

# Master Services Agreement

Dated

2023

PIGMENT CONSULTING LIMITED (1)

[Customer] (2)

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**THIS AGREEMENT IS DATED**

**[DATE]**

## **PARTIES**

- (1) **PIGMENT CONSULTING LIMITED** incorporated and registered in England and Wales with company number 12523087 whose registered office is at First Floor, Clifton Down House, 54a Whiteladies Road, Bristol BS8 2NH ("**Pigment**"); and
- (2) **[CUSTOMER]** incorporated and registered in **[England and Wales]** with company number **[TBC]** whose registered office is at **[ADDRESS]** (the "**Customer**").

## **BACKGROUND**

- (A) The Customer is looking to engage a supplier to deliver certain services.
- (B) Pigment in conjunction with its supplier network is capable of delivering such services.
- (C) Pigment can offer to supply services to the Customer on the terms set out in this Agreement.

## **AGREED TERMS**

### **1 Interpretation**

The following definitions and rules of interpretation apply in this Agreement.

#### **1.1 Definitions:**

**Account Director:** the person identified as such in the relevant Statement of Work.

**Agreement:** this agreement and all Statements of Work entered into pursuant to it.

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

**Business Day:** other than in relation to clause 27, a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.

**Change Order:** has the meaning given in clause 6.1.

**Committed Costs:** any orders placed in good faith with third party suppliers in connection with this Agreement for the provision of bespoke equipment, materials, goods or services that have no commercial use to Pigment beyond the provision of the Services under this Agreement and in respect of which Pigment is legally bound to pay for whether delivery is made or not.

**control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.



**Customer Materials:** all documents, information, items and materials in any form (whether owned by the Customer or a third party), which are provided by the Customer to Pigment in connection with the Services including the items provided pursuant to clause 5.1(c).

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR and Data Protection Act 2018.

**Deliverables:** any outputs of the Services to be provided by Pigment to the Customer as specified in a Statement of Work and any other documents, products and materials provided by Pigment to the Customer in relation to the Services (excluding Supplier Equipment).

**Engagement:** the direct or indirect engagement, employment or use of an individual on a permanent or temporary basis, whether under a contract of service or for services, under an agency, license, franchise or partnership agreement or through any other engagement and “Engages” and “Engaged” shall be construed accordingly.

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

- (a) acts of god, flood, draught, earthquake or other natural disaster;
- (b) terrorist attack, civil war, civil commotion or riots, wars, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; and
- (c) nuclear, chemical or biological contamination or accident.

**Good Industry Practice:** reasonable skill, care and diligence.

**Group:** means any subsidiary or holding company (as defined by s. 1159 of the Companies Act 2006) or any subsidiary of a holding company or any associated company of a party.

**Intellectual Property Rights:** copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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.

**Introduction:** the passing of any information by Pigment to the Customer identifying a Supplier or the employees, directors, officers, staff, personnel, agents, suppliers, contractors or sub-contractors of such a Supplier in order to agree any Statement of Work pursuant to this Agreement.

**Key Personnel:** as defined under the applicable Statement of Work.

**Key Subcontractor:** a subcontractor delivering services to support a Statement of Work whose services are expected (as at the date that the relevant Statement of Work is signed) to represent more than twenty five percent (25%) of the total of the Services required under that Statement of Work.

**Managing Director:** the person identified as such in the relevant Statement of Work.



**Nominated Representative:** the person identified as such in the relevant Statement of Work.

**Notice Period:** as defined under the applicable Statement of Work.

**Performance Notice:** written notice given to Pigment by the Customer pursuant to clause 15.1

**Remuneration:** means basic salary, shift or weighting allowances, guaranteed and/or anticipated bonus and commission earnings, car allowance and any other benefit or allowance.

**Restricted Individuals:** employees, directors, officers, staff, personnel, agents, suppliers, contractors or sub-contractors who have been utilised in connection with the provision of Services under a Statement of Work.

