

**COLEHOUSE LTD**

**STANDARD CLIENT TERMS AND CONDITIONS**

Version: 220214 v1

**1. INTERPRETATION**

1.1 In these Terms the following expressions shall unless the context otherwise requires have the following meanings:

- (a) **“Agreement”** shall mean the Consulting Services Agreement signed on behalf of Colehouse and the Client setting out inter alia details of the Client, Services, personnel, Charges, and detailing the additional terms and conditions (if any) over and above the terms and conditions set out herein upon which the Services are to be provided to the Client by Colehouse
- (b) **“Associate(s)”** shall mean a member or members of the Colehouse team who perform the Services as defined in the Agreement and these Terms that are engaged by Colehouse on the basis of a business to business arrangement
- (c) **“Business Day”** shall mean a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- (d) **“Charges”** shall mean Financial consideration paid in addition to fees for other items (e.g. out of pocket expenses)
- (e) **“Client”** shall mean the Party with whom Colehouse have entered into the Agreement the details of which are set out in the Agreement
- (f) **“Consultant(s)”** shall mean any member of the Colehouse team who performs the Services as defined in the Agreement and these Terms on behalf of Colehouse
- (g) **“Contract”** shall mean the Agreement including these Terms between Colehouse and the Client for the supply of Services by Colehouse to the Client
- (h) **“Deliverables”** shall mean the deliverables set out in the Order produced by Colehouse for the Client.
- (i) **“Fees”** shall mean the financial consideration that becomes due in return for performing the Services by the Consultant(s) pursuant to the Agreement and these Terms
- (j) **“Force Majeure Event”** shall mean any circumstance not within a Party’s reasonable control including, without limitation, acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; 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; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by 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; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts; and non-performance by suppliers or subcontractors (other than by companies in the same group as the Party seeking to rely on this clause.
- (k) **“Colehouse”** shall mean Colehouse Ltd
- (l) **“Colehouse Materials”** shall mean all materials equipment, documents and other property of Colehouse.
- (m) **“Group Company”** shall mean any Subsidiary or Holding Company of a Party (or another Subsidiary of any such Holding Company) where Holding Company and Subsidiary Company shall have the meanings ascribed to them by Section 1159 Companies Act 2006
- (n) **“Intellectual Property Rights”** shall mean patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral 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, 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.

- (o) **“Loss”** shall mean any and all obligations, costs, expenses, actions, demands and suits (including legal fees and other professional fees, court costs and other disbursements)
  - (p) **“Order”** shall mean the Agreement (supported by these Terms) presented to the Client for approval and signed by the Client as accepted.
  - (q) **“Party”** or **“Parties”** shall mean Colehouse or the Client or both Colehouse and the Client (as the case may be)
  - (r) **“Premises”** shall mean the base location at which the Services are to be provided as set out in the Agreement
  - (s) **“Professional Day”** shall mean the base unit by which Fees are calculated the minimum time period being 8 (eight) worked hours
  - (t) **“Services”** shall mean work performed in return for a Fee or Fees described in the Agreement
  - (u) **“Termination Date”** shall mean the date at which the provision of Services are scheduled to end, as set out in the Agreement
  - (v) **“Terms”** shall mean these terms and conditions which combined with the Agreement form the contract between the Parties
- 1.2 Any reference in these Terms to a person shall include natural persons, firms and other unincorporated bodies, companies and all other legal persons of whatever kind constituted.
- 1.3 These Terms apply to all contracts for the supply by Colehouse of the Services to the Client to the exclusion of any other terms and conditions stipulated or referred to by the Client including the Client’s standard conditions of trading.
- 1.4 The provisions of these Terms and the Agreement constitute the entire agreement between Colehouse and the Client with regard to the provision of the Services, and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. These Terms and the Agreement may only be varied by written agreement of the duly authorised representatives of each Party whose name shall have been notified in writing to the other Party.
- 1.5 Each Party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 1.6 The Contract shall be formed upon the signature by Colehouse and the Client of the Agreement.
- 1.7 The Client acknowledges that it is aware that the Terms provide for the exclusion of certain liabilities of Colehouse and limitations upon the liability of Colehouse and that the Charges have been calculated accordingly.
- 1.8 In the event of any conflict between the Terms set out herein and those set out in the Agreement the terms and conditions of the Agreement shall prevail.
- 1.9 Headings contained in these Terms are for references purposes only and should not be incorporated into the contract and shall not be deemed to be any indication of the meaning or the conditions to which they relate.
- 1.10 Words importing any gender include every gender.
- 1.11 Words importing the singular number include the plural number and vice versa.
- 1.12 References to numbered conditions are references to the relevant conditions in these Terms.
- 1.13 Any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done.

