



Restricted
Issue: 1.0-DDMMYYYY

Digital Service Agreement

NEW Client Name

26 Mar 2024

Restricted
Version 1.0

Authorised for
Enjoy Digital and Client Account Name

Created by
Account Handler

Created for
Client Name

Ref
XXX



This document is the property of Enjoy Digital and is tendered to you on the copyright and that any ideas, proposals and techniques expressed in it are the intellectual property of Enjoy Digital. It is Enjoy Digital's policy to take steps to protect its intellectual property in the event of imitation should Enjoy Digital's proposals not be accepted. Any information provided by the client will be treated as confidential whether or not Enjoy Digital's proposals are adopted.

Schedule 2 – standard terms and conditions

1. Interpretation

The definitions and rules of interpretation in this clause apply in this agreement.

1.1. Definitions

Acceptance: the acceptance or deemed acceptance of the Deliverables or in relation to Services pursuant to clause 4.

Acceptance Tests: the tests to be carried out as set out in clause 4.

Brand Guidelines: Customer's brand guidelines (if any) provided to Enjoy Digital from time to time.

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

Charges: the charges in respect of the Services as set out in the Statement(s) of Work, together with any charges arising from the requested changes.

Confidential Information: all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

- A. identified as confidential at the time of disclosure; or
- B. ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

Customer Materials: means any text, content, picture, logo, software, information or material supplied by the Customer to Enjoy Digital for incorporation within the Deliverables or to enable Enjoy Digital to provide the Services.

Data Protection Legislation: the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

UK Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

Deliverables: the reports, content, Site and other materials required to be delivered by Enjoy Digital in accordance with this agreement and a Statement of Work.

Design Work: means a piece of design work, including but not limited to graphic designs, pictures, copy, text, images and logos, created as a result of the Services and provided as part of the Deliverables as more particularly described in the Statement of Work(s).

Effective Date: the SOW Effective Date of the first Statement of Work entered into between the Parties to which these terms apply.

Following Term: the period commencing from the end of the Initial Term and terminating in accordance with clause 15.

Generic Items: means all standard generic parts of the Deliverables including, without limitation, all software, tools, processes designs and other materials existing prior to the commencement of the relevant Statement(s) of Work or developed in the course of the relevant Statement(s) of Work.

Initial Term: the period of 12 months from the Effective Date, subject to earlier termination in accordance with this agreement.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, 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.

Materials: the content provided to Enjoy Digital by the Customer from time to time for incorporation in the Deliverables.

Media Spend: expenses incurred or to be with third parties as part of any social or other media campaign

Non-Supplier Defects: those defects described in clause 4.4.

Phase: in relation to the Project Plan, one of the key phases of work identified in the Project Plan.

Project: the provision by Enjoy Digital of the Services as set out in this agreement.

Project Plan: the timetable within which Enjoy Digital will implement the Project as set out in the Statement(s) of Work.

Services: services to be provided pursuant to this agreement as set out in the Statement(s) of Works.

Site: means the website produced by Enjoy Digital as part of the Service as detailed in Statement(s) of Work.

Software: the software for the Deliverables commissioned by the Customer as specified in the Statement(s) of Work.

SOW Effective Date: the effective date of a Statement of Work.

Specifications: the design and functional specification for the Deliverables set out in the Statement(s) of Work.

Statement of Work: a document substantially in the form of the template statement of work set out in Schedule 1 describing Services and/or Deliverables to be provided by Enjoy Digital to Customer, which is agreed between the parties and signed by their authorised representatives.

Term: The Initial Term and any subsequent Following Term.

Third Party Products: those third party software products set out in the Statement(s) of Work.

Visitor: a visitor to the Site.

- 1.2. Clause and schedule headings do not affect the interpretation of this agreement.
- 1.3. References to clauses and schedules are (unless otherwise provided) references to the clauses and schedules of this agreement.
- 1.4. If there is an inconsistency between any of the provisions in the main body of this agreement and the Statement of Work(s), the provisions in the Statement of Work(s) shall prevail. If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.9. References to content include any kind of text, information, image, or audio or video material which can be incorporated on a digital environment.
- 1.10. A reference to writing or written includes e-mail.