**Services:** the services which are provided by Pigment under a Statement of Work.

**SoW Charges:** the sums payable for the Services as set out in a Statement of Work.

**Statement of Work:** the detailed plan, agreed in accordance with clause 3 (Statements of Work), describing the services to be provided by Pigment, the timetable for their performance and the related matters listed in the template statement of work set out in Schedule 1.

**Supplier:** a company whose services are proposed to be procured or procured by Pigment in order to support the delivery of Services to the Customer.

**Supplier Equipment:** any equipment, including tools, systems, cabling or facilities, provided by Pigment, its agents, suppliers, subcontractors or consultants to the Customer and used directly or indirectly in the supply of the Services, including any such items specified in a Statement of Work.

**Terms:** the terms and conditions of this Agreement excluding any Statement of Work.

**UK GDPR:** the UK General Data Protection Regulation.

**Unsatisfactory:** not to the reasonable satisfaction of the Customer having regard to:

- (a) Good Industry Practice; or
- (b) any specifications or standards set out within this Agreement.

**VAT:** value added tax.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and any reference to one gender shall include a reference to the other genders.



- 1.5 This Agreement shall be binding on, and enure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and any reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.8 References to clauses and Schedules are to the clauses and Schedules of this Agreement.
- 1.9 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.
- 1.10 In the event of any conflict, discrepancy or ambiguity between the Terms and any applicable Statement of Work, the applicable Statement of Work shall be deemed to take precedence.

## **2 Commencement and duration**

- 2.1 This Agreement shall commence on the date of signature by both parties and shall continue until terminated in accordance with this Agreement.
- 2.2 The Customer may procure Services from Pigment from the commencement of this Agreement by agreeing a Statement of Work with Pigment pursuant to clause 3 (Statements of Work) and Pigment shall provide such Services from the date specified in the relevant Statement of Work.

## **3 Statements of Work**

- 3.1 Each Statement of Work shall be agreed in the following manner:
  - (a) Pigment and the Customer shall discuss any requirement for services and agree who is to prepare any draft Statement of Work;
  - (b) the agreed party shall issue such a draft Statement of Work for the services required;
  - (c) Pigment and the Customer shall discuss and agree that draft Statement of Work; and
  - (d) both parties shall sign the draft Statement of Work when it is agreed.
- 3.2 Once a Statement of Work has been agreed and signed in accordance with clause 3.1(d), no amendment shall be made to it except in accordance with clause 6 (Change control) or clause 21 (Variation).



- 3.3 Each Statement of Work shall form part of this Agreement and shall not form a separate contract to it.

#### **4 Pigment's responsibilities**

- 4.1 Pigment shall perform the Services in accordance with Good Industry Practice.
- 4.2 Pigment shall exercise Good Industry Practice to:
- (a) provide the Services and the Deliverables in accordance with the Statement of Work;
  - (b) reasonably co-operate with the Customer in all matters relating to the Services, and comply with the Customer's reasonable instructions; and
  - (c) comply with any additional obligations imposed on it as set out in a Statement of Work.
- 4.3 Where specified in a Statement of Work, Pigment shall exercise all reasonable endeavours to see that the Key Personnel are utilised in the delivery of the Services required under that Statement of Work.
- 4.4 Notwithstanding clause 4.3, Pigment shall be entitled to replace any Key Personnel identified in a Statement of Work where such a replacement is needed to reflect the needs of its business or to reflect changes in personnel but Pigment must provide the Customer with no less than four (4) weeks' written notice of such a change.
- 4.5 Where any element of the Services are subcontracted by Pigment, Pigment shall ensure that its contract with any relevant subcontractor contains clauses requiring the subcontractor:
- (a) to at all times behave in accordance with Good Industry Practice;
  - (b) to ensure that it will not act or make any statement or otherwise behave in any manner that is reasonably likely to result in any prejudice to the Customer; and
  - (c) to not do anything that would place Pigment in breach of any of its obligations under this Agreement.

