This document sets out our Standard Terms and Conditions. Should we be awarded any contracts under DOS7 or G-Cloud 15, we will adhere to the specified contractual terms.

DIEGESIS TERMS AND CONDITIONS FOR IT SERVICES

1. **Application**

1.1 These Terms and Conditions shall apply to the provision of IT Services by the Supplier to the Customer.

1.2 In the event of conflict between these Terms and Conditions and any other terms and conditions (of the Customer or otherwise), the former shall prevail unless expressly otherwise agreed by the Supplier in writing.

2. **Definitions and Interpretation**

2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Acceptance" means agreement by the Customer that a Deliverable has been provided to an appropriate level of quality and is complete;

"Additional Services" means any services not explicitly stated in the Statement of Work or an associated CCN that the Supplier is exceptionally obliged to perform as a consequence of implicit or explicit instructions or requests from the Customer;

"Agreement" means any Statement Of Work agreed between a Customer and the Supplier that references these Terms and Conditions as applying;

"Agreement Protocols" means the non-contractual protocols prepared on a project by project basis that provide the basis for effective governance of the Project, extending the Supplier Quality System;

"Assistance Services" means the Customer is responsible for the direction of the services and the delivery of any resulting outcomes;

"Business Day" means, any day (other than Saturday and Sunday) on which ordinary banks are open for their full range of normal business in London;

"Cloud Environment" means an environment provided by a third party such as AWS, Azure or Google Cloud Platform which may be selected to host either or both Production Environment and Development Environments;

	means
“Commencement Date”	means the commencement date for these Terms and Conditions as set out in the Statement of Work to these Terms and Conditions;
“Confidential Information”	means all business, technical, financial or other information of a Party to the Agreement;
“Contractual Change Note (CCN)”	means an agreement to vary the Services or specific Deliverables already accepted;
“Customer”	is an organisation identified in a Statement Of Work who are purchasing Services where these Terms and Conditions apply;
“Customer Project Manager"	means the person appointed by the Project Sponsor to exercise day to day control over all Customer staff;
“Data Protection Legislation”	means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;
“Deliverable”	means an Output which is identified as subject to Acceptance in the Statement Of Work;

“Development Environment”	the environment prepared or otherwise made available for the Project where IPR can be developed and stored and which shall generally include: (a) a shared working area where all documentation related to or referenced by the Project can be stored; (b) individual environments where developers can code, debug and otherwise develop software Deliverables; (c) Source code management environments where software can be developed under version control, for example in a GITHUB or Atlassian bitbucket environment; (d) Additional run time environments for other forms of testing such as system testing, integration testing, factory acceptance testing, user acceptance testing within which deliverables can be tested prior to deployment to production.
“Derived Works”	means any IPR derived from existing IPR owned by a Party to which the IPR rights of existing IPR apply by law;
“End Date”	means the date identified in a Statement of Work being the planned Termination Date of the Statement of Work when work to deliver Services must cease;
“Equipment”	means the Equipment listed in the Equipment Schedule and shall include all updated or replacement parts and any additional equipment supplied by the Supplier;
“Estimated Cost”	means the estimated cost identified in a Statement of Work for Services provided on a Time and Materials basis;
“Fees”	means any and all sums payable by the Customer to the Supplier arising out of the performance of the Supplier’s obligations under these Terms and Conditions;
“Fixed Price”	means where the basis of calculation of the Fees is a fixed price for the defined Services paid to an agreed Payment Schedule;

	means
“Input"	an input which may be a pre-requisite to starting the project or output from another task necessary to start or complete a Task;
“Intellectual Property Rights”	means (a) any and all rights in any patents, trademarks, service marks, registered designs, applications (and rights to apply for any of those rights) trade, business and company names, internet domain names and e-mail addresses, unregistered trademarks and service marks, copyrights, database rights, know-how, rights in designs and inventions; (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a); (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist; and (d) the right to sue for past infringements of any of the foregoing rights;
“Invoice Period”	means the period for which Fees for a Time and Materials Project are calculated for a particular invoice;
“Minimum Term”	means the period between the Start Date and the earliest Termination Date that may requested under any early termination clause;
“Notice Period”	means the period of 30 calendar days from the point a Customer notifies the supplier of their intention to terminate any Agreement, ending in the Termination Date for that Agreement;
“Output"	means an output generated as a consequence of carrying out or completing the task;
“Machine”	means a computer or other equipment installed in the computer for it to function in accordance with its manufacturer’s specification;
“Machine Code”	means the executable programming instructions generated through a compiling and linking process for a particular Machine;

