

MASTER SERVICES AGREEMENT

This is Gain Ltd.

AND

Client legal name

This agreement ("**Agreement**") is effective from ("**Effective Date**")

between:

(1) This is Gain Ltd, a company registered in England and Wales under company number 16068670 whose registered office is at Avalon, Oxford Road, Bournemouth, England, BH8 8EZ ("**Agency**"); and

(2) Client legal name a private limited company in England and Wales under company number whose registered office is at ("**Client**").

INTRODUCTION:

(1) The Agency and its Affiliates (as defined below) are in the business of providing a broad range of creative, marketing, digital, data, technology, research, strategy and experimentation services to customers.

(2) The Client wishes to purchase, and the Agency and/or its Affiliates wish to provide, certain services and deliverables as more particularly described in one or more Scopes of Work (each, a "**SOW**") entered into in accordance with the terms of this Agreement.

IT IS AGREED AS FOLLOWS:

1. Definitions & Interpretation

In this Agreement:

- 1.1. references to clauses are to clauses of this Agreement. Where any provision contained in a SOW conflicts with any provision of this Agreement, the following order of precedence shall apply:
 - a. this Agreement;
 - b. SOW
 - c. Data Processing Agreement (as defined below),such that the terms of this Agreement shall always prevail and supersede except where the parties expressly and specifically state in a SOW that the alternative terms set out in the SOW will override the relevant terms set out in this Agreement;
- 1.2. a person includes a legal person (such as a limited company) as well as a natural person;
- 1.3. the words "include" and "including" shall be construed without limitation;
- 1.4. any reference to a particular law is a reference to it as it may be amended, extended or re-enacted, and includes any subordinate legislation made under it, from time to time;
- 1.5. references to the singular include the plural and vice versa;
- 1.6. the headings in this Agreement are for ease of reference only and shall be disregarded in construing or interpreting this Agreement;
- 1.7. references to either party shall include references to any permitted successor in title or permitted assignee of such party;
- 1.8. references to this Agreement or any other document are to this Agreement or that document as amended, supplemented, varied, modified, renewed, replaced or extended from time to time in accordance with the requirements of this Agreement or that document (as the case may be);

1.9. each SOW executed by the parties pursuant to this Agreement shall be governed by, and incorporate by reference, the terms and conditions of this Agreement as if fully set out in the SOW. For the avoidance of doubt, any reference in this Agreement to “this Agreement” shall be construed to include each SOW, and references to the “Services” and “Deliverables” shall be construed to include the services and deliverables described in the applicable SOW; and

1.10. The following terms shall have the corresponding meanings for the purposes of this Agreement:

“**Accounts**” means the Client’s products and services that are the subject of the Services as referred to in a SOW;

“**Affiliates**” means in relation to a party, any entity whether incorporated or not, that is controlled by or under ultimate common control with that party and “**control**” (or variants of it) shall mean the ability whether directly or indirectly to direct the affairs of another by means of ownership, contract or otherwise;

“**Agency Company**” has the meaning given to it in clause 2.1 and, for the avoidance of doubt, means the entity providing services under a SOW which will be the Agency and/or its Affiliate;

“**Agency Materials**” means those Materials specifically created for the purposes of a Project by Agency Personnel (including any Materials adapted, modified or derived from the Client Materials with the Client’s written approval) and incorporated into the Deliverables during the Term;

“**Agency Personnel**” means each individual employed or engaged by the Agency, involved in supplying the Services who for the avoidance of doubt includes the Agency or its Affiliate’s employees, independent contractors (engaged directly, via a limited liability company or umbrella company) and any staff of authorised subcontractors of the Agency or its Affiliate;

“**Agency Proprietary Materials**” means software (including all programming code in object and source code form), methodology, know-how, processes and Materials in relation to which the IPRs are owned by the Agency (or licensed to the Agency by a third party) and which are:

- i. in existence prior to the date on which it is intended to use them for a Project; or
- ii. created by or for the Agency outside of a Project and which are intended to be reused across its business;

“**Aggrieved Party**” has the meaning given to it in clause 15.6;

“**Anti-Bribery Laws**” has the meaning given to it in clause 25.1;

“**Applicable Laws and Regulations**” means (1) all relevant laws, statutes, regulations and binding codes issued by any applicable government or governmental agency, any local authority or statutory undertaking, any regulator or other applicable body and (2) all permits and licences issued by, and any applicable orders, judgments or decisions of, any applicable regulator or courts of competent jurisdiction, that are from time to time in force;

“**approval**” means approval given in accordance with clause 9.1;

“**Business Day**” means any day other than:

- i. Saturday, Sunday, or public holiday in the jurisdiction set out in clause 27 (Governing Law and Jurisdiction); and
- ii. any day between 24 December in any year and 1 January in the immediately following year (inclusive);

“Client Materials” means any Data, client equipment, computer systems, software, documents and any Materials or information owned by or licensed to the Client which are provided to the Agency, its Affiliates and/or Agency Personnel by or on behalf of the Client;

“Client Personnel” means each individual employed or engaged by the Client, who for the avoidance of doubt includes the Client or its Affiliate’s employees, independent contractors (engaged directly, via a limited liability company or umbrella company) and any staff of authorised subcontractors of the Client or its Affiliate;

“Data” means the Client’s computer data (in machine readable form);

“Data Processing Agreement” or **“DPA”** means the data processing agreement that will be included and identified in the SOW, should it be applicable;

“Data Protection Laws” For the purposes of this Agreement, “Data Protection Laws” refers to all Applicable Laws and Regulations governing the collection, processing, storage and protection of personal data, privacy and data security. This includes:

- General Data Protection Regulation (EU) 2016/679;
- 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 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (including as further amended by the laws of the United Kingdom or a part of the United Kingdom from time to time);
- California Consumer Privacy Act (CCPA) in the United States;
- Personal Information Protection and Electronic Documents Act (PIPEDA) in Canada;
- Canada’s Anti-Spam Legislation (CASL)