#### **5 Customer's obligations**

- 5.1 The Customer shall:
- (a) reasonably co-operate with Pigment in all matters relating to the Services;
  - (b) provide access to the Customer's premises, data and other facilities as may reasonably be required by Pigment for the purposes of the Services;
  - (c) provide to Pigment all documents, information, items and materials required by Pigment for the purposes of the Services; and
  - (d) inform Pigment of all health and safety and security requirements that apply at any premises to which Pigment will require access.





5.2 The Customer agrees to provide all information required by Pigment:

- (a) to populate any Statement of Work;
- (b) to apply or interpret any provision of this Agreement;
- (c) to ensure that the parties can comply with any legal obligations; or
- (d) to assist in the resolution of any dispute between Pigment and any subcontractor relating to the Services.

## **6 Change control**

6.1 Either party may propose changes to the scope or execution of the Services required under any Statement of Work, but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties. A Change Order shall be a document (to be based on the template set out in Schedule 2) setting out the proposed changes and the effect those changes will have on:

- (a) the Services;
- (b) the SoW Charges;
- (c) the timetable for the Services; and
- (d) any of the other terms of the relevant Statement of Work.

6.2 If the Customer wishes to make a change to the Services required under any Statement of Work:

- (a) it shall notify Pigment, providing as much detail as is reasonably necessary to enable Pigment to prepare the draft Change Order; and
- (b) Pigment shall, within 5 Business Days of receiving the Customer's request under clause 6.2(a), provide a draft Change Order to the Customer.

6.3 If Pigment wishes to make a change to the Services required under any Statement of Work, it shall provide a draft Change Order to the Customer.

6.4 If Pigment submits a draft Change Order in order to comply with any applicable safety or regulatory requirements and such changes do not affect the nature, scope of, or charges for the Services, the Customer shall not unreasonably withhold or delay consent to it.

6.5 If the parties agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Statement of Work.

## **7 Charges and payment**

7.1 In consideration of the provision of the Services by Pigment, the Customer shall pay the SoW Charges.





- 7.2 Pigment shall invoice the Customer for the SoW Charges at the intervals specified in the Statement of Work. If no intervals are specified, Pigment shall invoice the Customer at the end of each month for Services performed during that month.
- 7.3 The Customer shall pay undisputed invoices in full without any deduction, set-off or counterclaim within thirty (30) days of the date of each invoice.
- 7.4 The Customer shall pay Pigment any VAT properly chargeable on the Services. Any amount expressed as payable to Pigment under this Agreement is to be treated as exclusive of VAT unless stated otherwise.

## **8 Intellectual property rights**

### **8.1 In relation to the Customer Materials:**

- (a) the Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) the Customer grants to Pigment a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this Agreement for the purpose of providing the Services to the Customer.

### **8.2 In relation to the Deliverables:**

- (a) Pigment assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables;
- (b) Pigment shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction;
- (c) Pigment shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer all rights, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 8.2(a); and
- (d) the Customer may sub-license the rights granted in clause 8.2(a).

- 8.3 Pigment warrants that the receipt, use and onward supply of the Services and the Deliverables by the Customer and its sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party.

## **9 Insurance**

- 9.1 During the term of this Agreement and for a period of six (6) years after the termination of this Agreement, Pigment shall maintain in force, with a reputable insurance company:
- (a) professional indemnity insurance at an amount not less than £5,000,000;



- (b) public liability insurance at an amount not less than £5,000,000;
- (c) employer's liability insurance at an amount not less than £5,000,000; and
- (d) any additional insurance(s) specified in a Statement of Work.

9.2 Pigment shall, on the Customer's request, produce documentary evidence to show that such cover is being maintained.

## **10 Compliance with laws**

10.1 In performing its obligations under this Agreement, Pigment shall comply with the Applicable Laws.

## **11 Confidentiality**

11.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of three (3) years after termination of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.