- 1.14 Where the word 'including' is used in the Agreement or these Terms, it shall be understood as meaning 'including without limitation'.

## **2. BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Terms.
- 2.2 The Order shall only be deemed to be accepted when Colehouse have sent the Agreement (supported by these Terms) to the Client and both Parties have signed the Agreement, at which point, and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by Colehouse, and any descriptions or illustrations contained in Colehouse catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Terms apply to the Contract 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.
- 2.5 If the Contract sent to the Client by Colehouse in accordance with clause 2.2 has not been signed and returned by the Client within 20 Business Days from the date of issue, then the Contract shall not come into effect and neither Party shall be bound by its terms.

## **3. WARRANTY**

- 3.1 Colehouse shall supply the Services to the Client in accordance with the Contract in all material respects.
- 3.2 Colehouse warrants that it shall perform the Services with all reasonable skill and care to the standard generally accepted within the industry, sector or profession in which Colehouse operates.
- 3.3 The Client acknowledges and agrees that time is not of the essence for:
- (a) any dates or times when the Services are due to be performed or
  - (b) the length of time the Services will take to perform as stated in the Agreement or elsewhere
  - (c) any date or time when any of the Services will be completed by as stated in the Agreement or elsewhere.
- 3.4 The warranty set out in clause 3.2 represents the only warranty given by Colehouse to the Client in respect of the Contract and the provision of the Services by Colehouse and for the avoidance of doubt Colehouse provides no warranty that any result or objective can or will be achieved or attained at all or by the Termination Date or any other date, whether stated in the Contract or elsewhere.
- 3.5 Colehouse has no liability under clause 3.2 unless any claim based upon a failure by Colehouse to provide the Services with all reasonable skill and care is made in writing by the Client within twenty (20) Business Days of the completion or termination of the Services. Such claim must specify in reasonable detail the nature of the alleged failure by Colehouse.
- 3.6 Colehouse will, if reasonably requested by the Client and agreed in writing with an officer of Colehouse re-perform the relevant part of the Services subject to such a claim referred to at clause 3.5, contingent upon Colehouse and any of its employees, agents or Associates being given adequate time and access to the Premises. If Colehouse rectifies the defect claimed by the Client within a reasonable period of time (in any event within twenty (20) Business Days) then Colehouse shall have no other liability of any kind in respect of or arising from the same.

- 3.7 Colehouse reserves the right to amend the Contract if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Colehouse shall notify the Client in any such event.