“Defaulting Party” has the meaning given to it in clause 15.6;

“Deliverables” means the advertising, creative and other Materials which are to be provided by the Agency as specified in a SOW, including Agency Materials, Third Party Materials and Agency Proprietary Materials where applicable;

“Expenses” means reasonable travel, hotel, subsistence and other expenses incurred by the Agency or its Affiliate in connection with the supply of Services and Deliverables, provided that such expenses have either received the Client’s prior written approval or where applicable are in accordance with any expenses policies which have been supplied to the Agency or its Affiliate and set out in the corresponding SOW;

“Fees” means the fees for a Project as set out in the corresponding SOW or otherwise agreed in writing;

“Good Industry Practice” means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;

“Initial Term” has the meaning given to it in clause 17.1;

“Intellectual Property Rights” or **“IPRs”** means the following rights, wherever in the world enforceable, including all reversions and renewals and all applications for registration:

- i. any patents or patent applications;
- ii. any trademarks (whether or not registered);

- iii. inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration;
- iv. copyright or design rights (whether registered or unregistered);
- v. database rights;
- vi. any goodwill in any trade or service name, trading style or get-up;
- vii. background technology, and any software or computer programs related thereto, all graphics, user interfaces, logos, trade names, know-how, trade secrets, notes, designs, technical data, ideas, research, reports, documentation, domain names, design tools developed or utilised by the Agency and/or its Affiliates in performing the Services, including pre-existing, newly developed or acquired, modifications or enhancements to any of the foregoing, including source code, web authoring tools, type fonts, application tools, general non-copyrightable concepts such as website design, architecture, layout, navigational and functional elements and any documents or Materials related thereto; and
- viii. any and all other intellectual or proprietary rights.

“Losses” means all losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses, costs of investigation, litigation, settlement or judgment, interest and penalties) of any type arising from or in connection with: (a) any act or omission of a party, its Affiliates and/or its or their respective personnel under this Agreement and (b) any third party actions, proceedings, allegations (provided any such allegation is substantiated by evidence that is disclosed to the Defaulting Party) or demands;

“Materials” means any artwork, copy, models, designs, photographs, commercial, feature film, character, music, voice over, sound recording, performance, book, painting, logo, or any other material protected by IPRs, but not including any software which is owned or licensed by a third party;

“Moral Rights” means all rights of authors recognised under applicable copyright laws, including rights of attribution, rights to object to derogatory treatment, and similar rights protecting the personal and reputational interests of authors, as provided under Applicable Laws and Regulations;

“Project” means any project(s) agreed between the parties from time to time under which the Agency or its Affiliate is to perform Services and supply Deliverables to the Client or its Affiliate, as more fully described in the corresponding SOW;

“Project Commencement Date” means the commencement date of each Project as set out in the corresponding SOW;

“Project Completion Date” means the date by which each Project is to be completed, as set out in the corresponding SOW;

“Project Term” means the period during which the Services for each Project will be provided as specified in the corresponding SOW;

“Rate Card” means the Agency’s or its Affiliate’s rate card (if applicable) set out in the corresponding SOW;

“Renewal Terms” has the meaning given to it in clause 17.1;

“SOW” has the meaning given to it in the recitals to this Agreement;

“Services” means the Services to be supplied by the Agency or its Affiliate under this Agreement as set out in the corresponding SOW, which includes the provision of Deliverables;

“Specialist Regulations” has the meaning given to it in clause 13.1(d);

“Term” means the period commencing on the Effective Date and ending on the effective date of termination of this Agreement in accordance with clause 17 (Termination);

“Territory” means the United Kingdom unless expressly specified otherwise in the corresponding SOW. Any restrictions as to Territory set out in this Agreement or any SOW shall not prevent access to the Agency's (or its Affiliate's) Deliverables on a website from outside the Territory;

“Third Party Costs” has the meaning set out in clause 10.2;

“Third Party Materials” means those Materials which are either commissioned by the Agency or any of its Affiliates from third parties during the Term and incorporated into the Deliverables, or which have been created by a third party and which are in existence at the time it is desired to make use of them for inclusion in the Deliverables, but which excludes software which is owned or licensed by a third party;

“Transfer” has the meaning given to it in clause 22.2; and

“Wilful Misconduct” shall mean (a) an intentional or reckless disregard of Good Industry Practice, or (b) an intentional breach of any terms of this Agreement, which in either case is done with utter disregard for harmful consequences but which shall not include any act, omission, accident or error of judgment or mistake made in good faith and in any case must be greater than mere negligence.

2. This Agreement and Scopes of Work

- 2.1. This Agreement sets out the terms and conditions for the provision of Services and (where relevant) Deliverables to the Client by the Agency and/or its Affiliates (each an **“Agency Company”**).
- 2.2. The Client and the Agency agree that it is their intention (i) that all of the Services and Deliverables contemplated by this Agreement be made available to the Affiliates of the Client, (ii) that the Affiliates of the Client may acquire Services from the Agency by entering into a SOW with the Agency or an Affiliate of the Agency, and (iii) that Affiliates of the Client and the Agency are third party beneficiaries entitled to enforce the terms and conditions of this Agreement. Notwithstanding the foregoing provision, the Agency may work with its Affiliates to provide the Services to the Client or Affiliates of the Client (as applicable) and will decide which is the correct Affiliate of the Agency to bill the Client or the Client Affiliate (as applicable) for the work carried out.
- 2.3. Where an Agency Company enters into a SOW any reference to “Agency” in this Agreement or DPA shall be deemed to be a reference to that Agency Company. When a Client's Affiliate enters into a SOW, references to “Client” in this Agreement or DPA apply to that Client Affiliate for that SOW. Notwithstanding the foregoing sentence, each party remains ultimately responsible for its Affiliates' obligations and liabilities under any SOW.
- 2.4. The Client and any Agency Company may agree to new Projects from time to time by agreeing a new SOW in writing which shall be governed by the terms and conditions set out in this Agreement.
- 2.5. The Agency Company will not be obliged to perform any work on behalf of the Client until the corresponding SOW has been signed by both parties.
- 2.6. In consideration for the Agency agreeing to enter into this Agreement and performing its obligations under it, the Client agrees to pay, and the Agency accepts, consideration of a nominal sum, receipt of which is hereby acknowledged, or such other amount as may be required under the Applicable Laws and Regulations, receipt of which is hereby acknowledged by the Agency.

