Video Services are provided by the Agency, it will provide all pre-production, production and post-production Services necessary to deliver the Deliverables set out in the Project Plan to include as necessary:
  - (i) provision of technical knowledge and expertise;
  - (ii) scriptwriting;
  - (iii) production of incidental music;
  - (iv) engagement of personnel and facilities necessary to perform the Video Services;
  - (v) the supply, provision and application of all above and below the line pre-production and production materials, services, equipment, and all other elements and personnel necessary to provide the Deliverables;
  - (vi) wardrobe, props, special effects; and
  - (vii) casting.
- (l) The Video Services shall be produced in accordance with the Client's own promotional and marketing materials and from written communications, discussions between the Client and the Agency.

- (m) All content decisions shall be made by the Client in accordance with the Project Plan, any specification supplied by the Client prior to the commencement of the Video Services and information and instructions provided by the Client during production. Failure to provide the Agency with clear instruction and information in a timely manner when requested may mean that the Agency will have to make assumptions to enable the Services to be delivered on time. In that event, the Client will not have the right to reject the Deliverables solely on the basis of the assumption made by the Agency.
- (n) The Agency will use its reasonable endeavours to include all features and matters contained within the Project Plan in the Deliverables, save where this is not practicable in the reasonable opinion of the Agency. The Client will not be entitled to reject the Deliverables in that event.
- (o) The Client acknowledges that all final artistic and creative content shall be determined by the Agency in consultation with the Client.
- (p) Where the Agency prepares a script as part of the Deliverables, it shall produce a draft which shall be subject to one review by the Client prior to sign off in advance of recording it. Additional changes or reviews may incur the Client in additional Charges. All requests for changes or amendments to the script shall be made in writing. The failure by the Client to approve a script in a timely fashion in accordance with the Production Schedule may result in a non-approved script being included in the final edit. The Client shall have no right to reject the Deliverables in that event.
- (q) Upon completion of the Deliverables, a draft copy will be provided to the Client for one review and approval. All requests for changes to the Deliverables shall be made in writing. Further changes will be liable to additional Charges. Failure to approve the Deliverables within the timescales set out in the Project Plan will result in its deemed acceptance by the Client.
- (r) The Agency reserves the right to Charge the Client to store the footage.
- (s) The Agency reserves the right to cancel the Video Services where they are delayed for a period beyond 30 days.

## **6. Non-solicitation and Employment**

- 6.1 The Client shall not, without the prior written consent of the Agency, at any time from the date on which the Services commence until the expiry of 12 months after the Project Delivery Date, solicit or entice away from the Agency or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Agency in the provision of such Services.
- 6.2 Any consent given by the Agency in accordance with clause 6.1 shall be subject to the Client paying to the Agency a sum equivalent to 25% of the then current annual remuneration of the Agency's employee, consultant or subcontractor or, if higher, 25% of the annual remuneration to be paid by the Client to that employee, consultant or subcontractor.

## **7. Changes to the Project Plan**

- 7.1 Either party may propose changes to the scope or execution of the Project Plan but no changes shall come into effect until a PCN has been agreed in writing by both parties (an exchange of emails shall be sufficient for this purpose).

- 7.2 A PCN shall set out the proposed changes and the effect that those changes will have on:
- (a) the Services;
  - (b) the Deliverables;
  - (c) the performance dates for the Services and Deliverables;
  - (d) the Charges;
  - (e) the payment terms; and
  - (f) any terms of the Agreement.
- 7.3 If the Agency wishes to make a change to the Services or Project Plan it shall provide a draft PCN to the Client save where there is an immediate safety or security risk that requires immediate attention.
- 7.4 If the Client wishes to make a change to the Services or Project Plan:
- (a) It shall notify the Agency and provide as much detail as the Agency reasonably requires of the proposed changes, including the timing of any proposed changes; and
  - (b) The Agency shall, as soon as practicable after receiving the information at clause 7.4(a) provide a draft PCN to the Client.
- 7.5 If the parties:
- (a) agree to a PCN, they shall confirm this in writing (an exchange of emails shall be sufficient for this purpose) and that PCN shall amend the Project Plan and this Agreement; or
  - (b) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 26 (Multi-tiered dispute resolution procedure).
- 7.6 Where, as a result of any agreed changes to a Order or Project Plan, the Agency incurs any Wasted Costs, the Client shall pay these immediately upon demand.