#### **4. CLIENT'S OBLIGATIONS AND TIMING FOR PROVISION OF SERVICES**

- 4.1 The Client shall allow the Consultant reasonable access to its personnel and premises and shall make available to such Consultant such office space telephone and other facilities including but not by way of limitation Client computer systems data and documentation as may be reasonably necessary to enable the Services to be provided in a timely manner.
- 4.2 The Client shall ensure that the terms of the Order and any information it provides to Colehouse are complete and accurate.
- 4.3 The Client shall co-operate with Colehouse in all matters relating to the Services.
- 4.4 The Client shall notify Colehouse of all security and other office procedures implemented at its premises at which Services are to be provided.
- 4.5 The Client shall obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
- 4.6 The Client shall indemnify Colehouse for any claims made against Colehouse in respect of physical injury or death of a Consultant sustained as a result of the Consultant carrying out the Services unless such physical injury or death has resulted from the negligence of Colehouse.
- 4.7 The Client shall indemnify and hold harmless Colehouse from and against all Claims and Losses arising from loss, damage, liability, injury to Colehouse, Consultants, employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of the provision of the Services or any information supplied to the Client by Colehouse, its employees or Consultants, or supplied to Colehouse or the Consultants by the Client within or without the scope of the Contract. 'Claims' shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise); and 'Losses' shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.
- 4.8 All times, periods or dates for performance of the Services shall be extended by a reasonable period if any delay or stoppage is caused by any act or omission of the Client, its employees, agents or its independent-contractors or by any matter beyond Colehouse's or the Consultant's control.
- 4.9 All additional costs and expenses reasonably incurred by Colehouse by reason of any delay, variation, interruption or suspension of work arising from any act or omission of the Client, its employees, agents or its independent-contractors (other than Colehouse and the Consultants) will be reimbursed to Colehouse by the Client. Such additional costs and expenses will be due and payable when they have been calculated by Colehouse and invoiced to the Client.
- 4.10 If Colehouse's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
- (a) without limiting or affecting any other right or remedy available to it, Colehouse shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Colehouse's performance of any of its obligations;
  - (b) Colehouse shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Colehouse's failure or delay to perform any of its obligations as set out in this clause 4.10; and
  - (c) the Client shall reimburse Colehouse on written demand for any costs or losses sustained or incurred by Colehouse arising directly or indirectly from the Client Default.

## 5. ACCEPTANCE

- 5.1 Unless otherwise provided for in the Contract, where any stage of performing the Services requires the approval or acceptance of the Client, Colehouse shall indicate in writing to the Client that a stage has been reached in the performance of the Services requiring the approval or acceptance of the Client (**Approval Notice**).
- 5.2 If the Client does not notify Colehouse of any matters concerning the quality or content of the Services provided to that stage within twenty (20) Business Days of receiving the Approval Notice then the Client will be deemed to have approved the performance of the Services up to that stage.
- 5.3 Where Colehouse has completed performing the Services, the Client will be deemed to have accepted or approved them within twenty (20) Business Days of Colehouse:
  - (a) notifying the Client that the Services had been completed
  - (b) supplying any final report to the Client or
  - (c) sending a final invoice to the Client.

## 6. PAYMENTS

- 6.1 Invoices in respect of Fees shall be issued by Colehouse on a monthly basis and are payable by the Client in full and in cleared funds to a bank account nominated in writing by Colehouse within thirty (30) days of the invoice date.
- 6.2 Time for payment of Colehouse invoices shall be of the essence.
- 6.3 If the Client fails to make payment due to Colehouse under the Contract by the due date, then, without limiting Colehouse's remedies under clause 12, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this clause 6.3 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 6.4 If any item or part of an item of an invoice rendered by Colehouse is disputed or subject to question by the Client, the payment by the Client of that part of the invoice which is not disputed or subject to question shall not be withheld. The provisions of clause 6.1 and 6.3 shall apply to such part of the invoice as is not disputed or subject to question and also the disputed or questioned item, to the extent that it shall subsequently be agreed or determined to have been due to Colehouse.
- 6.5 If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in the Contract, then Colehouse shall be entitled to:
  - (a) require the Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
  - (b) not perform any further Services (or any part of the Services).
- 6.6 When making a payment the Client shall quote relevant reference numbers and the invoice number.
- 6.7 The Fees are exclusive of VAT and other duties or taxes which shall be payable where applicable in addition to the sums quoted. Where any taxable supply for VAT purposes is made under the Contract by Colehouse to the Client, the Client shall, on receipt of a valid VAT invoice from Colehouse, pay to Colehouse such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.8 All amounts due under the Contract 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).

## **7. OWNERSHIP OF DESIGNS AND INTELLECTUAL PROPERTY**

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by Colehouse.
- 7.2 Colehouse grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free licence in perpetuity to copy the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.
- 7.3 The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 7.2.
- 7.4 The Client grants Colehouse a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to Colehouse for the term of the Contract for the purpose of providing the Services to the Client.