3. Term

- 3.1. This Agreement shall commence on the Effective Date and shall continue until terminated in accordance with clause 17 (Termination).
- 3.2. Each Project shall commence on the date specified in the corresponding SOW and shall continue until the Project Completion Date, or as otherwise set out in the SOW, subject to earlier termination in accordance with the terms of clause 17 (Termination).

4. Client's Obligations

- 4.1. The Client shall co-operate with the Agency in all matters relating to the Services as the Agency may reasonably require to perform its obligations under this Agreement and any SOW.
- 4.2. The Client will give the Agency full and clear instructions as to its requirements for the Services and Deliverables to be included in a SOW, including full details of the dates by which each stage of the proposed Services and Deliverables are to commence and finish. The Client will give the Agency clear briefings and ensure that all the facts given about the Accounts are accurate and shall ensure that its other suppliers and agencies co-operate fully with the Agency. The Client will promptly inform the Agency if the Client considers that any Deliverables submitted to the Client by the Agency for approval are false or misleading or in any way contrary to Applicable Laws and Regulations and/or Specialist Regulations.
- 4.3. The Client will promptly supply to the Agency (at no charge) any Client Materials reasonably required by the Agency or otherwise necessary to provide the Services and Deliverables and shall ensure that it has all rights and licences in place to enable use by the Agency of all Client Materials.
- 4.4. If the Client does not fulfil its obligations under or in connection with this Agreement (including its payment obligations), then to the extent that such failure prevents the Agency from performing any Services and/or providing any Deliverables in accordance with this Agreement, the Agency will be relieved of its obligations to the Client, and the Agency shall not be liable for any Losses incurred by the Client or its Affiliates as a result of any such failure.

5. Service Delivery

- 5.1. The Agency shall:
 - a. apply reasonable skill and care as may be necessary for its performance of the Services and provision of the Deliverables as described in each SOW;
 - b. comply with all lawful and reasonable directions regarding the Services and Deliverables communicated to it from time to time by the Client (provided such directions do not materially deviate from or add to the SOW but if they do then any such material amendment must first be agreed in accordance with clause 7 (Amendments)); and
 - c. keep Client Materials reasonably safe and secure while they are in the possession or control of the Agency.
- 5.2. If at any time the Agency becomes aware that it may not be able to perform the Services or deliver any Deliverables by any date set out in the corresponding SOW (or any other deadline agreed by the parties in writing), the Agency will notify the Client and give details of the reasons for the delay.
- 5.3. Any dates for performance of the Services set out in this Agreement or any SOW shall be estimates only, and time shall not be of the essence for the performance of the Services.

6. Personnel

- 6.1. The Agency will allocate suitable Agency Personnel with appropriate levels of experience to provide the Services. The Client acknowledges and agrees that it may be necessary for the Agency to replace the Agency Personnel providing the Services with alternative Agency Personnel with similar levels of experience.
- 6.2. Where the Agency Personnel deployed by the Agency pursuant to a SOW:
- a. is an employee of the Agency, the Agency undertakes to pay and provide all relevant wages, holiday pay, benefits and emoluments to the Agency Personnel, to ensure that all appropriate deductions are made from their wages in respect of PAYE (or equivalent), national insurance and social security contributions and to pay all employer's contributions in respect of the wages of the Agency Personnel;
 - b. is a self-employed contractor either operating through a limited or umbrella company or as a self-employed individual, such individual shall be fully responsible for any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with either the performance of the Services or any payment or benefit received by the individual in respect of the Services, where such recovery is not prohibited by law.
- 6.3. This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Agency shall be fully responsible for any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with any payment received by Agency Personnel in respect of the Services, where such recovery is not prohibited by law. The Agency shall further reimburse the Client against all reasonable costs and expenses incurred by the Client in connection with such liability, deduction, contribution, assessment or claim other than where such liabilities arise out of the Client's negligence or wilful default.

7. Amendments

- 7.1. In the event that either party wishes to make any material amendment to a Project, any such amendment shall be subject to the agreement of both parties in writing.
- 7.2. In the event of any amendment to a Project by the Client, the Fees payable to the Agency in respect of the amended Project shall not decrease below the level of Fees that would have been payable had the Project not been amended, save with the prior written approval of the Agency.
- 7.3. Pending any agreed amendments to a Project, the Agency shall (unless otherwise agreed) continue to perform and be paid for the Services as if such change had not been requested.

8. Approvals and Authority

- 8.1. For the purposes of this Agreement, any reference to "approval" to be given by the Client shall mean the Client giving approval by e-mail from the individual business e-mail address of an authorised signatory of the Client.
- 8.2. For the purposes of this Agreement, any reference to "approval" to be given by the Agency shall mean the Agency giving approval by e-mail from the individual business e-mail address of an authorised signatory of the Agency.
- 8.3. Where a party is asked to give approval under or in connection with this Agreement, such approval shall not be unreasonably withheld or delayed.
- 8.4. As required, the Agency will seek the Client's prior approval of any draft Deliverables and such approval will be the Agency's authority to proceed with the use of the relevant Deliverables.

- 8.5. In the event that the Client does not approve of any matter requiring approval it shall notify the Agency of its reasons for disapproval within three (3) Business Days of the Agency's request. If the Client does not notify the Agency of its disapproval in accordance with this clause, it shall be deemed approved.
- 8.6. In the event of any delay or failure of the Client to give approvals (or disapprovals) requested under or in connection with this Agreement, the Agency will not be liable for any resulting delays or adverse impact caused to the delivery of the Project.