## **8. Charges and Payment**

- 8.1 In consideration of the provision of the Services and the delivery of the Deliverables by the Agency, the Client shall pay the Charges.
- 8.2 Where the Charges are calculated on a time and materials basis the Agency's Standard Charges for each individual person shall be calculated on the basis of an eight-hour day, worked during Business Hours save in the case of Live Events Services undertaken on-site where the Charges are calculated on the basis of a ten-hour day. Additional working hours shall be charged at an additional 10% of the agreed daily rate for each individual working those additional hours.
- 8.3 Where the Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in the Project Plan as the case may be.
- 8.4 In relation to Third-party Fees:
- (a) the Client shall pay to the Agency in advance all Third-party Fees which will be incurred by the Agency when performing the Services



- (b) the Client shall be responsible for all and any fees it incurs from the appointment and/ or engagement of a Client's Own Supplier and shall indemnify the Agency against any fees or liability it incurs as a result of a Client's Own Supplier making a claim against the Agency in respect of its own fees arising from any services it may have provided;
  - (c) the Client acknowledges that the Third-party Fees are subject to alteration from time to time (e.g. changes made to any service or products being supplied, changes in the Third-party Supplier's charging structure etc.) and this is outside of the Agency's control. Any increase in the Third-party Fees will be passed onto the Client and payable in accordance with this Clause 8; and
  - (d) the Agency reserves the right to ask the Client either for a Deposit towards any Third-party Fees, or to pay for them in advance. Where the Client asks for such payments in advance to be invoiced, the Agency will not be obliged to order or engage the Third-party Supplier until the payment in advance has been paid to the Agency in full.
- 8.5 The Agency will invoice the Client for the cost of hotels, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Agency engages in connection with the Services in addition to the Charges but payable by the Client on the same terms.
- 8.6 The Agency may increase its Standard Charges and any Charges not calculated in accordance with the Standard Charges from time to time.
- 8.7 Any increase in the Standard Charges shall affect:
- (a) the Charges in Project Plans in force at the date the increase takes effect; and
  - (b) the calculation of the Charges for PCNs or Project Plans entered into after the date the increase takes effect.
- 8.8 Before the Agency provides any Services to the Client, the Client will be required to pay a Deposit towards the Charges. The amount of the Deposit and the date or stage when it shall be paid will be set out in the Project Plan.
- 8.9 The Agency shall invoice the Client for the Charges at the intervals specified in the Project Plan. If no intervals are so specified, the Agency shall invoice the Client at the end of each month for Services performed during that month, payable immediately.
- 8.10 With the exception of any invoice raised in respect of the Deposit or Disbursements (which shall be payable immediately and in any event prior to the commencement or continuance of any Services) the Client shall pay each invoice submitted to it by the Agency within 30 days of the date of the invoice to a bank account nominated in writing by the Agency from time-to-time.
- 8.11 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Agency any sum due under this Agreement on the due date:
- (a) the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%; and
  - (b) the Agency may suspend part or all of the Services until payment has been made in full.

- 8.12 All sums payable to the Agency under this Agreement:
- (a) are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
  - (b) 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).