## **8. LIMITATION OF LIABILITY**

- 8.1 Colehouse has obtained professional indemnity insurance cover in respect of its own legal liability for individual claims not exceeding £1m per claim. The limits and exclusions in this clause reflect the insurance cover Colehouse has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Neither Party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 8.4 Nothing in this clause 8 shall limit the Client's payment obligations under the Contract.
- 8.5 Nothing in the Contract 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).
- 8.6 Subject to clause 8.3 (No limitation in respect of deliberate default), and clause 8.5 (Liabilities which cannot legally be limited), Colehouse's total liability to the Client for all loss or damage shall not exceed the cost of the Services under the Contract
- 8.7 The caps on Colehouse liabilities shall be reduced by:
- (a) payment of an uncapped liability; and
  - (b) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 8.8 Subject to clause 8.3 (No limitation in respect of deliberate default), clause 8.4 (No limitation of Client's payment obligations) and clause 8.5 (Liabilities which cannot legally be limited), this clause 8.8 sets out the types of loss that are wholly excluded:
- (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;
  - (g) indirect or consequential loss.
- 8.9 Colehouse has given commitments as to compliance of the Services with relevant specifications in clause 3. 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 the Contract.
- 8.10 Colehouse's liability to the Client in respect of regulatory enforcement action and other actions of regulators is excluded from the Contract.
- 8.11 Unless the Client notifies Colehouse that it intends to make a claim in respect of an event within the notice period, Colehouse 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 twenty (20) Business Days from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 8.12 This clause 8 shall survive termination of the Contract.
- 9. CONFIDENTIALITY**
- 9.1 Each Party acknowledges that all information supplied to it by or on behalf of the other Party relating to the business of that other Party and that other Party's products and services is confidential ("Confidential Information"). Each Party agrees to maintain as confidential the Confidential Information and not to disclose said Confidential Information at any time to any other person nor to use it for any purpose other than for the purposes of the Contract.
- 9.2 The obligations of confidentiality and the restrictions as to use of Confidential Information shall not apply to apply to Confidential Information which:
  - (a) falls within the public domain through no fault of the Party to whom Confidential Information is disclosed
  - (b) was known or in the possession of the other Party before it was provided to them
  - (c) is required to be disclosed by order if a court of competent jurisdiction.
- 9.3 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 carrying out the Party's obligations under the Contract. 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 9.3; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.4 The terms and other details of this Contract shall be held confidential by both Parties, as shall the Parties' respective performance under the Contract. It is agreed that each Party has a right to publicise the existence of this Contract or use non-confidential details of the Contract for publicity. However before any publicity is made, each Party will obtain written consent from the other Party, such consent shall not be unreasonably withheld. On receipt of the consent, if agreed between Parties, all press release material or case study material shall be reviewed and approved by the other Party prior to the publicity. If any disclosure of terms or performance is required for legal or regulatory reasons, the disclosing Party shall notify the other Party, as soon as practical of such required disclosure and shall use reasonable efforts to minimise such disclosure.
- 9.5 The Client shall (in addition to, and without affecting any other rights or remedies that Colehouse may have) indemnify, keep indemnified and hold Colehouse harmless from and against all actions, claims, demands,

liabilities, damages, costs, losses or expenses (including but not limited to any consequential losses, loss of profit, loss of reputation and all interest, penalties, legal and other professional costs and expenses) directly or indirectly arising out of or in connection with any breach of the Client's confidentiality obligations under this clause 9.

9.6 The obligations under this clause 9 will continue in force notwithstanding the termination of this Contract.

## **10. RESTRICTION**

10.1 The Client shall not (and shall procure that each Group Company of the Client shall not) during the Contract or during the period of three (3) months after the termination of the Contract employ or contract with a Consultant for the provision of services by the Consultant or otherwise engage the services of the Consultant through any source other than Colehouse. Should the Client be in breach of this clause it shall pay to Colehouse by way of liquidated damages such amount as is equal to in the case of employees of Colehouse 25% of the annual salary and guaranteed bonuses (if any) of the said Consultant effective as at the date of the said breach or in the case of Associates the greater of 25% of the sums paid by Colehouse to the Associate or his/her employer during the twelve (12) month period prior to the date of the said breach or 25% of the sums paid by the Client or any Group Company of the Client to the Associate or his/her employer during the period of six (6) months after the date of the said breach. Such sum shall be payable by the Client within twenty (20) Business Days of the date of Colehouse's invoice in respect thereof and the Client and Colehouse agree that such sum represents a fair estimation of the Loss likely to be suffered by Colehouse as a result of the breach by the Client of this clause.