“Materials”	means are literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that the Supplier may deliver to a Customer as part of a Service. The term “Materials" does not include Programs or Machine Code;
“Payment Schedule”	means a schedule which determines when invoices shall be submitted and payments shall be made;
“Performance Services"	means the Supplier is responsible for the direction of the services and the delivery of the required outcome;
“Platform"	means a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them;
“Program"	means the following, including the original and all whole or partial copies: 1. machine-readable instructions and data; 2. components; 3. audio-visual content (such as images, text, recordings, or pictures); and 4. related licensed materials. The term does not include Machine Code or Materials;
“Project"	means the carrying out of work by all Parties associated with an Agreement;
“Project Completion”	means when all Deliverables have been Accepted or when the Termination Date is reached, whichever is the sooner;
“Project Plan"	means the detailed schedule of tasks required to create and provide the Deliverables, the assignment of named people to those tasks, the description of the required inputs for each task, the Deliverables produced by each task, the estimated effort for each task and any key dates, milestones or dependencies associated with completing those tasks;
“Project Specification"	means a description of the deliverables to be provided by the Services;
“Project Sponsor"	means the person appointed by the Customer to chair the steering committee and ensure that Customer staff are appointed to deliver the Customer responsibilities;

“Proposal"	means any detailed description of Services provided to the Customer referenced as an annex or appendix by the Statement of Work which then becomes part of the Agreement with the precedence stated in the Statement of Work;
“Quality Procedures”	means the quality system that shall be adopted for the good governance of delivery of Services under an Agreement;
“Rate Card”	means a schedule of day rates by grade that apply to the Project for work performed on a time and materials basis;
“Services"	means the services to be provided by the Supplier to the Customer as set out in a Statement Of Work;
“Shared Working Area"	means a repository such as a mountable file system or site in SharePoint where all information related to the Services can be stored, ideally under version control;
“Software”	means any and all programs, applications, instructions or similar that may from time to time be installed on the Customer’s computer systems;
“Start Date”	means the date on which a Statement of Work starts and from which work to deliver Services can start;
“Statement Of Work (SOW)"	means a description of the services to be provided which when signed by both parties becomes an Agreement;
“Steering Committee"	means the people appointed by the Customer and the Supplier with appropriate authority to consider and agree contractual changes;
“Supplier”	Diegesis Limited a company registered in England and Wales under number 06459593 whose registered office is at 2, Printers Yard, 90A, The Broadway, Wimbledon, SW19 1RD;
“Supplier Director"	means the person appointed by the Supplier to agree any contractual changes via a CCN with the Customer;

“Supplier Project Manager"	means the person appointed by the Supplier Director to exercise day to day control over all Supplier staff and to deliver the Services in accordance with the Agreement;
“Task" means a task defined in the Project	Plan optionally listing the Inputs required to start a task and the Outputs resulting from completing the task;
“Term” means the period between the	Start Date and the End Date of any Agreement;
“Termination Date”	means the date on which a Statement Of Work completes;
“Time and Materials”	means where the basis of calculation of the Fees is time expended in the delivery of the service;
“T&Cs”	means the Terms and Conditions in this document;
“Working Day”	means the normal working hours of Supplier which shall apply if Fees quoted on a daily basis are applied pro-rata; and
“Working Hours”	means the normal working hours of the Supplier which are 09:00 to 17:30.

2.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

2.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

2.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

2.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions and each of the Schedules as amended or supplemented at the relevant time;

2.2.4 a Schedule is a schedule to these Terms and Conditions;

2.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule; and

2.2.6 a “Party” or the “Parties” refer to the parties to these Terms and Conditions.

2.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

2.4 Words imparting the singular number shall include the plural and vice versa.

2.5 References to any gender shall include any other gender.

3. **Intellectual Property Rights**

3.1 The Statement of Work may define which of the following Sub-Clauses of this Clause 3 apply.

3.2 If the Statement of Work makes no reference to this Clause 3 then Sub-Clause 3.3 shall apply and Sub-Clause 3.4 shall not apply.