## **9. Intellectual Property Rights**

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services to include the Deliverables (other than Intellectual Property Rights in the Client Materials) shall be owned by the Agency or its licensors.
- 9.2 So far as it is able to do so, the Agency grants to the Client or shall procure the direct grant to the Client of, a, non-exclusive and non-transferable, licence to use the Deliverables solely in the Client's business for the purposes set out in the Order or Project Plan as the case may be.
- 9.3 From time to time, the Agency may need to procure a licence from a Third-party Licensor (e.g. a software provider) to enable it to create, develop and supply the Deliverables to the Client. The Client shall be liable and remain liable for all licence fees payable to the Third-party Licensors at any time.
- 9.4 A Third-party Licensor may charge a Third-party Licence Fee in respect of that licence which may be payable on a one-off basis, a monthly or annual basis for the continuation of that licence. The basis and amount the Third-party Licensor may charge for a licence may change for any reason and this is outside of the Agency's control. The Client shall be liable and remain liable for all licence fees payable to the Third-party Licensor at any time, it shall also indemnify the Agency against any licence fees or additional costs the Agency may incur arising from the Client's use or continuing use of the licence.
- 9.5 The Client acknowledges that content, deliverables, products, or services provided by The Agency may incorporate AI and Gen-AI technologies from third-party providers. The intellectual property rights in such AI and Gen-AI technologies may be subject to the terms and conditions imposed by these third-party providers. The Client agrees to comply with all applicable terms, including any licensing requirements, usage restrictions, or attribution obligations.
- 9.6 The Client is granted a non-exclusive, non-transferable, and revocable license to use the AI/Gen-AI generated content or AI/Gen-AI integrated deliverables, products, or services in accordance with the terms of this Agreement and any applicable third-party terms. The Client must ensure that its use of these materials does not infringe upon the rights of the AI /Gen-AI solution provider or any other third party.
- 9.7 The Client shall not sublicense, assign or otherwise transfer the rights granted in clause 9.2.
- 9.8 The Client grants the Agency a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials to the Agency for the purpose of providing the Services and Deliverables to the Client.
- 9.9 The Client grants the Agency a fully paid-up, non-exclusive, royalty-free, licence to use the Trademarks in the creation of the Deliverables and performance of the Services.

**10. Data Protection**

10.1 Both parties will comply with all applicable requirements of the applicable Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

10.2 The parties have determined that for the purposes of Data Protection Legislation:

- (a) the Agency shall process the Client Personal Data as processor on behalf of the Client;
- (b) the Client shall act as controller of the Client Personal Data; and
- (c) unless otherwise stated in the Project Plan the personal data to be processed is as follows:

Types of personal data	Names, business addresses, telephone numbers, business email addresses, with Deliverables
Nature of personal data	The Agency will not be expected to process any sensitive data
Purpose of processing	To deliver the Services and Deliverables under this Agreement
Duration of processing	The duration of the supply of Services the final Milestone.
Scope	Where necessary personal data will be transferred to sub-processors for the sole purpose of performing the Services and the Deliverables.

10.3 Should the determination in clause 10.2 change, the parties shall use all reasonable endeavours make any changes that are necessary to this clause 10.

10.4 Without prejudice to clause 10.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client Personal Data to the Agency and/or lawful collection of the same by the Agency for the duration and purposes of this Agreement.

10.5 Without prejudice to clause 10.1, the Agency shall, in relation to Client Personal Data:

- (a) process that Client Personal Data only on the documented instructions of the Client, which shall be to process the Client Personal Data for the purposes set out in clause 10.2(c) or the Project Plan unless the Agency is required by Applicable Laws to otherwise process that Client Personal Data (**Purpose**). Where the Agency is relying on Applicable Laws as the basis for processing Client Personal Data, the Agency shall notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Agency from so notifying the Client on important grounds of public interest;
- (b) implement technical and organisational measures to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

- (c) ensure that any personnel engaged and authorised by the Agency to process Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Client insofar as this is possible (taking into account the nature of the processing and the information available to the Agency), and at the Agency's cost and written request, in responding to any request from a data subject and in ensuring the Client's compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Client without undue delay on becoming aware of a personal data breach involving the Client Personal Data;
- (f) at the written direction of the Client, delete or return Client Personal Data and copies thereof to the Client on termination of the Agreement unless the Agency is required by Applicable Law to continue to process that Client Personal Data. For the purposes of this clause 10.5(f), Client Personal Data shall be considered deleted where it is put beyond further use by the Agency; and
- (g) maintain records to demonstrate its compliance with this clause 10.