10.2 Colehouse shall not (and shall procure that each Group Company of Colehouse shall not) during the Contract or during the period of three (3) months after the termination of the Contract employ or contract with an Employee of the Client, for the provision of services by the employee or Consultant or otherwise engage the services of the employee or Consultant through any source other than the Client. Should Colehouse be in breach of this clause 10.2 it shall pay to the Client by way of liquidated damages such amount as is equal to in the case of employees of the Client 25% of the annual salary and guaranteed bonuses (if any) of the said employee or Consultant effective as at the date of the said breach. Such sum shall be payable by Colehouse within twenty (20) Business Days of the date of the Client's invoice in respect thereof and the Client and Colehouse agree that such sum represents a fair estimation of the Loss likely to be suffered by the Client as a result of the breach by Colehouse of this clause.

10.3 The Parties have agreed that, for the duration of the Contract and for any time after it, Colehouse personnel and Consultants may, at the reasonable request of the Client and if absolutely necessary, represent the Client in external matters, including regulatory proceedings and law enforcement proceedings, but for the avoidance of doubt, Colehouse shall not be liable to the Client for any acts or omissions that may occur in representing the Client in such proceedings.

## **11. USE OF ASSOCIATES**

11.1 Colehouse is permitted to use Associates to provide some or all of the Services.

11.2 Colehouse shall be responsible for the work of Associate(s) whose work shall be to the same standard as stated in this Contract.

11.3 Colehouse warrants that all taxation and national insurance contributions and all other sums which are required by law to be deducted from the wages paid to Consultant(s) in delivering the Services shall be so deducted and shall account to HM Revenue and Customs or any other relevant regulatory authority in respect of such sums. Colehouse gives to the Client a full indemnity in respect of all costs, claims or demands made by HM Revenue and Customs or any other relevant regulatory authority in respect thereof

## **12. TERMINATION**

12.1 Without affecting any other right or remedy available to it, either Party may terminate the Contract by giving the other Party twenty (20) Business Days written notice.



- 12.2 Without affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect by giving written notice to the other Party if:
- (a) the other Party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within twenty (20) Business Days of that Party being notified in writing to do so;
  - (b) the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other Party's financial position deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.3 Without affecting any other right or remedy available to it, Colehouse may terminate the Contract with immediate effect by giving written notice to the Client if:
- (a) the Client fails to pay any amount due under the Contract on the due date for payment; or
  - (b) there is a change of control of the Client; or
  - (c) the Client is in breach of their confidentiality obligations under clause 9 of these Terms; or
  - (d) the Client or any of its directors or employees commits any act, which in the reasonable opinion of Colehouse, may adversely affect or jeopardise the name or reputation of Colehouse.
- 12.4 Without affecting any other right or remedy available to it, Colehouse may suspend the supply of Services under the Contract or any other contract between the Client and Colehouse if:
- (a) the Client fails to pay any amount due under the Contract on the due date for payment;
  - (b) the Client becomes subject to any of the events listed in clause 12.2(c) or clause 12.2(d), or Colehouse reasonably believes that the Client is about to become subject to any of them; and
  - (c) Colehouse reasonably believes that the Client is about to become subject to any of the events listed in clause 12.2(b)
- 12.5 On termination of the Contract:
- (a) the Client shall immediately pay to Colehouse all of Colehouse's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Colehouse shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - (b) the Client shall return all Colehouse Materials which have not been fully paid for. If the Client fails to do so, then Colehouse may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 12.6 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 12.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 12.8 Termination of the Contract shall not affect any accrued rights or liabilities of either Party.