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

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

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

## **12 Restrictions**

- 12.1 Neither the Customer nor any member of the Customer's Group shall during the term of each Statement of Work and for six (6) months thereafter Engage any of Pigment's Restricted Individuals who were utilised in connection with that Statement of Work without Pigment's written consent.
- 12.2 If the Customer or any member of the Customer's Group Engage any of Pigment's Restricted Individuals in breach of clause 12.1, the Customer shall be liable to pay Pigment a fee calculated as 30% of the total Remuneration or service fee payable to the affected Restricted Individual in any twelve (12) month period (the "**Transfer Fee**"). No refund of this Transfer Fee will be paid in the event that any such Engagement subsequently terminates. VAT is payable on any Transfer Fee due.
- 12.3 Where there has been an Introduction of a Supplier which does not immediately result in the supply of services from that Supplier to support the delivery of a Statement of Work pursuant



to this Agreement, but which leads to an Engagement of an individual associated with that Supplier by the Customer within six (6) months from the date of Introduction, the Customer shall notify Pigment of that Engagement and, save where the Supplier is Engaged via Pigment, shall be liable to pay a Transfer Fee in respect of such an individual in accordance with clause 12.2 above as if that individual were a Restricted Individual.

- 12.4 The Customer acknowledges and agrees that where it fails to notify Pigment of the actual Remuneration or service fee it has agreed to pay in respect of any Engagement, Pigment shall be entitled to calculate the Transfer Fee on comparable market rates for similar engagements over a twelve (12) month period.
- 12.5 The restrictions contained in this clause 12 are agreed by the parties be reasonable and proportionate in the circumstances. In the event that any such restrictions shall be found to be void but would be valid if some part thereof were deleted or period of any such restriction were reduced, such restriction shall apply with such modification as may be strictly necessary to make it valid and effective.

### **13 Data Protection**

- 13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 13.2 The parties shall not do, or fail to do, or permit to be done, anything which causes the other party to be in breach of its obligations under the Data Protection Legislation.
- 13.3 For the purposes of this clause 13 "**Controller**", "**Processor**", "**personal data**", "**data subject**", "**personal data breach**", "**process**" and "**processing**" each have the same meaning as used in the Data Protection Legislation.
- 13.4 Both parties acknowledge that the Customer and Pigment may be a Controller in respect of certain personal data but the parties are not joint Controllers (as defined within the Data Protection Legislation).
- 13.5 Both parties agree that, to the extent that each party acts as an independent Controller each party shall at all times:
- (a) comply with the Data Protection Legislation when processing personal data which will include, but not be limited to, where applicable:
    - (i) promptly informing the regulator or data subjects of a personal data breach;
    - (ii) providing data subjects with required information under the Data Protection Legislation' transparency requirements;
    - (iii) complying with valid requests from data subjects regarding the use and storage of personal data;
    - (iv) taking all measures required of a Controller pursuant to section 66 of the Data Protection Act 2018; and
    - (v) only processing Personal Data where the Party has a valid lawful basis to do so,