3.3 Where this Clause 3.3 applies:

3.3.1 Upon receipt of all sums due under the Agreement, the Supplier shall assign to the Customer the ownership of any and all Intellectual Property Rights that may subsist in anything produced by the Supplier in the course of providing the Services;

3.3.2 In complying with the provisions of sub-Clause 3.3, the Suppler shall undertake to execute any such agreements and perform any such actions that may be necessary to put such assignments into effect and shall exclusively bear any costs associated therewith;

3.3.3 The Supplier shall waive all moral rights arising out of Chapter IV of the Copyright, Designs and Patents Act 1988.

3.4 Where this Clause 3.4 applies:

3.4.1 The Supplier shall retain the ownership of any and all Intellectual Property Rights that may subsist in anything produced by the Supplier in the course of providing the Services. Throughout the Term of the Agreement, the Supplier shall be deemed to automatically grant a royalty-free, exclusive licence of any and all such rights to the Customer to use the same in accordance with the terms of the Agreement and the Services;

3.4.2 In complying with the provisions of sub-Clause 3.4, the Supplier shall undertake to execute any such agreements and perform any such actions that may be necessary to put such licences into effect and shall exclusively bear any costs associated therewith; and

3.4.3 The Service Provider shall assert all moral rights arising out of Chapter IV of the Copyright, Designs and Patents Act 1988.

3.5 Each Party shall retain all rights to pre-existing IPR and any Derived Works of that IPR.

4. **Statement Of Work**

4.1 The Parties shall sign a Statement Of Work referencing these Terms And Conditions to effect an Agreement, which shall list any Deliverables to be provided by the Services.

4.2 At time of signature of the Statement Of Work, the precise details of each Deliverable sufficient to define Acceptance may not yet be known, in which case the Project Specification is a Deliverable and shall be created and submitted for acceptance as early as possible during the Project.

4.3 The Statement Of Work shall identify the set of documents that comprise the Agreement and state the precedence of these documents.

5. **Supplier's Obligations (Performance Services)**

5.1 If the Statement of Work identifies the Services as Performance Services then this Clause 5 shall apply and Clause 6 shall not apply

5.2 With effect from the Commencement Date until any termination under Clause 13 the Supplier shall, in consideration of the Fees being paid in accordance with the terms of payment, provide the Services expressly identified in the Statement of Work, or otherwise agreed under these Terms and Conditions.

5.3 The Supplier will use reasonable care and skill to perform the Services identified in the Statement of Work or otherwise agreed under these Terms and Conditions with reasonable skill and care, commensurate with prevailing standards in the Information Technology sector in the United Kingdom.

5.4 The Supplier shall appoint a Project Director who has overall authority for the delivery of the Services and for agreeing any changes to those Services.

5.5 The Supplier shall appoint a Project Manager who has day to day responsibility for the delivery of the Services including responsibility for managing all Supplier staff while engaged on the Project and is responsible for delivering the project outcomes.

5.6 The Supplier shall use all reasonable endeavours to complete its obligations under the Statement of Work. The Parties agree that time will not be of the essence in the performance of these obligations.

6. **Supplier's Obligations (Assistance Services)**

6.1 If the Statement of Work identifies the Services to be delivered as Assistance Services, or if the Statement of Work makes no reference to Assistance Service or Performance Services then this Clause 6 shall apply and Clause 5 shall not apply.

6.2 The Supplier will use reasonable care and skill to perform the Services identified in the Statement of Work or otherwise agreed under these Terms and Conditions with reasonable skill and care, commensurate with prevailing standards in the Information Technology sector in the United Kingdom.

6.3 The Supplier shall appoint a Project Director who has overall authority for the delivery of the Services and for agreeing any changes to those Services.

6.4 The Supplier shall act in accordance with all reasonable instructions given to it by the Customer provided such instructions are compatible with the Statement of Work and within the competencies of the person receiving the instructions.

6.5 The Supplier shall appoint a Project Manager who has day to day responsibility for the delivery of the Services including responsibility for managing all Supplier staff while engaged on the Project.