2. Scope of the project

- 2.1. Enjoy Digital shall:
- A. design, develop and deliver the Services in the Phases set out in and in accordance with the Project Plan contained within the Statement(s) of Work;
 - B. assist in the preparation of any Statement of Work;
 - C. provide the Services.
 - D. comply with the Brand Guidelines when:
 - I. preparing and providing the Deliverables; and
 - II. performing the Services;
 - E. comply with Customer's information and IT security measures as communicated to Enjoy Digital when performing the Services; and
 - F. deliver the Deliverables to Customer, all in accordance with the terms of this agreement, an applicable Statement of Work and any other instructions of Customer.
- 2.2. Customer acknowledges that Enjoy Digital has no control over the policies of search engines with respect to the type of websites and/or content that they accept or the way in which websites are ranked either now or in the future. As a result search engines may:
- A. stop accepting submissions from Enjoy Digital for an indefinite period of time with or without notice; or
 - B. cease to list a website at its discretion, and Enjoy Digital shall not be liable to Customer for any such actions of search engines.
- 2.3. Enjoy Digital is not responsible for changes made to a Site by:
- A. other parties; or
 - B. Customer in choosing to link to or obtain a link from a particular website without prior consultation with Enjoy Digital

3. Customer responsibilities

- 3.1. The Customer acknowledges that Enjoy Digital's ability to provide the Services is dependent upon the full and timely cooperation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of any information and data the Customer provides to Enjoy Digital. Accordingly, the Customer shall:
- A. provide Enjoy Digital with access to, and use of, all information, data and documentation reasonably required by Enjoy Digital for the performance by Enjoy Digital of its obligations under this agreement;
 - B. keep all passwords secret at all times; and

- C. provide Material as expressly set out in the Project Plan and comply with any of its other obligations under the Project Plan.
- 3.2. The Customer shall be responsible for the accuracy and completeness of the Materials on a Site in accordance with clause 13.

4. Development and acceptance

- 4.1. Once Enjoy Digital has completed the design and development of the Deliverables in accordance with a Phase of the Project Plan or Deliverables in accordance with a Statement of Work, Enjoy Digital shall notify the Customer to that effect and that Enjoy Digital have completed their internal testing and the Customer should commence the Acceptance Tests. As soon as reasonably practicable (and in any event within ten (10) Business Days), the Customer shall test the Deliverables for that Phase of the Project. The Customer shall notify Enjoy Digital of any errors in the Deliverables Project. The procedure set out in this clause 4 shall be repeated in respect of each Phase or Deliverables and any further development works agreed by the parties from time to time.
- 4.2. The Acceptance Tests shall test compliance of the Deliverables with the Specifications or the Deliverables under a Statement of Works.
- 4.3. Acceptance of the Deliverables or the Services shall occur when the Deliverables have passed the Acceptance Tests. The Customer shall notify Enjoy Digital when the tests have been passed and provide the results of the Acceptance Tests to Enjoy Digital in writing.
- 4.4. If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom Enjoy Digital has no responsibility (Non-Supplier Defect), the Deliverables shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. Enjoy Digital shall provide assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or products ("Additional Services"). The Customer shall pay Enjoy Digital in full for all such Additional Services and products at Enjoy Digital's then current fees and prices.
- 4.5. Acceptance of the Deliverables shall be deemed to have taken place upon the occurrence of any of the following events:
 - A. the Customer uses any part of the Deliverables for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
 - B. the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of ten (10) Business Days from the date on which Enjoy Digital notifies the Customer that Enjoy Digital are ready to commence running such Acceptance Tests or retests.

5. Statements of work

- 5.1. In addition to the Services set out in this agreement, individual Statements of Work may be entered into by the parties and such Statements of Work are governed by and subject to this agreement. In the event of inconsistency or conflict between this agreement and any Statement of Work, the terms of the Statement of Work shall take precedence to the extent of the conflict or inconsistency.
- 5.2. Each Statement of Work shall specify (as applicable) the scope and Specification of the Services and Deliverables, any obligations of each party additional to those set out in this agreement and the Charges relevant to each Statement of Work.

- 5.3. Each Statement of Work unless otherwise agreed by the parties shall constitute a separate contract under this agreement and any defined terms used in each Statement of Work shall have the same meaning as set out in this agreement.

6. Third party products

The Third Party Products shall be supplied in accordance with the relevant licensor's standard terms. The licence fee for such Third Party Products is included in the Charges payable pursuant to clause 8.1.

7. Project management

- 7.1. Each party shall appoint an account manager who shall:
- A. provide professional and prompt liaison with the other party; and
 - B. have the necessary expertise and authority to commit the relevant party.