10.6 The Client provides its prior, general authorisation for the Agency to:

- (a) appoint processors to process the Client Personal Data, provided that the Agency:
  - (i) shall ensure that the terms on which it appoints such processors comply with Data Protection Legislation, and are consistent with the obligations imposed on the Agency in this clause 10;
  - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Agency; and
  - (iii) shall inform the Client of any intended changes concerning the addition or replacement of the processors, thereby giving the Client the opportunity to object to such changes provided that if the Client objects to the changes and cannot demonstrate, to the Agency's reasonable satisfaction, that the objection is due to an actual or likely breach of Data Protection Legislation, the Client shall indemnify the Agency for any losses, damages, costs (including legal fees) and expenses suffered by the Agency in accommodating the objection.
- (b) transfer Client Personal Data outside of the UK as required for the Purpose, provided that the Agency shall ensure that all such transfers are effected in accordance with Data Protection Legislation. For these purposes, the Client shall promptly comply with any reasonable request of the Agency, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EUGDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UKGDPR applies to the transfer).

10.7 Either party may, at any time on not less than 30 days' notice, revise this Clause 10 (Data protection) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## 11. Confidentiality

11.1 Each party undertakes that it shall not at any time during the term of this Agreement, and for a period of one year after termination or expiry of this Agreement, disclose to any person

any confidential information concerning the business, affairs, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by Clause 11.2(a).

11.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

## 12. Limitation of liability

12.1 **Scope of this clause:** references to liability in this clause 12 (Limitation of liability) include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

12.2 **No limitations in respect of deliberate default:** the Agency may not benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

12.3 **Liabilities which cannot legally be limited:** nothing in this Agreement limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.4 **Cap on the Agency's liability;** subject to clause 12.2 (no limitations in respect of deliberate default) and clause 12.3 (liabilities which cannot legally be limited), the Agency's total liability to the Client in respect of all breaches of this Agreement shall not exceed the total charges paid by the Client to the Agency. Total charges mean all sums paid by the Client in respect of the Deliverables and Services supplied by the Agency in respect of the Project Plan or Scope of Works giving rise to the liability. The Agency's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement.

12.5 **Specific heads of excluded loss:** subject to clause 12.2 (No limitations in respect of deliberate default), and clause 12.3 (Liabilities which cannot legally be limited), this clause 12.5 specifies the types of losses that are excluded by the Agency:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;

- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

- 12.6 **Exclusion of statutory implied terms:** the Agency has given commitments as to compliance of the Services with relevant specifications in clause 3.1 (Agency's responsibilities). In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.
- 12.7 **No liability for claims not notified within three months:** unless the Client notifies the Agency that it intends to make a claim in respect of an event within the notice period, the Agency shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 12.8 **Limitation of liability for claims arising from the use of Artificial Intelligence:** The Agency shall not be liable for any direct, indirect, incidental, special, or consequential damages arising out of or in connection with the use of AI-generated content or AI-integrated deliverables, products, or services, including any claims related to the accuracy, completeness, performance, or intellectual property status of such materials.
- 12.9 **Indemnification for the use of Artificial Intelligence:** The Client agrees to indemnify, defend, and hold harmless The Agency, its affiliates, and its respective officers, directors, employees, and agents from and against any and all claims, liabilities, damages, losses, and expenses (including reasonable legal fees) arising out of or related to the Client's use of AI-generated content or AI-integrated deliverables, products, or services, particularly with respect to any claims of intellectual property infringement, inaccuracies, or data breaches.
- 12.10 **No Warranty for Artificial Intelligence Performance:** The Agency makes no representations or warranties regarding the performance, accuracy, or reliability of the AI technology integrated into the product. The AI component is provided "as is," and The Agency disclaims all liability for any errors, inaccuracies, or malfunctions related to the AI technology.

### 13. Cancellation

- 13.1 The Client may cancel an Order before the agreed final Milestone, taking into consideration factors such as allocation of resources, ability to obtain replacement work at such short notice and time and costs incurred to the point of cancellation the Agency shall be entitled to charge the Client the cancellation fee as outlined below:
- (a) If the cancellation is received by the Agency more than four (4) weeks before the final Milestone the Client shall pay the cost of the work completed at the date the written cancellation is received or 50% of the balance of the Charges due under the Project Plan, whichever is greater.
  - (b) If the cancellation is received by the Agency less than four weeks but more than seven (7) calendar days before the final Milestone the Client shall pay the cost of the work completed at the date the written cancellation is received or 75% of the balance of the Charges due under the Project Plan, whichever is greater.