9. Fees

- 9.1. The Agency will invoice the Client in respect of all Fees, Expenses and any applicable Third Party Costs.
- 9.2. Notwithstanding any other provision of this Agreement, the Client shall not be obliged to pay Fees for a Project and the Agency shall not be obliged to supply any Services and Deliverables for a Project until each party has signed the corresponding SOW. Where relevant, the Agency shall not be obliged to supply any Services and/or Deliverables for a Project until the Client has supplied a valid purchase order number for such Services and Deliverables.
- 9.3. The Fees, Expenses and Third Party Costs will be invoiced in accordance with the payment terms set out in the corresponding SOW and shall be payable (subject to clause 10.4) within 30 (thirty) days of the date of the relevant invoice unless otherwise stated in the SOW.
- 9.4. All sums stated in this Agreement or in any SOW, quotation or estimate exclude goods and services tax (GST), value-added tax (VAT), sales tax, or other similar applicable taxes, and such taxes shall be payable by the Client at the prevailing rate from time to time.
- 9.5. The Fees, Expenses and Third Party Costs do not cover the performance of services which are outside of a SOW nor do they cover the performance of services outside the Territory. If any such services are required, the terms relating to their provision together with the applicable fees, expenses and third party costs will be agreed in writing by the parties.
- 9.6. In the event that the Client fails to make any payment in full when due to the Agency under this Agreement, then without prejudice to its other rights and remedies under or in connection with this Agreement or otherwise in law, the Agency reserves the right to (1) charge interest on amounts overdue, where the interest shall accrue from the due date until the date of actual payment (both before and after judgment) at a rate equal to the Bank of England base rate plus 2% per annum, compounded monthly, and this interest shall be calculated on a daily basis and shall be payable on demand (2) immediately suspend work until the Agency has received payment of the overdue amount together with any accrued interest and/or (3) immediately terminate any SOW.
- 9.7. The Client reserves the right to withhold payment of any invoice or part of an invoice where the Client (acting reasonably and in good faith) has a bona fide reason to challenge the validity or accuracy of such invoice. On receipt of any such invoice, the Client shall:
- a. immediately notify the Agency in writing of the reason for such withholding;
 - b. pay the undisputed part of such invoice in accordance with clause 9.3; and
 - c. work promptly and in good faith with the Agency to resolve any such dispute over the relevant invoice.
- 9.8. If any payment of the Fees, Expenses or Third Party Costs is subject to tax (whether by way of direct assessment or withholding at its source), the Agency shall be entitled to receive from the Client such amounts as shall ensure that the net receipt to the Agency of the Fees, Expenses and Third Party Costs after tax in respect of the payment is the same as it would have been were the payment not subject to such tax.

- 9.9. Where a surcharge is levied by a supplier against the Agency due to late payment or late delivery of Materials and this results from late payment or late delivery by the Client, the Client shall immediately reimburse to the Agency the amount of such surcharge, together with any accrued interest charged by the supplier in respect of the overdue amount.
- 9.10. Each party shall pay all monies which are payable by it to the other without any right of set off, abatement or withholding in respect of monies which are due to it or alleged to be due to it from the other party.
- 9.11. (a) Upon the renewal of any SOW, for the Services and Deliverables already scoped in such SOW from the outset, the Agency may adjust the Fees with effect from the start of the renewed term to reflect any increase in the United Kingdom Consumer Prices Index (CPI) over the period since the commencement of the prior term. Such adjustment shall not exceed the percentage increase in the CPI (as published by the Office for National Statistics) measured from the CPI published for the month preceding the start of the prior term to the CPI published for the month preceding the renewal date. For the avoidance of doubt, without prejudice to the foregoing provisions in this Clause 9.11, the Parties will also agree any additional fees for any additional Services or Deliverables.
- (b) The Agency shall provide the Client with written notice of any such adjustment at least fourteen (14) days prior to the renewal date.
- (c) If the CPI is discontinued or materially altered, the parties shall agree in good faith to use a comparable substitute index published by an independent body.

10. Third Party Services and Cost

- 10.1. When third party contracts are involved in the SOW, the Agency acts in all its contracts with third parties with regard to the provision of Services set out in the SOW as a principal at law.
- 10.2. The Agency will invoice the Client in respect of all third-party costs incurred by the Agency on behalf of the Client in performing the Services, subject to the Client approving all such costs in advance in writing, including:
- a. production work required to produce the Deliverables including illustrations, film production, artwork, photography, model fees, recordings, the services of performers, animation, print and post-production work and other content including content management systems (CMS), plug-ins and extensions; and
 - b. all costs incurred in taking legal or other advice, or searches and enquiries, as agreed between the parties from time to time,
- (collectively defined as **"Third Party Costs"**).
- 10.3. The Agency will advise the Client as soon as reasonably practicable of any changes in the estimated cost of items of Deliverables.
- 10.4. In the event that any Third Party Costs require payment in advance or sooner than the payment terms set out in clause 9.3, the Agency will notify the Client as soon as reasonably practicable in advance and the Client shall pay such costs within the period set out in the relevant invoice.

11. Third Party Suppliers: Business Terms and Selection

- 11.1. The Agency may enter into contracts with third party suppliers in respect of Services and Deliverables in accordance with such suppliers' standard or bespoke terms (**"Third Party Contracts"**).
- 11.2. Provided that the Agency has, with the relevant third party's authorisation, notified the Client of any unusual restrictions or unusual contract terms contained in such Third Party Contracts:

- a. the Client hereby acknowledges that its right to use or otherwise benefit from any Services or Deliverables acquired under such Third Party Contracts shall be as set out in such Third Party Contracts;
 - b. any charges or liabilities (to the extent caused by an act or omission of the Client or its Affiliates or any third party acting for or on its or their behalf) for which the Agency is liable under such Third Party Contracts (including cancellation payments) shall be the responsibility of the Client; and
 - c. the Client hereby indemnifies and shall keep the Agency indemnified against any Losses caused by any act or omission of the Client or any of its Affiliates which makes the Agency incur Losses under any such Third Party Contracts.
- 11.3. The Agency shall provide the Client with a copy of any relevant Third Party Contract if requested to do so and if authorised by the relevant third party.