8. Charges and payment

- 8.1. Enjoy Digital shall issue VAT invoices in respect of the Charges as set out in the Statement(s) of Work. Enjoy Digital shall invoice Customer for all other Charges monthly in arrears or otherwise as provided in a Statement of Work. Where Enjoy has agreed to undertake any Media Spend, the Company may invoice the Client at the beginning of the month immediately preceding the month in which the expense is to be incurred and shall be under no obligation to incur the cost of any Media Spend before payment has been received from the Customer. Provided that Enjoy Digital has performed the Services in accordance with this agreement and applicable Statement of Work Customer shall pay all properly due and submitted invoices within 30 days of their receipt by Customer.
- 8.2. All Charges are exclusive of VAT which shall be payable by Customer at the applicable rate.
- 8.3. If Customer fails to make any payment due to Enjoy Digital under this agreement by the due date for payment, then, without limiting Enjoy Digital's remedies under clause 15, Customer shall pay interest on the overdue amount at the rate of 4% per annum above Clydesdale Bank PLC base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. Customer shall pay the interest together with the overdue amount.
- 8.4. In relation to payments disputed in good faith, interest under clause 8.3 is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
- 8.5. If Customer disputes in good faith about the accuracy of an invoice issued (or disagrees in good faith with any amount invoiced) by Enjoy Digital, it shall, within five (5) Business Days of receipt of that invoice, notify Enjoy Digital in writing of its reasons and may withhold payment of the disputed sum. If the dispute relates to part of an invoice, Enjoy Digital shall issue a credit to Customer for the disputed element and Customer shall pay the undisputed sum in accordance with clause 8.1. If on termination of this agreement Customer is owed a credit in relation to a disputed invoice then Enjoy Digital shall pay such credit to Customer in full within 30 days of the termination of this agreement.
- 8.6. Customer shall not be entitled to the refund of any advance payments made to Enjoy under this agreement nor to the allocation of payments for any other purpose other than with the agreement of Enjoy.

9. Warranties

- 9.1. Each of the parties warrants to the other that it has full power and authority to enter into and perform this agreement.
- 9.2. Enjoy Digital shall perform the Services with reasonable care and skill.
- 9.3. Enjoy Digital warrants that the Deliverables will perform substantially in accordance with the Specifications for a period of 30 (thirty) days from Acceptance. If the Deliverables do not perform so, Enjoy Digital shall, for no additional charge, carry out any work necessary in order to ensure that the Deliverables substantially complies with the Specification.
- 9.4. The warranty set out in clause 9.3 shall not apply to the extent that any failure of the Deliverables to perform substantially in accordance with the Specification is caused by any Materials.
- 9.5. This agreement sets out the full extent of Enjoy Digital's obligations and liabilities in respect of the supply of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into this agreement or any collateral contract (whether by statute or otherwise) are hereby expressly excluded.

10. Limitation of remedies and liability

- 10.1. Nothing in this agreement shall operate to exclude or limit either party's liability for:
 - A. death or personal injury caused by its negligence; or
 - B. any breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - C. fraud; or
 - D. any other liability which cannot be excluded or limited under applicable law.
- 10.2. Neither party shall be liable under or in connection with this Agreement or any collateral contract for any:
 - A. loss of revenue;
 - B. loss of actual or anticipated profits;
 - C. loss of contracts;
 - D. loss of the use of money;
 - E. loss of anticipated savings;
 - F. loss of business;
 - G. loss of opportunity;
 - H. loss of goodwill;
 - I. loss of reputation;
 - J. loss of, damage to or corruption of data; or
 - K. any indirect or consequential loss,

in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or caused by breach of contract, tort (including negligence), breach of statutory duty or otherwise.

- 10.3. Subject to clause 10.1, each party's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed the lower of;
- A. twice the aggregate charges payable by the Customer under this agreement; or
 - B. Five Million pounds (£5,000,000).