- (b) provide reasonable cooperation and assistance to the other party to enable the other party to fulfil its respective obligations under the Data Protection Legislation; and
  - (c) on reasonable written request from the other party, provide (and if it is updated, shall continue to provide throughout the term of this Agreement) the other party with its privacy policy so that the other party may provide said policy to data subjects on request in order to fulfil transparency related obligations or other obligations under the Data Protection Legislation.
- 13.6 To the extent that either party processes personal data on behalf of the other as Processor the parties agree and acknowledge that the other party shall be the Controller and that the Processor in each case shall:
- (a) comply with its obligations under any applicable laws regarding the processing of the personal data (including the Data Protection Legislation), and shall not by any act or omission put the Controller in breach of any such laws (including the Data Protection Legislation);
  - (b) only process personal data in accordance with the Controller's documented instructions from time to time (and for no other purpose whatsoever);
  - (c) process personal data other than in accordance with clause 13.6(b) only if required to do so by law, in which case the Processor shall where permitted by the Data Protection Legislation use reasonable endeavours to inform the Controller of the relevant legal requirement before processing;
  - (d) notify the Controller as soon as is reasonably practicable if the Processor reasonably believes an instruction from the Controller breaches (or could cause either party to breach) the Data Protection Legislation;
  - (e) ensure that access to the personal data is strictly limited to persons (including any employee or sub-processor) who need access to it as strictly necessary to perform the Controller's instructions and that all such persons are informed of the confidential nature of the personal data and are subject to contractual or statutory obligations of confidentiality;
  - (f) keep appropriate written records of all processing of personal data carried out pursuant to this Agreement;
  - (g) ensure that personal data is processed securely and confidentially and shall implement and at all times maintain appropriate technical and organisational measures to protect the personal data (ensuring in each case a level of security appropriate to the risk) in particular to prevent accidental or unlawful destruction, loss, alternation, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed;
  - (h) not transfer personal data to countries outside the European Economic Area ("**EEA**") without the Controller's prior written authorisation (not to be unreasonably withheld) and, at the reasonable request of the Controller, enter into a separate written agreement relating to the transfer of personal data outside of the EEA (or otherwise enter into an alternative



arrangement as may be approved under the Data Protection Legislation relating to the transfer of data outside of the EEA);

- (i) notify the Controller in writing promptly (and in any event within 48 hours of receipt) of any notices received by the Processor (or any sub-processor) relating to the processing of any personal data, including requests from individual data subjects in relation to the exercise of their rights, complaints and/or correspondence from any regulatory body including any competent data protection supervisory authority and the Processor shall provide such information and assistance as the Controller may reasonably require in relation to any such notice;
- (j) assist the Controller (including by way of technical and organisational measures) in meeting the Controller's obligations regarding the exercise of data subjects' rights in accordance with the Data Protection Legislation;
- (k) assist the Controller in meeting its obligations under the Data Protection Legislation with respect to data security, breach notification (including notification to any supervisory authority and communication to data subjects), data protection impact assessments and prior consultation with or notification to a competent data protection supervisory authority;
- (l) not permit any processing of the personal data by any agent, sub-contractor, supplier or other third party (sub-processor) without the prior written authorisation of the Controller in each case (not to be unreasonably withheld), and shall ensure in each case that prior to the sub-processor processing any personal data the sub-processor shall enter a written contract with the Processor which contains terms equivalent to those set out in this clause 13.6 and terminates automatically on termination of this Agreement for any reason;
- (m) at the choice of the Controller (and in any event on termination or expiry of this Agreement unless otherwise notified in advance by the Controller) either securely and confidentially return to the Controller all personal data or securely and confidentially destroy the personal data; and
- (n) at the reasonable request of the Controller, make available to the Controller all information necessary to demonstrate the Processor's (and any sub-processor's) compliance with its obligations under this Agreement and permit the Controller and its representatives (at no cost to the Controller) to inspect and audit the Processor's data processing activities (and those of its sub-processors) and comply with all reasonable requests to enable the Controller to verify and/or procure that the Processor (and any sub-processor) is complying with the provisions of this Agreement.

13.7 The parties have agreed to document the description of the processing under this Agreement in each Statement of Work.

## **14 Limitation of liability**

14.1 Nothing in this Agreement shall limit or exclude Pigment's or the Customer's liability for:



- (a) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) any liability which cannot be limited or excluded by applicable law.

**14.2** Subject to clause **14.1**:

- (a) Neither party shall have liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement;
- (b) Pigment's total aggregate liability under or in connection with any one Statement of Work whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall be limited to a sum equal to 100% of the SOW Charges paid to Pigment under that Statement of Work;
- (c) Pigment's total aggregate liability under or in connection with this Agreement whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall be limited to £1,000,000 in any one calendar year;

**14.3** The rights of both parties under this Agreement are in addition to, and not exclusive of, any rights or remedies provided for in common law.