12. Confidentiality

- 12.1. Each of the parties acknowledges that, whether by virtue of and in the course of this Agreement or otherwise, it may receive or otherwise become aware of information relating to the other party, its clients, customers, businesses, business plans or affairs, investment strategy, systems, processes, products or personnel (including personnel of its subcontractors) which information is proprietary and confidential to the other party ("**Confidential Information**").
- 12.2. Confidential Information shall include any document marked "Confidential", or any information which the recipient has been informed is confidential or which the recipient ought reasonably to expect the other party would regard as confidential.
- 12.3. Confidential Information shall exclude information which:
- a. at the time of receipt by the recipient is in the public domain;
 - b. subsequently comes into the public domain through no fault of the recipient, or its personnel (including personnel of its subcontractors);
 - c. is lawfully received by the recipient from a third party on an unrestricted basis;
 - d. is already known to the recipient before receipt; and/or
 - e. is independently developed by the recipient without reference to the Confidential Information.
- 12.4. Each of the parties undertake to maintain the confidentiality of the other party's Confidential Information at all times and to use no less adequate measures than it uses in respect of its own Confidential Information to keep the other party's Confidential Information reasonably secure. Neither party shall at any time, whether during the Term or at any time thereafter, without the prior written approval of the other party, use, disclose, exploit, copy or modify any of the other party's Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the exercise of its rights and/or the performance of its obligations in connection with this Agreement.
- 12.5. Each of the parties undertakes to disclose the other party's Confidential Information only to those of its personnel (including personnel of its subcontractors) and Affiliates to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement.
- 12.6. Each of the parties shall be entitled to disclose this Agreement, within their own organisation, solely for the purposes of identifying which clients or suppliers (as applicable) they have or had a contract with.
- 12.7. Nothing in this clause shall require a party to return or destroy any Data and Materials containing or based on the disclosing party's Confidential Information that the receiving party is required to retain by applicable law, or to satisfy

the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, or any applicable document retention policies, to which it is subject.

12.8. The terms of and obligations imposed by this Clause 12 shall survive the termination of this Agreement for any reason.

12.9. The terms of this Agreement shall supersede and replace any other confidentiality obligations agreed between the parties, whether by way of a non-disclosure agreement or otherwise.

13. Agency Warranties

13.1. The Agency warrants and undertakes that:

- a. it has full power and authority to enter into this Agreement and that by doing so it will not be in breach of any obligation to a third party;
- b. the Agency Personnel who perform the Services are and shall be competent and suitable, whether as to qualifications, experience or otherwise, to provide the Services;
- c. subject to clause 13.4, the use of the Deliverables by the Client in accordance with this Agreement and for the purposes set out in the SOW will not infringe a third party's IPRs; and
- d. to the best of its knowledge and belief and subject to clause 13.4, as at the date of delivery of the Deliverables, the use of the Deliverables in accordance with this Agreement for the purposes set out in the SOW will comply with all Applicable Laws and Regulations, save that where the Client's business involves any industry sector which is subject to its own industry specific regulations or other code, regulation, statute or law (collectively "**Specialist Regulations**") the Client shall be responsible for ensuring that the Deliverables are compliant with such Specialist Regulations.

13.2. Subject to the limitations set out in clause 15 (Liability), the Agency hereby indemnifies the Client against any Losses incurred by the Client as a result of breach by the Agency of its warranty and undertaking in clause 13.1(c).

13.3. All warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise are hereby excluded to the fullest extent permitted by law, including any condition of satisfactory quality or fitness for a particular purpose.

13.4. The Client releases the Agency from any liability under or in connection with this Agreement and hereby indemnifies the Agency against any Losses incurred by the Agency to the extent that such Losses arise as a result of:

- a. any and all changes, modifications or enhancements that the Client makes to the Deliverables without the Agency's prior written consent and/or after the Agency delivers items under any SOW;
- b. the Deliverables infringing third party IPRs, breaching regulations or other laws, where the Agency had previously notified the Client of a specific risk that the Deliverables infringed third party IPRs or breached regulations or other laws and the Agency had obtained the written approval of the Client's wish for the Client to use such Deliverables notwithstanding such notified risk;
- c. the incorporation of Client Materials into the Deliverables provided that the Agency has incorporated and used such Client Materials in the Deliverables in accordance with any instructions given by the Client from time to time;
- d. use of the Deliverables for a purpose or in a manner not authorised by the Agency or the failure of the Client to adhere to the Agency's instructions for the use of the Deliverables; and

- e. use of the Deliverables in combination or operation with any other Materials not supplied or approved by the Agency.

14. Client Warranties

14.1. The Client warrants and undertakes that:

- a. it has full power and authority to enter into this Agreement and that by doing so it will not be in breach of any obligation to a third party;
- b. the Client Materials will not, when used in accordance with this Agreement and any written instructions given by the Client, infringe a third party's IPRs;
- c. to the best of its knowledge and belief, the Client Materials will comply with all Applicable Laws and Regulations including all Specialist Regulations; and
- d. the Client Materials are accurate and complete in all material respects.