11. Intellectual property rights

- 11.1. The Intellectual Property Rights in the Design Work shall be the property of the Customer and Enjoy Digital hereby assigns all such Intellectual Property Rights to the Customer. The parties shall execute all documents necessary to give effect to this clause
- 11.2. Enjoy Digital hereby grants to the Customer a perpetual, non-exclusive, royalty-free licence (without the right to grant sub-licences) of its Intellectual Property Rights in the Deliverables and Generic Items in so far as it is necessary to enable the Customer to operate, use maintain and update the Deliverables, as the case may be.
- 11.3. The Customer shall use the Deliverables exclusively for the purposes of and in the furtherance of its business and shall not sell, assign or transfer any Intellectual Property Rights granted under this Agreement to any third party without Enjoy Digital's prior consent or otherwise commercially exploit the same for profit.
- 11.4. The Customer may also use any website development tools, techniques and skills, data processing techniques, software programming or development techniques, ideas and know-how belonging to Enjoy Digital and which existed prior to the execution of the relevant Statement of Work or were gained during the performance of the Services to the extent needed to operate, maintain and update a Site and Software, as the case may be.
- 11.5. Except as expressly agreed in the Statement of Work(s), all Intellectual Property Rights in the Deliverables, but excluding the Customer Materials and Design Work, shall be the property of Enjoy Digital. The Intellectual Property Rights in the Generic Items shall always be the property of Enjoy Digital.
- 11.6. For the avoidance of doubt, nothing in this Agreement or in the Statement of Work(s) shall amount to the transfer of Intellectual Property Rights in any Generic Items or shall prevent Enjoy Digital from using, in the furtherance of its normal business, website development tools, techniques and skills, data processing techniques, software programming or development techniques, ideas and know-how which existed prior to the execution of the relevant Statement(s) of Work or were gained during the performance of the Services.

12. Intellectual property indemnity

- 12.1. The Customer shall indemnify Enjoy Digital against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.
- 12.2. Enjoy Digital shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim that the Deliverables infringes any Intellectual Property Rights of a third party, other than infringements referred to in clause 12.1.
- 12.3. The indemnities in clause 12, clause 12.2 and clause 13.3 are subject to the following conditions:
 - A. the indemnified party promptly notifies the indemnifier in writing of the claim;
 - B. the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;

- C. the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and
 - D. the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.
- 12.4. The indemnities in clause 12 and clause 12.2 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

13. Site content

- 13.1. Enjoy Digital may update any Site produced under a Statement(s) of Work with Materials provided from time to time by the Customer, subject to Agreement in a Statement(s) of Work. The Customer shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (Inappropriate Content).
- 13.2. Enjoy Digital shall include only Materials on the Site. The Customer acknowledges that Enjoy Digital has no control over any content placed on the Site by Visitors and does not purport to monitor the content of the Site. Enjoy Digital reserves the right to remove content from the Site where it reasonably suspects such content is Inappropriate Content. Enjoy Digital shall notify the Customer promptly if it becomes aware of any allegation that any content on the Site may be Inappropriate Content.
- 13.3. The Customer shall indemnify Enjoy Digital against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.
- 13.4. Enjoy Digital may include the statement to the effect of "Website by Enjoy Digital Digital" on the Site.

14. Data protection

- 14.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 14, Applicable Laws means (for so long as and to the extent that they apply to Enjoy) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 14.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and Enjoy is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 14.3. Without prejudice to the generality of clause 14.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Enjoy for the duration and purposes of this agreement.
- 14.4. Without prejudice to the generality of clause 14.1, Enjoy shall, in relation to any Personal Data processed in connection with the performance by Enjoy of its obligations under this agreement:
- A. process that Personal Data only on the written instructions of the Customer unless Enjoy is required by Applicable Laws to otherwise process that Personal Data. Where Enjoy is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Enjoy shall promptly notify the Customer of this before performing the processing

required by the Applicable Laws unless those Applicable Laws prohibit Enjoy from so notifying the Customer;

- B. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, 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 (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - C. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - D. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - I. the Customer or Enjoy has provided appropriate safeguards in relation to the transfer;
 - II. the data subject has enforceable rights and effective legal remedies;
 - III. Enjoy complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - IV. Enjoy complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - E. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - F. notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - G. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - H. maintain complete and accurate records and information to demonstrate its compliance with this clause 14.
- 14.5. The Customer does not consent to Enjoy appointing any third party processor of Personal Data under this agreement. Where the Customer consents to the appointment of any third-party processor, Enjoy will enter with the third-party processor into a written agreement substantially incorporating terms which are substantially similar to those set out in this clause 14. As between the Customer and Enjoy, Enjoy shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 14.
- 14.6. Either party may, at any time on not less than 30 days' notice, revise this clause 14 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).

15. Term and termination

- 15.1. This agreement shall commence on the Effective Date and shall continue, unless terminated earlier in accordance with clause 15.2, for the Initial Term, and shall continue thereafter for the Following Term unless

terminated earlier in accordance with this clause 15.1 or clause 15.2 of this agreement. During the Following Term, either party may terminate this Agreement by giving three (3) months' written notice to the other party.