6.6 The Supplier shall use all reasonable endeavours to complete its obligations under the Statement of Work. The Parties agree that time will not be of the essence in the performance of these obligations.

7. Customer's Obligations

7.1 The Customer shall appoint a Project Sponsor who has overall responsibility for the delivery of all inputs and management of all staff delivering those inputs.

7.2 The Customer shall appoint a Customer Project Manager who shall act as the primary point of contact between the Supplier and the Customer for all matters that need resolution on a day to day basis, and who shall act as a deputy for the Customer Project Sponsor.

7.3 When an Agreement is for the provision of Assistance Services the Customer is responsible for delivery of the outcome and shall ensure that the Supplier Project Manager is provided instructions on the scope of any individual task.

7.4 The Customer shall:

7.4.1 allow the Supplier access to the Equipment and all relevant Software for investigation purposes;

7.4.2 provide adequate working space and facilities for the Supplier's staff; and

7.4.3 co-operate with them in the diagnosis of any defect or malfunction in the Equipment or Software.

7.5 The Customer shall allow the Supplier the use of any Equipment, computer systems, peripherals or other hardware necessary to enable it to provide the Services and shall be responsible for procuring, installing and maintaining all communications media not supplied by the Supplier.

7.6 The Customer will not allow any changes or modifications to the Software to be made by any party other than those changes or modifications authorised by, and notified to, the Supplier. If such changes or modifications are carried out without such authorisation and appropriate notification, the Supplier reserves the right to review these Terms and Conditions and make adjustments accordingly.

7.7 The Customer will make freely available to the Supplier all documentation associated with the Equipment, working documents, original Software installation media, current data backups, Equipment and any other relevant hardware for the efficient maintenance of the Equipment and the Software.

7.8 The Customer shall create regular data backups in such a manner as to minimise any potential data loss and to ensure that these are made available to the Supplier as required.

7.9 The Customer shall take all reasonable precautions to ensure the safety and health of the Supplier's personnel while such personnel are at the Customer's premises.

7.10 Where the Customer has engaged multiple Suppliers in a multi-stakeholder Project, it is the Customer's responsibility to ensure any other agency provides inputs required for the delivery of the Service to the Supplier in the required time frame in accordance with the Project Plan.

7.11 Where the Services include the provision of Deliverables into a Production Environment by the Supplier, the Customer shall provide access to nominated Supplier staff to enable the Supplier to develop and test in the Development Environment and deploy into the Production Environment without the need for specific intervention by the Customer or any third party. Nominated Supplier staff shall comply with Customer policies and operational procedures and follow installation and release procedures where available. Provision of such access by the Customer in is of particular importance when access is to a Customer

provided Cloud Environment or particularly where the Services are Performance Services

7.12 If a Customer is unable to comply with Clause 7.11 then the Customer becomes responsible for Acceptance of Deliverables in a Development Environment and for development of any process to complete the deployment of the deliverable

into the Production Environment.

7.13 If the Customer executes Deliverables in the Production Environment prior to explicit Acceptance of the Deliverables then the run time Deliverables and any associated Deliverables provided to support the runtime Deliverables are deemed to be Accepted.

8. Governance and Quality Systems

8.1 Unless otherwise agreed in writing Services delivered under any Agreement shall comply with the Supplier Quality Procedures available on requests and audited annually by an external auditor.

8.2 Unless otherwise agreed in writing the Supplier Atlassian system shall be used to manage the individual tasks defined in the Project Plan.

8.3 Governance in delivering the services shall be applied based on an Agreement Protocols document describing any enhancements to the Supplier Quality Procedures to be adopted by the Steering Committee in delivering the Services.