15. Liability

15.1. Subject to clauses 15.2 and 15.3:

- a. the Agency's maximum aggregate liability arising under this Agreement for any and all Losses howsoever arising, whether in contract, tort (including negligence), misrepresentation or otherwise, from the acts or omissions of the Agency, Agency's Affiliates and/or Agency Personnel relating to their respective data protection obligations under clause 24 (Data Protection) and any applicable DPA, or any claim by a third party related to the breach of that third party's IPR in connection with the Services and Deliverables, shall be limited to One Million Pounds (and the parties agree that this limit is not on a 'per claim' basis but on an aggregate basis which means it applies to all causes of action, and all linked or continuing claims which shall be treated as being part of the same original cause of action for the purpose of applying this aggregate limit to any and all claims in connection with data protection obligations, any applicable DPA and third party IPR infringement claims as set out in this clause 15.1); and
- b. to the extent any Losses are not covered by Clause 15.1(a), the Agency's maximum aggregate liability arising under this Agreement for any and all other Losses howsoever arising, whether in contract, tort (including negligence), misrepresentation or otherwise, from the acts or omissions of the Agency, Agency's Affiliates and/or Agency Personnel shall be limited to the fees paid to the Agency under the applicable SOW in the twelve months preceding the date on which the claim arose under that SOW (and the parties agree that this limit is not on a 'per claim' basis but on an aggregate basis which means it applies to all causes of action, and all linked or continuing claims which shall be treated as being part of the same original cause of action for the purpose of applying this aggregate limit).

15.2. Nothing in this Agreement shall exclude or in any way limit either party's liability for fraud, death or personal injury caused by its negligence or any other liability to the extent such liability may not be excluded or limited as a matter of law.

15.3. Subject to clause 15.2, in no event will either party be liable under or in connection with this Agreement whether in contract, tort (including negligence), misrepresentation or otherwise for:

- a. loss of actual or anticipated income, revenue or profits;
- b. loss of goodwill or reputation;
- c. loss of anticipated savings;
- d. loss of data;

- e. wasted expenditure; or
 - f. any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.
- 15.4. Where one party ("**Indemnifying Party**") agrees to indemnify and keep the other party ("**Indemnified Party**") indemnified under this Agreement, such indemnity is subject to the Indemnified Party complying with the following process:
- a. the Indemnified Party must promptly notify the Indemnifying Party in writing of such claim;
 - b. the Indemnified Party must not make any admission of liability, settlement or compromise without the prior written consent of the Indemnifying Party;
 - c. the Indemnified Party must give the Indemnifying Party express authority to conduct all negotiations and litigation and to defend and/or settle all litigation arising from such claim, provided that the Indemnifying Party regularly consults the Indemnified Party on the conduct and defence of the claim;
 - d. the Indemnified Party must provide the Indemnifying Party with all available information and assistance in relation to such claim as the Indemnifying Party may reasonably require at the Indemnifying Party's cost and expense; and
 - e. if within ninety (90) days after the Indemnifying Party's receipt of notice of any such claim, the Indemnifying Party fails to take action to defend or settle such claim, the Indemnified Party may at the Indemnifying Party's expense undertake the defence, compromise or settlement of the claim as it sees fit.
- 15.5. Each party shall use reasonable endeavours to mitigate its losses, howsoever arising, under or in connection with this Agreement.
- 15.6. The party against whom any claim for payment of Losses is brought ("**Defaulting Party**") shall not be liable to compensate the other party ("**Aggrieved Party**") to the extent any Losses are caused by the Aggrieved Party's own negligence or Wilful Misconduct.
- 15.7. If the claim being made against the Defaulting Party arises from a third party claim, the Defaulting Party shall not be liable to compensate the Aggrieved Party until the third party claim has been resolved or adjudicated upon pursuant to the applicable dispute resolution procedures set out in the contract between the Aggrieved Party and the third party, and the amount of compensation then payable by the Defaulting Party to the Aggrieved Party shall be determined in accordance with Clause 27 (Governing Law and Jurisdiction).
- 15.8. The provisions of this clause 15 shall survive termination of this Agreement, howsoever arising.

16. Intellectual Property Rights

- 16.1. The Agency acknowledges that ownership of Client Materials and ownership of all IPRs in any Client Materials (including any modifications or adaptations of such Client Materials produced in the course of providing the Services and Deliverables) shall remain vested in the Client or its licensors (as applicable). The Client hereby grants to the Agency a worldwide, non-exclusive, irrevocable, royalty-free, perpetual and sub-licensable licence during the applicable Project Term to use the Client Materials solely for the purposes of providing the Services and Deliverables.

- 16.2. Subject to the remaining provisions of this clause 16 and subject to the Agency receiving payment of all Fees attributable to the Agency Materials, the Agency hereby assigns (and in the case of copyright, by way of a present assignment of future copyright) to the Client the IPRs in the Agency Materials which are capable of being assigned.
- 16.3. The Client acknowledges that all IPRs in the Agency Proprietary Materials shall be owned by and remain the property of and vested in the Agency. Subject to the Agency receiving payment of all Fees attributable to the Agency Proprietary Materials licensed under this clause, the Agency hereby grants to the Client a licence to use only those Agency Proprietary Materials that are embedded or included in the Deliverables, in the Territory, for the period of time and for the purposes set out in the corresponding SOW.
- 16.4. Prior to delivery of the Deliverables, the Agency shall obtain such licences or consents in respect of Third Party Materials as shall be necessary in order that the Client can use such Third Party Materials for the purposes set out in the corresponding SOW. The Agency shall notify the Client of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Materials, and the Client hereby indemnifies and keeps the Agency indemnified against any Losses suffered by the Agency as a result of the Client or its Affiliates breaching any such restrictions.
- 16.5. The Agency agrees, at the Client's request and expense, to take all such actions and execute all such documents as are necessary (in the Client's reasonable opinion) to enable the Client to obtain, defend or enforce its rights in the Deliverables, and shall not do or fail to do any act which would or might prejudice the Client's rights under this clause 16.
- 16.6. To the extent permitted by law and subject to the Agency receiving payment of all Fees attributable to the Agency Materials, the Agency shall ensure that all Moral Rights in the Agency Material included in the Deliverables are waived (or where not lawfully possible to waive Moral Rights, the Agency agrees not to assert any Moral Rights in respect of the Agency Materials). Subject to the Agency receiving payment of all Fees attributable to the Agency Materials, the Agency shall use its reasonable endeavours to ensure that all Moral Rights in Third Party Materials are waived (or where not lawfully possible to waive Moral Rights, to procure that Moral Rights are not asserted in respect of Third Party Materials), but if the Agency cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any Third Party Materials, the Agency will notify the Client and shall obtain the Client's written approval prior to incorporating such Third Party Materials into the Deliverables.
- 16.7. Notwithstanding any of the above or any other agreement signed between the parties or their Affiliates, and save as otherwise expressly provided for in the applicable SOW, the Agency may:
- a. during and after the Project Term and Term, use any Materials, including case studies, training materials, workshops, interviews, and other similar marketing materials. Additionally, the Agency may use information that has already been broadcast, published, distributed, or otherwise made available to the public, provided it does not include the Client's Confidential Information. The Agency may also use the Client's name and logo for the purpose of promoting its work and business, including on the Agency's website, in credentials pitches, in its showreel, on social media platforms and in printed materials;
 - b. retain all know-how obtained in connection with the Services and Deliverables;
 - c. track, use, generate and publish aggregated or anonymised data or reports on trends, benchmarks and usage statistics;
- The Agency shall ensure that any AI platform used does not retain or train on the Client's Data beyond the permitted use under this Agreement and implements appropriate technical and organisational measures consistent with privacy-by-design and data minimisation principles.