**15 Managing Statements of Work**

- 15.1** Where the Customer reasonably considers that the performance of the Services under a Statement of Work is Unsatisfactory it shall give written notice of this to Pigment detailing the grounds upon which the Customer has come to this conclusion.
- 15.2** Following service of a Performance Notice pursuant to clause 15.1, Pigment and the Customer shall seek to agree any appropriate remedial action needed.

**16 Termination of Statements of Work**

- 16.1** Notwithstanding clause 15.2, the Customer shall be entitled to terminate a Statement of Work immediately on giving written notice to Pigment in the event that:
  - (a) a Performance Notice has been issued in respect of the Statement of Work; and
  - (b) the performance of the relevant Services remains Unsatisfactory fourteen (14) days after the delivery of the Performance Notice to Pigment.
- 16.2** Either party may terminate a Statement of Work at any time by giving written notice to the other party in accordance with the applicable Notice Period set out therein.





- 16.3 Termination of a Statement of Work shall not affect the continuance of this Agreement.

## **17 Termination of this Agreement**

- 17.1 Without affecting any other right or remedy available to it, either party may suspend or terminate this Agreement with immediate effect by giving notice if:
- (a) the other party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within thirty (30) days after being notified in writing to do so;
  - (b) the other party is subject to or instigates insolvency proceedings of any type or if the party seeking to suspend or terminate this Agreement reasonably believes that the other party is or will be unable to pay its debts as they fall due.
- 17.2 If either party suspends or terminates this Agreement pursuant to clause 17.1, the other party will not be entitled to make any claim against the party exercising its right to suspend or terminate this Agreement solely in respect of such suspension or termination.
- 17.3 Either party may terminate this Agreement for any reason by giving one (1) month's written notice to the other.

## **18 Consequences of termination**

- 18.1 On termination of this Agreement:
- (a) Pigment shall, if so requested by the Customer, provide reasonable assistance to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it;
  - (b) save for termination in the event of the insolvency of Pigment in accordance with clause 17.1, the Customer shall remain liable to pay Pigment for Committed Costs incurred before the date of termination of this Agreement;
  - (c) the Customer shall either (i) permit Pigment or any relevant subcontractor reasonable access to collect any Supplier Equipment or (ii) at its own cost ensure the safe return of any Supplier Equipment; and
  - (d) the following clauses shall continue in force: clause 1 (Interpretation), clause 8 (Intellectual property rights), clause 11 (Confidentiality), clause 14 (Limitation of liability), clause 18 (Consequences of termination), clause 22 (Rights, remedies and waiver), clause 24 (General) and clause 27.1 (Governing law).
- 18.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry.





- 18.3 For the avoidance of doubt, pursuant to clause 3.3 each Statement of Work shall form part of this Agreement and shall not form a separate contract to it. As such, all Statements of Work shall automatically end on termination of this Agreement.

## **19 Audit and retention of documents**

- 19.1 The Customer and/or their authorised representative shall have the right both during the term of this Agreement and for six (6) years thereafter, upon reasonable notice and no more than once every eighteen (18) months, to conduct audits of Pigment and/or any relevant subcontractor, to inspect the books, records (including timesheets if relevant) and any other relevant facilities of Pigment and/or any relevant subcontractor in order to verify compliance with the obligations set out in this Agreement including SOW Charges charged by Pigment and to take copies of any books or records for this purpose.
- 19.2 Pigment shall provide such free assistance and access (including access to people, premise and records) reasonably required for the purposes of complying with clause 19.1.
- 19.3 Pigment shall keep or cause to be kept during the term of each Statement of Work and for a period of six (6) years thereafter all records and/or materials used in connection with that Statement of Work.

## **20 Assignment, subcontracting and other dealings**

- 20.1 Save as expressly permitted under this Agreement, neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 20.2 Pigment shall be entitled to subcontract performance of part or the whole of the Services required under a Statement of Work to any subcontractor provided that Pigment must obtain the Customer's prior written approval where such subcontracting is to a Key Subcontractor. Subcontracting shall not relieve Pigment of its obligations under this Agreement.