### **13. VARIATION TO CONTRACT**

- 13.1 Unless otherwise agreed with Colehouse the Client shall provide Colehouse with not less than twenty (20) Business Days written notice of its desire to vary the Contract by the addition or removal of Consultants or by changing the start dates or end dates of Consultants engaged in providing the services or by changing the end dates for the delivery of artefacts or by variation to the scope of work or by variation to the artefacts to be delivered pursuant to the Contract
- 13.2 Upon receipt of a written request of contract variation from the Client Colehouse will within twenty (20) Business Days submit for approval to the Client a new or revised Contract to supersede the Contract to which the variation request applied. Upon signature agreement of both parties the new or revised Contract will supersede the original Contract to which written contract variation was requested
- 13.3 Colehouse will use all reasonable endeavours to maintain continuity in respect of Consultant(s) and key personnel used in used in performance of the Services but shall be free to determine the number of and which Consultant(s) and key personnel shall be involved in the performance of its obligations under this Contract. Colehouse shall serve notice of any such changes upon the Client provided that any new Consultant(s) is sufficiently skilled and experienced to provide Services in accordance with the Contract
- 13.4 Notwithstanding clause 13.3 should Colehouse wish to vary the Contract it shall serve not less than twenty (20) Business Days written notice whereupon the Parties shall consult in good faith in an attempt to determine whether or not such variation is appropriate

### **14. DISPUTE RESOLUTION**

- 14.1 The Parties shall attempt in good faith to resolve any claim or dispute arising out of or relating to the Contract promptly in accordance with this clause 14 without recourse to legal proceedings other than where a Party is entitled to terminate the Contract in accordance with clause 12.
- 14.2 At the time of first referral of any claim or dispute in accordance with this clause 14 the Party referring the matter shall state in writing to the other Party that the referral is being made under this clause.
- 14.3 In the first instance any claim or dispute arising out of or in connection with the Contract shall be referred to a senior representative of the Client and a senior officer of Colehouse who will meet in good faith in order to try and resolve the dispute.
- 14.4 If the dispute or difference is not resolved as a result of such meeting either Party may (at such meeting or within ten (10) Business Days of its conclusion) propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator ("the Adviser") before resorting to litigation.
- 14.5 If the parties are unable to agree on an Adviser or if the Adviser agreed upon is unable or unwilling to act, any Party may, within ten (10) Business Days from the date of the proposal to appoint an Adviser or within ten (10) Business Days of notice to any Party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution ("the Centre") in London to appoint an Adviser.
- 14.6 The parties will within ten (10) Business Days of the appointment of the Adviser meet with him in order to agree the exchange of any relevant information and the structure and mechanics for the negotiation to be held in London. If considered appropriate the parties may at any stage seek assistance from the Centre in respect of a suitable procedure.
- 14.7 All negotiations connected with the dispute will be conducted in complete confidence and the parties undertake not to divulge details of such negotiations except to their professional advisers who will also be subject to such confidentiality and such negotiations will be without prejudice to the rights of the parties in any future proceedings.

- 14.8 If the parties accept the Adviser's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing and once it is signed by their duly authorised representatives, shall be final and binding on the parties.
- 14.9 Failing agreement, any of the parties may invite the Adviser to provide a non-binding opinion in writing as to the merits of the dispute and the rights and obligations of the parties. Such opinion will be provided on a without prejudice basis and will be private and confidential to the parties and may not be used in evidence in any proceedings commenced pursuant to the terms of this Contract without the prior written consent of all the parties.
- 14.10 If the parties fail to reach agreement in the structured negotiations within twenty (20) Business Days of the Adviser being appointed, such a failure shall be without prejudice to the right of any Party subsequently to refer to any dispute or difference to litigation but the Parties agree that before resorting to litigation structured negotiations in accordance with this clause 14 shall have taken place.
- 14.11 These provisions shall not prejudice the rights of either Party to seek the assistance of any Court by way of injunction or other similar pre-emptive remedy to protect any of its rights or property.
- 14.12 Performance of the Contract shall continue during negotiations under this clause 14 unless both Parties agree to suspend the Services.