The Client acknowledges and agrees that the Agency may use only anonymised and aggregated components of the Client's Data, processed in accordance with privacy-by-design and data minimisation principles, for the purposes of improving the Agency's internal machine learning algorithms and developing, operating and enhancing its products and services. Such anonymised and aggregated data shall not be associated, directly or indirectly, with any identifiable company, Client or end user.

The Client further acknowledges that the Agency may aggregate and anonymise data (including Client's Data) to create statistical, benchmarking or analytical information, and that, as between the parties, the Agency shall own all rights in such aggregated and anonymised data and any derivatives of it. The Agency may use such aggregated and anonymised data for any lawful business purpose, including operating, analysing, improving or marketing its products and services, and may disclose or share such data externally for research, marketing, analytics or other lawful purposes provided that such use does not result in the identification of the Client, any of its group companies or any end user.

- 16.8. During the Term, if the Agency is asked to take part in a competitive pitch or other similar process for the Client, then notwithstanding any of the previous provisions of this clause 16, the Agency shall retain ownership of all IPR in any Materials forming part of the pitch process, save to the extent that the Agency is successful in such pitch and the parties agree that such Materials will be used in a Project set out in a SOW in accordance with this Agreement, in which case the ownership of IPRs in the Materials will be governed by the terms of this Agreement.
- 16.9. The Agency shall not be liable under or in connection with this Agreement for any modifications, adaptations or amendments to any Deliverables made by the Client or by a third party on the Client's behalf, nor in the event that any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to the acts or omissions of the Client and/or Client Personnel.
- 16.10. The terms of and obligations imposed by this clause 16 shall survive the termination of this Agreement, howsoever arising.

17. Termination

- 17.1. This Agreement shall commence on the Effective Date and shall continue for an initial term of **5 years ("Initial Term")**. Upon the conclusion of the Initial Term, this Agreement will automatically renew for successive one-year terms ("**Renewal Terms**") unless either party provides written notice of termination at least **thirty (30)** days prior to the end of the Initial Term or any subsequent Renewal Term. Termination of this Agreement under this clause 17.1 shall not affect any SOWs already in progress, which must be completed in accordance with their terms.
- 17.2. Either party may terminate this Agreement or any Project immediately upon written notice to the other party:
- a. in the event of any material breach of this Agreement by the other party which breach is not remediable or, if remediable, is not remedied within thirty (30) days after the service by the party not in default of a written notice on the defaulting party, specifying the nature of the breach and requiring such breach to be remedied;
 - b. if the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, or is deemed insolvent or unable to pay its debts under the Applicable Laws and Regulations;
 - c. if the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal or enters into any compromise or arrangement with its creditors (other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other party with other companies);

- d. if a petition is filed, or a notice is given, or a resolution is passed or an order is made for or in connection with the winding up of that other party (other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other party with other companies); or
- e. if an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party.

18. Consequences of Termination

- 18.1. Termination of this Agreement under clause 17.1 shall not terminate any individual Projects, which shall continue until complete as set out in the relevant SOW. For the avoidance of doubt, such SOWs shall continue to be governed by the terms of this Agreement notwithstanding its termination.
- 18.2. Upon termination of this Agreement or a Project for any reason:
 - a. the Client shall pay the Agency all Fees, Expenses and Third Party Costs due to the Agency (in accordance with clauses 9 (Fees) and 10 (Third Party Services and Cost), including during the notice period, in respect of any cancelled or terminated Project; and
 - b. each party shall on the reasonable request of the other party promptly deliver or dispose of any and all Materials belonging or relating to the other party (including all Confidential Information) and all copies of the same, which are then in its possession, custody or control and which relate to all affected Projects, and shall on the request of the other party certify in writing that the same has been done.
- 18.3. Provisions of this Agreement which are either expressed to survive its termination or which from their nature or context are contemplated to survive termination shall remain in full force and effect notwithstanding termination of this Agreement. Notwithstanding the generality of the foregoing, the following clauses shall survive termination of this Agreement:
 - a. clause 12 (Confidentiality);
 - b. clause 13 (Agency warranties);
 - c. clause 14 (Client warranties);
 - d. clause 15 (Liability);
 - e. clause 16 (Intellectual Property Rights);
 - f. clause 18 (Consequences of Termination);
 - g. clause 19 (Non-Solicitation);
 - h. clause 21 (Notices);
 - i. clause 26 (General); and
 - j. clause 27 (Governing law and jurisdiction).