- (c) If the cancellation is received by the Agency seven (7) days or less before the final Milestone, the Client shall pay the cost of the work completed at the date the written cancellation is received or 100% of the balance of the Charges due under the Project Plan, whichever is greater.

13.2 No matter when a cancellation notice is received, the Client shall pay any Third-party Fees which have been incurred by the Agency, or which the Agency is contractually obligated to pay, for which the Agency cannot cancel or obtain a refund without incurring a penalty or other cost or fee.

13.3 The Client shall remain responsible for the fees of Client's Own Suppliers, upon cancellation.

#### **14. Termination**

14.1 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (l) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.

14.2 For the purposes of clause 14.1(a), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- (a) a substantial portion of this Agreement; or
- (b) any of the obligations contained within an Project Plan.

In deciding whether any breach is material, no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

14.3 Without affecting any other right or remedy available to it, the Agency may terminate this Agreement with immediate effect by giving written notice to the Client if:

- (a) the Client fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment; or
- (b) there is a change of Control of the Client.

## 15. Obligations on Termination and Survival

### 15.1 Obligations on Termination or Expiry

On termination, cancellation or expiry of this Agreement:

- (a) the Client shall immediately pay to the Agency all of the Agency's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Agency may submit an invoice, which shall be payable immediately on receipt;
- (b) the Client shall, return all of the Agency's Equipment. If the Client fails to do so, then the Agency may enter the Client's premises and take possession of the Agency's Equipment. Until the Agency's Equipment has been returned or repossessed, the Client shall be solely responsible for its safe keeping; and
- (c) the Agency shall on request return any of the Client Materials not used up in the provision of the Services; and
- (d) the Agency shall, upon request, return any personal data for which the Client is the data controller.

### 15.2 Survival

- (a) on termination or expiry of this Agreement, all existing Project Plans shall terminate automatically;
- (b) any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect;



- (c) termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## 16. Force Majeure

16.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts; non-performance by suppliers, freelancers or subcontractors;
- (h) interruption or failure of utility service; and
- (i) technical or equipment failure.

16.2 Provided it has complied with clause 16.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

16.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

16.4 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party 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 its ability to perform any of its obligations under this Agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

16.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four weeks the party not affected by the Force Majeure Event may terminate this Agreement by giving four weeks written notice to the Affected Party.

## **17. Assignment and other dealings**

- 17.1 The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 17.2 The Agency may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

## **18. Variation**

Subject to Clause 7 no variation of this Agreement, Project Plan, Order or Scope of Works shall be effective unless it is agreed by both parties in writing.

## **19. Waiver**

- 19.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 19.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **20. Rights and Remedies**

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **21. Severance**

- 21.1 If any provision or part-provision of this Agreement or any Project Plan is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 21.2 If any provision or part-provision of this Agreement or Project Plan is deemed deleted under clause 21.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **22. Entire Agreement**

- 22.1 This Agreement together with any document referred to within it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 22.2 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 this Agreement or any document referred to in it. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## 23. No Partnership or Agency

- 23.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 24. Third-party Rights

- 24.1 Subject to Clause 24.2, this Agreement does not give rise to any rights under the Contracts (Rights of Third-parties) Act 1999 to enforce any term of this Agreement.
- 24.2 Any Group Company shall have the right to enforce any term of this Agreement.

## 25. Notices

- 25.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be (a) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case) or (b) sent by email to the address specified in the Project Plan.
- 25.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
  - (b) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; or
  - (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 25.2(c) business hours mean 9:00am to 5:00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 25.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 25.4 A notice given under this Agreement is not valid if sent by fax.

## 26. Multi-tiered Dispute Resolution Procedure

- 26.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in a Project Plan, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, both the Agency's and the Client's directors responsible for the Project Plan shall attempt in good faith to resolve the Dispute. The director from the Agency shall, where appropriate, suggest a course of action in an attempt to rectify a dispute which shall form the basis of the parties discussion;
  - (b) if the Agency's and the Client's directors responsible for the Project Plan are for any reason unable to resolve the Dispute within 10 days of it being referred to

them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

- 26.2 No party may commence any court proceedings under clause 28 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 26.3 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 28.

## **27. Governing Law**

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.

## **28. Jurisdiction**

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.