## **21 Variation**

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

## **22 Rights, remedies and waiver**

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



## 23 Entire agreement

- 23.1 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.
- 23.2 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.

## 24 Force Majeure

- 24.1 Provided it has complied with clause 24.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 24.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 24.3 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event but no later than 5 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement; and
  - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 24.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than six (6) weeks, the party not affected by the Force Majeure Event may terminate this Agreement by giving two (2) weeks' written notice to the Affected Party.

## 25 Dispute Resolution

- 25.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a "**Dispute**") then the parties shall follow the procedure set out in this clause 25 and either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with any relevant supporting documents.
- 25.2 Within fourteen (14) days of service of a Dispute Notice, the Nominated Representative of each party who shall meet and shall attempt to resolve the relevant Dispute.
- 25.3 If the parties are unable to resolve the relevant Dispute for any reason within thirty (30) days of service of a Dispute Notice, the Dispute shall be referred to the Account Director of each party who meet and shall attempt to resolve the relevant Dispute.



25.4 If the dispute has not been resolved within thirty (30) days of any meeting of the Account Director pursuant to clause 25.3, then the matter shall finally be referred to the Managing Director of each party who shall attempt to resolve the relevant Dispute within fourteen (14) days of such referral.

25.5 Should the parties fail to resolve the relevant Dispute having followed the procedure set out in this clause 25, either party shall be entitled to refer the relevant Dispute to the courts for final determination.

## **26 General**

26.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

26.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

26.3 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

26.4 If there is an inconsistency between any of the provisions of this Agreement and the provisions of the Statements of Work, the provisions of this Agreement shall prevail.

26.5 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

26.6 If any provision or part-provision of this Agreement is deemed deleted under clause 26.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **27 Notices**

27.1 Any notice or other communication to be given under this Agreement shall be in writing, signed by or on behalf of the party giving it and addressed to the relevant party at the address shown on this Agreement or otherwise subsequently notified in accordance with this clause. Notices may be delivered personally, sent by pre-paid post, or by e-mail and shall be deemed to have been served when delivered (if delivered personally) on the second Business Day after the date of posting (if sent by post) and upon transmission (if sent by e-mail), provided that where in the case of delivery in person or by e-mail such delivery or transmission occurs after 5pm on any day, service shall be deemed to occur at 9.30am on the next Business Day.

27.2 Pigment and the Customer each agree to notify the other in accordance with this Agreement of any change of address (email or otherwise) in order to prevent interruptions to their communications.

27.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.



**28 Governing law and jurisdiction**

- 28.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.
- 28.2 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.



## Schedule 1 Template Statement of Work

### Statement of Work No. [NUMBER]

Reference is made to the Master Services Agreement made between [CUSTOMER] and PIGMENT CONSULTING LIMITED effective from [DATE] (the "**Agreement**"). This Statement of Work is governed by the terms and conditions of the Agreement. All terms used and not otherwise defined are used as defined in the Agreement.

**Statement of Work title:** [TITLE]

**Services:** [Description of the Services to be provided under this Statement of Work.]

**Expected resources required:** [Provide a summary of the resources that are expected to be deployed to ensure the effective delivery of the Services.]

**Approved Key Subcontractors:** [The following are approved Key Subcontractors for this Statement of Work:

Key Subcontractor	Discipline/Area of Expertise

]

**Start Date:** [Specify when the Services will commence.]

**Insurances:** [Pigment shall maintain the following additional insurances for the term of this Statement of Work:

Additional Insurance	Minimum Level of Indemnity

]

**Supplier Equipment:** [List out any equipment, including tools, systems, cabling or facilities, provided by Pigment, its agents, subcontractors or consultants to the Customer and used directly or indirectly in

the supply of the Services but that is not intended to belong to the Customer. Mark "N/A" if this does not apply.]