## **15. SEVERANCE**

- 15.1 If any provision or part-provision of the Contract is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable (or indications to that effect are received by either of the Parties from any competent authority) the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality or at the discretion of Colehouse it may be severed from the Contract and the remaining provisions of the Contract shall remain in full force and effect unless Colehouse in Colehouse' sole discretion decides that the effect of such declaration is to defeat the original intention of the Parties in which event Colehouse shall be entitled to terminate the Contract by giving to the Client twenty (20) Business Days' notice of the intention to terminate.

## **16. NOTICES**

- 16.1 Any notice given to a Party under or in connection with the Contract shall be in writing and shall be:
- (a) delivered by hand or if sent from within the same country as the recipient is situated, by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) if sent from a different country in which the recipient is situated, delivered by prepaid airmail providing proof of delivery at the registered office address.
- 16.2 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 working day delivery service, at 9.00 am on the second (2<sup>nd</sup>) Business Day after posting; or
  - (c) if sent by prepaid airmail providing proof of delivery, at 9:00am on the seventh (7<sup>th</sup>) Business Day after posting.
- 16.3 This clause 16 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 16.4 A notice given under the Contract is not valid if sent by email.

**17. RIGHTS CUMULATIVE**

- 17.1 All rights granted to either of the Parties shall be cumulative and no exercise by either of the Parties of any right under the Contract shall restrict or prejudice the exercise of any other right granted by the Contract or otherwise available to it.

**18. WAIVER**

- 18.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a Party to exercise any right or remedy provided under the Contract 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 the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**19. FORCE MAJEURE**

- 19.1 Neither Party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for two months, the Party not affected may terminate the Contract by giving ten (10) Business Days written notice to the affected Party.

**20. ASSIGNMENT**

- 20.1 Colehouse may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 20.2 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 the Contract without the prior written consent of Colehouse.

**21. THIRD PARTY RIGHTS**

- 21.1 Unless it expressly states otherwise the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 21.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**22. LAW AND JURISDICTION**

- 22.1 This Contract shall be governed by and construed in accordance with the Laws of England. The English Courts shall have exclusive jurisdiction for the hearing of any dispute between the Parties (other than with regard to enforcement where the jurisdiction shall be non-exclusive).

**23. COMPLIANCE WITH ANTI BRIBERY AND COUNTER CORRUPTION MEASURES**

- 23.1 Colehouse represents, warrants and undertakes now and hereafter that it has not and shall not commit, procure, or encourage bribery in relation to this Contract, the Services, or to obtain or retain business or any advantage in business for any member of the Client organisation, and has and shall ensure to the fullest extent possible that its employees and agents and others under its direction or control do not do so.

**24. DATA PROTECTION**

- 24.1 The following definitions apply in this clause 24:

- (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
  - (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party.
  - (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
- 24.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 24 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
- 24.3 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and Colehouse is the Processor.
- 24.4 Without prejudice to the generality of clause 24.2, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Colehouse and/or lawful collection of the Personal Data by Colehouse on behalf of the Client for the duration and purposes of the Contract.
- 24.5 Without prejudice to the generality of clause 24.2, Colehouse shall, in relation to any Personal Data processed in connection with the performance by Colehouse of its obligations under the Contract:
  - (a) process that Personal Data only on the documented written instructions of the Client unless Colehouse is required by Domestic Law to otherwise process that Personal Data. Where Colehouse is relying on Domestic Law as the basis for processing Personal Data, Colehouse shall promptly notify the Client of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits Colehouse from so notifying the Client;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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 UK unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
    - (i) the Client or Colehouse has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) Colehouse 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) Colehouse complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
  - (e) assist the Client, at the Client'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 Client without undue delay on becoming aware of a Personal Data Breach;

- (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Contract unless required by Domestic Law to store the Personal Data; and
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 24.
- 24.6 The Client consents to Colehouse appointing a third-party processor of Personal Data under the Contract if required. Colehouse confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business and in either case which Colehouse confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Client and Colehouse, Colehouse shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 24.6.
- 25. GENERAL**
- 25.1 The relationship between Colehouse and the Client is that of independent associate. Neither Party is agent for the other, and neither Party has any authority to make any contract, whether expressly or by implication, in the name of the other Party, without that Party's prior written consent for express purposes connected with the performance of this Contract.

END OF DOCUMENT