8.4 Unless otherwise agreed in writing, all Statements Of Work shall include the following Deliverables: 8.4.1 Timesheets;

8.4.2 Project Protocols;

8.4.3 Project Initiation Document (PID);

8.4.4 Project Specification;

8.4.5 Architecture or Design appropriate to the Services to be delivered and in a form that enables Acceptance of the Deliverables using the Acceptance Criteria;

8.4.6 Acceptance Criteria.

8.5 Statements of Work should include the following Deliverables:

8.5.1 Specification of the Development Environment if applicable;

8.5.2 Specification of the methods and tools to be adopted to undertake the Services;

8.6 Unless otherwise agreed in writing, all Statements of Work shall include provision for:

8.6.1 Assumptions on which the success of the Services depends;

8.6.2 An initial risk register to be maintained and managed in accordance with the Project Protocols;

8.6.3 Accounts on Customer systems necessary to carry out the Services;

8.6.4 A Shared Working Area where all information relevant to the Project can be stored, generally on a Customer platform where Customer IPR is held;

9. **Price**

9.1 The Customer agrees to pay the Fees in accordance with Clause 10, the signed Statement of Work and any signed Contractual Change Notes that vary the Agreement.

9.2 The Supplier shall be entitled to recover from the Customer its reasonable incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services provided such expenses shall be charged at cost, agreed in advance and shall be subject to the Suppliers Expenses Policy for Transport and Subsistence where relevant.

9.3 The Customer shall pay the Supplier for any Additional Services provided by the Supplier that are not specified in the Statement of Work in accordance with the Supplier's Rate Card in effect at the time of the performance or such other rate as may be agreed. Such additional services are only chargeable in exceptional circumstances. The Supplier shall notify the Customer in advance of their intention to carry out additional services to be charged under this Clause. An example of such a circumstance is responding to a Contractual Change Request from the Customer. Any such charge for additional services shall be invoiced separately from any Fees due under the Statement of Work.

9.4 All sums payable by either Party pursuant to these Terms and Conditions are exclusive of any value added or other tax or other taxes on profit, for which that Party shall be additionally liable.

10. **Payment**

10.1 All payments required to be made pursuant to these Terms and Conditions by either Party shall be made within 30 days of the date of the relevant invoice, without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.

10.2 The time of payment shall be of the essence of these terms and conditions. If the Customer fails to make any payment on the due date in respect of any sum due under these Terms and Conditions then the Supplier shall have the right to charge the Customer interest on any sum outstanding at the rate of 2% above the base rate of Nat West Bank PLC from the due date for payment until the date on which the payment is received.

10.3 Invoices shall be submitted monthly on completion of the Invoice Period unless a specific Payments Schedule is included in the Agreement in which case that shall apply.

10.4 On a Time and Materials Project or any other Project where Monthly Invoicing applies, the monthly Invoice Period is from the Start Date or the day after the last Friday in the previous month (whichever is the later) up to and including the Termination Date or the last Friday in the current month whichever is the sooner.

11. **Deliverables And Acceptance**

11.1 All Outputs of the Statement Of Work that are Deliverables for Acceptance shall be defined in the Statement Of Work or its appendixes.

11.2 Any Output not explicitly defined in the Statement Of Work that is subsequently identified in a Task as important to the overall Acceptance of the Services may be

nominated as a Deliverable by either Party in writing to the other Party in accordance with Section 12, agreement to the CCN not to be unreasonably refused. Whenever possible such Deliverables should be identified prior to work starting on development of the Output.

11.3 On a Time and Materials Project, Timesheets are Deliverables and it is agreed that Acceptance of Timesheets constitutes agreement by the Customer that the Services provided as recorded in Timesheets has been properly delivered, and that an Invoice based on those Timesheets is a valid Invoice.

11.4 Unless agreed in writing otherwise, when providing Assistance Services, the only Deliverables to which Acceptance applies are Timesheets.

11.5 All Deliverables once accepted are then subject to change control.

11.6 When the Customer is presented with a Deliverable for Acceptance, the Customer shall review that Deliverable and within 5 days (or any alternative period previously agreed), confirm to the Supplier Acceptance of the Deliverable or identify any Defects that render the Deliverable unfit for purpose, any such Acceptance not to be unreasonably refused.

11.7 Upon receipt of the Customer's request for rectification of a defect in a Deliverable provided for Acceptance, the Supplier shall (subject to its then current commitments) normally begin work on such support or defect not later than 2 working days thereafter and shall carry out all Services as specified in the Statement of Work during Working Hours until all required work is completed to the deliverables and it is re-presented for Acceptance.

11.8 When a Deliverable is reworked by the Supplier to correct any defects and the Deliverable is re-presented for Acceptance the Customer shall review that Deliverable in accordance with Sub-Clause 11.6.