**Deliverables:** [Pigment shall deliver the following Deliverables as part of the Services:

No.	Deliverable

]

**Timetable:** [Set out the timetable for performing the Services.]

**Acceptance Criteria:** [Set out any criteria for accepting the Deliverables.]

**SoW Charges:** [Pigment's fees for the Services will be based on [Specify cost basis.]]

Specific fees are indicated in the table(s) below.

(a) Time And Materials

Fees for the Services are to be calculated as follows:

Consultant Type	Role/Title	Rate	Estimated Costs
		[£x per hour] [£x per day]	
SUBTOTAL:			

(b) Milestones

The following milestones and milestone payments have been agreed between the parties:

Milestone/Deliverable	Deadline (If Known)	Cost Estimate
	[Date]	
	[Date]	
	[Date]	
SUBTOTAL:		

(c) **Expenses/Reimbursement**

Listed below are the expected business expenses to be incurred in the course of delivering the Services outlined in this Statement of Work.

Category (Travel, Lodging, etc.)	Cost Estimate
<b>SUBTOTAL:</b>	

(d) **Total estimated costs**

	Cost Estimate
<b>Time and Materials</b>	
<b>Milestones</b>	
<b>Expenses</b>	
<b>TOTAL:</b>	

**Payment schedule:** [Set out intervals at which Pigment is entitled to submit invoices.]

**Key Personnel:** [Pigment shall deploy the following of its staff to assist with the delivery of the Services:

Name	Title

Any change to the Key Personnel planned by Pigment shall be notified in accordance with clause 4.4]

**Notice Period:** [Either party must give at least four (4) weeks' notice to terminate this Statement of Work pursuant to clause 16.2:]

**Particulars of data processing:**



Subject matter of the processing	The processing of personal data to the extent necessary for the provision of the Services under this Statement of Work including but not limited to [TBC].
Duration of the processing	The term of this Statement of Work.
Nature of the processing	The processing of personal data to the extent necessary in the provision of the Services under this Statement of Work including but not limited to [TBC].
Purpose of the processing	To the extent necessary in order to provide the Services under this Statement of Work including but not limited to [TBC].
Personal Data types	[TBC]
Categories of Data Subjects	[TBC]

**Dispute escalation process:** For this Statement of Work, the following individuals are identified for the purposes of clause 25.

	PIGMENT	[CUSTOMER]
<b>Nominated Representative</b>	[NAME]	[NAME]
<b>Account Director</b>	[NAME]	[NAME]
<b>Managing Director</b>	[NAME]	[NAME]

..... Date: .....

Signed by [NAME] for and on behalf of the Customer.

..... Date: .....

Signed by [NAME] for and on behalf of Pigment Consulting Limited.

## Schedule 2 Template Change Order

### Change Order

Reference is made to the Master Services Agreement made between [CUSTOMER] and Pigment Consulting Limited effective from [DATE] (the "**Agreement**") and Statement of Work No.[NUMBER] entered into pursuant to the Agreement (the "**Statement of Work**"). This Change Order is governed by the terms and conditions of the Agreement. All terms used and not otherwise defined are used as defined in the Agreement.

This Change Order is supplemental to the Statement of Work and, subject to the amendments described in this Change Order, the Statement of Work shall remain in full force and effect.

Change Order Title	
--------------------	--

Initiator	
Date of Request	

Reason for this Change Order	
------------------------------	--

Amendments made to the Statement of Work	
Services	
SOW Charges	
Timetable for the Services	
Other	

Signed for and on behalf of <b>[CUSTOMER]</b> :  Signature:  Name (Print):  Title:  Date:	Signed for and on behalf of PIGMENT CONSULTING LIMITED:  Signature:  Name (Print):  Title:  Date:
---	--

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

Executed for and on behalf of **PIGMENT  
CONSULTING LIMITED**

by

.....(name)

}

.....(signature)

*Director*

Executed for and on behalf of **[CUSTOMER]**

by

.....(name)

}

.....(signature)

*Director*