- 15.2. 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 fails to pay any amount due under this agreement on the due date for payment and remains in default not less than fourteen days after being notified in writing to make such payment;
 - B. the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen days after being notified in writing to do so;
 - 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 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR (being a partnership) has any partner to whom any of the foregoing apply;
 - 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 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. 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 that other party (being a company) 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;
 - F. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
 - G. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - H. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - I. the other party (being an individual) is the subject of a bankruptcy petition or order;
 - 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. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2(c) to clause 15.2(j) (inclusive); or
 - L. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.3. On termination of this agreement by Enjoy Digital pursuant to clause 15.1, all licences granted by Enjoy Digital under this agreement shall terminate immediately.

- 15.4. On expiry or termination of this agreement otherwise than on termination by Enjoy Digital pursuant to clause 15.1, Enjoy Digital shall promptly return all Materials to the Customer, and shall provide to the Customer an electronic copy of any Site produced under a Statement of Work (including all content on that Site). Enjoy Digital shall provide such assistance as is reasonably requested by the Customer in transferring the hosting of the Site to the Customer or another service provider, subject to the payment of Enjoy Digital's expenses reasonably incurred.
- 15.5. On expiry or termination of this agreement, all provisions of this agreement shall cease to have effect, except that any provision which can reasonably be inferred as continuing or is expressly stated to continue shall continue in full force and effect, and in particular any payments due to Enjoy Digital shall remain due and be immediately payable. .

16. Change control

Any request to change the scope of the Services, other than by a Statement of Work, shall be processed in accordance with the Change Control Procedure.

17. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four weeks, the party not affected may terminate this agreement by giving fourteen days' written notice to the affected party.

18. Confidentiality

- 18.1. Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 18.2. Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.
- 18.3. The obligations set out in this clause 18 shall not apply to Confidential Information which the receiving party can demonstrate:
 - A. is or has become publicly known other than through breach of this clause 18; or
 - B. was in possession of the receiving party prior to disclosure by the other party; or
 - C. was received by the receiving party from an independent third party who has full right of disclosure; or
 - D. was independently developed by the receiving party; or
 - E. was required to be disclosed by a governmental authority, stock exchange or regulatory body, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

- 18.4. The obligations of confidentiality in this clause 18 shall not be affected by the expiry or termination of this agreement.
- 18.5. This clause 18 supersedes the terms of any Non-Disclosure Agreement between Enjoy Digital and the Customer which is hereby terminated.

19. Notices

- 19.1. A notice given under this agreement:
- A. shall be in writing in the English language (or be accompanied by a properly prepared translation into English);
 - B. shall be sent for the attention of the person, and to the address or e-mail address given in this clause 19 (or such other person, address, or e-mail address as the receiving party may have notified to the other, such notice to take effect five days from the notice being received); and
 - C. shall be:
 - I. delivered personally; or
 - II. sent by email; or
 - III. sent by pre-paid first-class post, recorded delivery or registered post; or
 - IV. (if the notice is to be served or posted outside the country from which it is sent) sent by registered airmail.
- 19.2. The addresses for service of notice:
- A. For the Customer, shall be included on the first Statement of Work:
- and
- B. for Enjoy Digital:
- Address: 23 The Calls,
Leeds,
LS2 7EH
- For the attention of: Contracts Officer
E-mail: hello@enjoy-digital.co.uk
- 19.3. A notice is deemed to have been received:
- A. if delivered personally, at the time of delivery; or
 - B. in the case of e-mail, at the time of transmission, provided a confirmatory copy is sent by first-class pre-paid post or by personal delivery before the end of the next Business Day; or
 - C. in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or
 - D. in the case of registered airmail, five days from the date of posting; or
 - E. if deemed receipt under the previous paragraphs of this clause 19.3 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.

- 19.4. To prove service, it is sufficient to prove that the notice was transmitted by e-mail to the e-mail address of the relevant party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

20. Announcements

- 20.1. Subject to clause 20.2. no party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 20.2. Enjoy shall be permitted to use and announce the fact of its work for the Customer for portfolio and testimonial purposes, provided that commercial detail of the assignment shall not be disclosed.

21. Assignment

Neither party may assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights or obligations under this agreement without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

22. Entire agreement

- 22.1. This agreement 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. 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. Third party rights

- 23.1. A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 23.2. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

24. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

25. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

26. Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

27. Severance

- 27.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 27.2. If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

28. Governing law

This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the law of England and Wales.

29. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.