12. Variation and Amendments

12.1 The provisions of Clause 12 shall apply to the provision of Performance Services and shall apply to the provision of Assistance Services where the change has a material commercial impact. Examples are to a key date, the Estimated Cost or any aspect of the provision of staff.

12.2 If either Party wishes to vary any details of the Statement of Work it must notify the other in writing as soon as is reasonably possible using a Contractual Change Note (CCN) as laid out in Appendix A below.

12.3 Upon receipt of a Customer's request for a change by submitting a Contractual Change Note, the Supplier shall review the CCN with 3 working days and provide a response to the CCN appropriate to the complexity of the CCN reasonable within that period.

12.4 The Supplier shall provide a Quotation for the change based on the agreed applicable fee rates, showing separately the estimate and contingency amount to implement the change.

12.5 Effort expended by the Supplier to provide a response or formal quotation to a Customer generated CCN is an example of Additional Services.

12.6 The Customer shall review the change and may request clarifications to the proposed work or to the initial CCN which shall then be re-reviewed.

12.7 No work is authorised to start and the Supplier shall not start work on the change until the CCN has been signed by the Customer.

12.8 The Supplier shall use all reasonable endeavours to make any required changes and any additional costs including the cost of Additional Services thereby incurred shall be separately invoiced to the Customer.

12.9 If the Service is provided as Performance Service the Supplier shall be responsible for scheduling the implementation of any change. The Supplier may require completion of the current Statement Of Work and then collect all changes

and implement them in a second Statement of Work, particularly when there is a significant risk that the proposed change may materially impact the current Statement Of Work.

12.10 If, due to circumstances beyond the Supplier's control, it has to make any change in the arrangements relating to the provision of the Services it shall notify the Customer forthwith. The Supplier shall endeavour to keep such changes to a minimum and shall seek to offer the Customer arrangements as close to the original arrangements as is reasonably possible in the circumstances.

12.11 The Customer shall not commit the Supplier to implement an change to any Deliverable or to any revision to a timetable laid out in the Project Plan without first agreeing a CCN with the Supplier.

13. Term and Termination

13.1 An Agreement shall come into force on the agreed Start Date and shall continue to the End Date or to the date of Project Completion whichever is the sooner, subject to the provisions of this Clause 13.

13.2 Either Party may terminate the Agreement by giving to the other not less than 3 months written notice, to expire on or at any time after the minimum term of the Agreement if any such Minimum Term is defined in the Agreement.

13.3 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

13.3.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 30 Business Days of the due date for payment;

13.3.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within 30 Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;

13.3.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

13.3.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

13.3.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be

bound by or assume the obligations imposed on that other Party under the Agreement);

13.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;

13.3.7 that other Party ceases, or threatens to cease, to carry on business; or

13.3.8 control of that other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of Clause 10, "control" and "connected persons" shall have

the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

13.4 In the event of termination under clause 13.1 the Supplier shall retain any sums already paid to it by the Customer without prejudice to any other rights that either party may have whether at law or otherwise.

13.5 For the purposes of sub-Clause 13.3.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

13.6 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

13.7 Upon the termination of the Agreement for any reason:

13.7.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;

13.7.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;

13.7.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which exist at or before the date of termination;

13.7.4 subject as provided in this Clause 13 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other with regard to the Agreement; and

13.7.5 each Party shall (except to the extent referred to in Clause 17 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information provided for the delivery of Services under this Agreement, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

14. **Liability**

14.1 In the event that the Supplier fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.

14.2 The Supplier’s total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the sum defined therein.

14.3 The Supplier shall not be liable for any loss or damage suffered by the Customer that results from the Customer's failure to follow any instructions given by the Supplier.

14.4 Nothing in an Agreement shall limit or exclude the Supplier's liability for death or personal injury.

14.5 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

14.6 Subject to sub-Clause 14.2 of the Agreement the Supplier shall indemnify the Customer against any costs, liability, damages, loss, claims or proceedings arising out of the Supplier's breach of the Agreement.

14.7 The Customer shall indemnify the Supplier against any costs, liability, damages, loss, claims or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Service Provider) caused by the Client or its agents or employees.

14.8 These limitations shall apply cumulatively, and shall apply regardless of the form of action, whether under statute, in contract or tort, including negligence, or any other form of action.

15. Insurances

15.1 The Supplier shall ensure that it has in place at all times suitable and valid insurance that shall include Employers Liability insurance, Public Liability insurance and Professional Indemnity insurance.

15.2 The Supplier shall on request provide copies of the current certificates of insurance for verification.

16. Guarantee

16.1 The Supplier shall guarantee that the product of all Services provided will be free from any and all defects for a period defined in the Agreement providing such a period is so defined.

16.2 If any defects in the product of the Services appear during the guarantee period set out in the Agreement the Service Provider shall rectify any and all such defects at no cost to the Client.

17. Confidentiality

17.1 During the term of the Agreement and after termination of the Agreement for any reason for a period of 5 years starting on last Termination Date of any Agreement, the following obligations shall apply to the Party disclosing Confidential Information ('the Disclosing Party') to the other Party ('the Receiving Party').

17.2 Subject to sub-Clause 17.3, the Receiving Party:

17.2.1 may not use any Confidential Information of the Disclosing Party for any purpose other than the performance of its obligations under the Agreement;

17.2.2 may not disclose any Confidential Information of the Disclosing Party to any person except with the prior written consent of the Disclosing Party; and

17.2.3 shall make every effort to prevent the use or disclosure of the Confidential Information of the Disclosing Party.

17.3 The obligations of confidence referred to in the provisions of this Clause shall not apply to any Confidential Information of the Disclosing Party that:

17.3.1 is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain before its receipt by the Receiving Party;

17.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;

17.3.3 is required to be disclosed by any applicable law or regulation;

17.3.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the Disclosing Party in respect of it and who imposes no obligations of confidence upon the Receiving Party.

17.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to which it may be entitled.

17.5 The obligations of the Parties under the provisions of this clause shall survive the expiry or the termination of the Agreement for whatever reason.

18. Data Protection And Computer Security

18.1 The Supplier will only use the Customer's personal information as set out in the Supplier's Privacy Notice available on request as identified in Appendix 1.

18.2 The Supplier shall abide by its Security Policies when delivering the Services.

19. Data Processing

19.1 In this Clause 19 and in the Agreement, "personal data", "data subject", "data controller", "data processor", and "personal data breach" shall have the meaning defined in Article 4 of the UK GDPR.

19.2 Both Parties shall comply with all applicable data protection requirements set out in the Data Protection Legislation. Neither this Clause 19 nor the Agreement shall relieve either Party of any obligations set out in the Data Protection Legislation and shall not remove or replace any of those obligations.

19.3 For the purposes of the Data Protection Legislation and for this Clause 19 and the Agreement, the Supplier is a "Data Processor" to the extent that it processes data on behalf of the Customer. The Customer is the "Data Controller" and a "Data Processor".

19.4 The type(s) of personal data, the scope, nature and purpose of the processing, and the duration of the processing shall be set out in a Schedule to the Agreement.

19.5 The Data Controller shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in these Terms and Conditions, any Agreement or Schedules to the Agreement.

19.6 The Data Processor shall, with respect to any personal data processed by it in relation to its performance of any of its obligations under these Terms and Conditions and any Agreements:

19.6.1 Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor shall promptly notify the Data Controller of such processing unless prohibited from doing so by law.

19.6.2 Ensure that it has in place suitable technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures. Measures to be taken shall be agreed between the Data Controller and the Data Processor and set out in the Schedule to the Agreement.

19.6.3 Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential; and

19.6.4 Not transfer any personal data outside of the UK without the prior written consent of the Data Controller and only if the following conditions are satisfied:

19.6.4.1 The Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data;

19.6.4.2 Affected data subjects have enforceable rights and effective legal remedies;

19.6.4.3 The Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and

19.6.4.4 The Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data.

19.6.5 Assist the Data Controller at the Data Controller's cost, in responding to any and all requests from data subjects and in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner's Office);

19.6.6 Notify the Data Controller without undue delay of a personal data breach;

19.6.7 On the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of the Agreement unless it is required to retain any of the personal data by law; and

19.6.8 Maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause 19 or any Agreement and to allow for audits by the Data Controller and/or any party designated by the Data Controller.

19.7 The Data Processor shall not sub-contract any of its obligations to a subcontractor with respect to the processing of personal data under this Clause 19

or any Agreement without the prior written consent of the Data Controller (such consent not to be unreasonably withheld). In the event that the Data Processor appoints a sub-contractor, the Data Processor shall:

19.7.1 Enter into a written agreement with the sub-contractor, which shall impose upon the sub-contractor the same obligations as are imposed upon the Data Processor by this Clause 19 or any Agreement and which shall permit both the Data Processor and the Data Controller to enforce those obligations; and

19.7.2 Ensure that the sub-contractor complies fully with its obligations under that agreement and the Data Protection Legislation.

19.8 Either Party may, at any time, and on at least 30 calendar days' notice, alter the data protection provisions of the Agreement, replacing them with any applicable data processing clauses or similar terms that form part of an applicable certification scheme. Such terms shall apply when replaced by attachment to the Agreement.

20. Costs

20.1 Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of any Agreement.

21. Set-Off

21.1 Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other Agreement at any time.

22. Sub-Contracting and Assignment

22.1 Subject to the provisions of Clause 19, the Supplier may sub-contract to third parties all or any part of the Services to be carried out under the Agreement.

22.2 Any sub-contracting by the Supplier under Clause 22.1 shall be subject to agreement with the Customer, such agreement not to be unreasonably refused.

22.3 The Customer shall not assign to a third party any or all of its rights or obligations under the Agreement without the prior written consent of the Supplier.

23. **Relationship of the Parties**

23.1 Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

24. **Non-Solicitation**

24.1 Neither Party shall, for the Term of any Agreement and for two years after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to an Agreement without the express written consent of that Party.

24.2 Neither Party shall, for the Term of any Agreement and for four years after its termination or expiry, solicit or entice away from the other Party any customer or client where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

25. **Third Party Rights**

25.1 No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

25.2 Subject to Clause 25 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

26. **Force Majeure**

26.1 Neither Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Supplier failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

26.2 In the event that a Party to the Agreement cannot perform their obligations thereunder as a result of force majeure for a continuous period of 45 days, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.

27. **Waiver**

27.1 No waiver by the Supplier of any breach of these Terms and Conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of these Terms and Conditions shall be effective only if given in writing and signed by the waiving

party and then only in the instance and for the purpose for which any waiver is given.

27.2 No failure or delay on the part of any Party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

28. Entire Agreement

28.1 An Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties in accordance with the provisions of Clause 12.

28.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law

29. Severance

If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected thereby.

30. Notices

30.1 All notices under these Terms and Conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

30.2 Notices shall be deemed to have been duly given:

30.2.1 when delivered, if delivered by courier or other messenger (including recorded delivery mail) during normal business hours of the recipient; or

30.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or

30.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

30.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

in each case addressed to the most recent address or e-mail address notified to the other Party.

30.3 Service of any document for the purposes of any legal proceedings concerning or arising out of the Agreement shall be effected by either Party by causing such document to be delivered to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing from time to time.

31. **Dispute Resolution (ADR and Arbitration)**

31.1 The parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

31.2 If negotiations under sub-Clause 31.1 do not resolve the matter within 21 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.

31.3 If the ADR procedure under sub-Clause 31.2 does not resolve the matter within 28 days of the initiation of that procedure, or if either party will not participate in the ADR procedure, the dispute may be referred to arbitration by either party.

31.4 The seat of the arbitration under sub-Clause 31.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the parties. In the event that the parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either party may, upon giving written notice to the other party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.

31.5 Nothing in this Clause 31 shall prohibit either party or its affiliates from applying to a court for interim injunctive relief.

31.6 The parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 31 shall not be final and binding on both parties.

32. **Law and Jurisdiction**

32.1 The Agreement shall be governed by the laws of England and Wales.

32.2 Any dispute between the Parties relating to the Agreement shall fall within the exclusive jurisdiction of the courts of England and Wales.

Appendix A – Schedule of Annexes

Annex	Document Description
1	Diegesis Privacy Notice
2	Template Statement of Work
3	Template Contractual Change Note (CCN)
4	Travel Subsistence and Expenses Policy
5	Diegesis Quality Manual
6	Diegesis Security Policy