19. Non-Solicitation

- 19.1. During the Term and for a further period of six months after its termination, neither party shall (except with the prior written approval of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment or engagement of the other party any person employed or engaged by such other party either in the provision or receipt of any Services or Deliverables, other than by means of a national advertising campaign open to all applicants and not specifically targeted at any of the staff of the other party or the recruitment of any

person through an employment agency where such agency has not been specifically instructed to solicit any staff of the other party.

- 19.2. In the event of a breach of clause 19.1, the party in breach shall pay to the other party an amount that equates to that person's annual salary as liquidated damages, it being agreed by the parties that this provision is reasonable and that the actual damage which would be sustained by the non-breaching party would be impractical and extremely difficult to determine and that the payment of said damages is in no manner punitive.

20. Force Majeure

- 20.1. Neither party shall be liable for any delay in performing or failure to perform its obligations (save for its payment obligations in respect of Services delivered) hereunder to the extent that and for so long as the delay or failure results from any act, event, non-happening, omission or accident beyond its reasonable control (a "**Force Majeure Event**").
- 20.2. Force Majeure Events shall include the following events affecting either party or its personnel (including personnel of its subcontractors):
- a. strikes, lock-outs or other industrial action (other than strikes, lock-outs or other industrial action of any personnel (including personnel of its subcontractors) of the party seeking to rely on the Force Majeure Event);
 - b. civil commotion, riot, invasion, war (whether declared or not), terrorism, or threat of or preparation for war or terrorist attack;
 - c. fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic or other natural disaster;
 - d. impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; and/or
 - e. compliance with any law or governmental order, rule, regulation or direction.
- 20.3. The party whose performance is affected by a Force Majeure Event shall, as soon as reasonably practicable after becoming aware of the Force Majeure Event, provide a written notice to the other party, giving details of the Force Majeure Event, its likely duration and the manner and extent to which its obligations are likely to be prevented or delayed.
- 20.4. If any Force Majeure Event occurs, the date(s) for performance of the affected obligation(s) shall be postponed for so long as is made necessary by the Force Majeure Event, provided that if any Force Majeure Event continues for a period of or exceeding six consecutive weeks, the non-affected party shall have the right to terminate this Agreement immediately on written notice to the affected party. Each party shall use its reasonable endeavours to minimise the effects of any Force Majeure Event.
- 20.5. If any production of the Deliverables is cancelled, delayed or disrupted due to a Force Majeure Event:
- a. the Agency shall use its reasonable endeavours to recover any Third Party Costs relating to the cancelled, delayed or disrupted Deliverables and will account to the Client for any such Third Party Costs it is able to recover;
 - b. the Client will be liable to the Agency and will reimburse the Agency for any Third Party Costs relating to the cancelled, delayed or disrupted Deliverables which the Agency is not able to recover or which the Agency is committed to pay.

21. Notices

- 21.1. A notice given to a party under or in connection with this Agreement shall be in writing and sent to the party at the address given in this Agreement or as otherwise notified in writing to the other party, and addressed to the Managing Director or CEO .
- 21.2. The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand	On signature of a delivery receipt.
Next working day delivery service providing proof of postage	9.00 am on the second Business Day after posting.
Pre-paid airmail providing proof of postage	9.00 am on the fifth Business Day after posting
By email	Notices sent by email will be deemed received immediately after they are sent, provided that the sender does not receive a delivery failure notification or an automated out of office notification.

- 21.3. For the purpose of this clause and calculating deemed receipt all references to time are to local time in the place of deemed receipt.
- 21.4. This clause does not apply to the service of any proceedings or documents related to legal actions or other dispute resolution methods. Such notices will only be considered served if delivered by hand, courier, or processor, with a receipt signature.

22. Assignment and Sub-Contracting

- 22.1. The Agency shall be entitled to subcontract its provision of the Services and/or Deliverables provided that any subcontracting shall not relieve the Agency from its obligations to the Client under this Agreement.
- 22.2. Neither party shall be entitled to assign, novate, transfer, charge, or otherwise dispose of this Agreement, or any SOW entered into pursuant to it, or any of its rights or obligations arising thereunder (each, a “**Transfer**”) without the prior written approval of the other party save in respect of a Transfer to its Affiliate.

23. Third Party Rights

- 23.1. A person who is not (a) a party to this Agreement or (b) an Affiliate, shall have no right to enforce or rely on any term of this Agreement. For agreements governed by English law, this clause shall apply in accordance with the Contracts (Rights of Third Parties) Act 1999.

24. Data Protection

- 24.1. Each party shall comply with the obligations applicable to it under the Data Protection Laws.

25. Anti Bribery

Each party shall:

- 25.1. comply with all applicable anti-bribery and anti-corruption laws, regulations, and guidance issued by relevant governmental authorities ("**Anti-Bribery Laws**"). This includes, but is not limited to, compliance with recognised anti-bribery legislation such as the UK Bribery Act 2010, the US Foreign Corrupt Practices Act (FCPA) and Canada's Corruption of Foreign Public Officials Act (CFPOA);
- 25.2. maintain in place throughout the Term (and enforce where appropriate) its own policies and procedures to ensure compliance with Anti-Bribery Laws;
- 25.3. promptly report to the other party any request or demand for any undue financial or other undue advantage of any kind received by it in connection with the performance of this Agreement; and
- 25.4. ensure that it imposes written terms on any authorised subcontractor appointed pursuant to clause 22 which are at least equivalent to those imposed on the Agency in this clause.

26. General

- 26.1. The failure of either party to enforce or exercise at any time any term or any right under this Agreement does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect that party's later right to enforce or to exercise it.
- 26.2. Except as instructed otherwise in writing, each party consents to the transmission by email, of confidential and other types of documents, correspondence and any other information relating to the execution and performance of this Agreement and the delivery of the Services and/or Deliverables. Each party will be responsible for protecting its own IT systems and, to the fullest extent permitted by law, will not be responsible to the other party on any basis (whether under contract, tort (including negligence) or otherwise) for any Losses arising from the use of the internet by that party or its personnel (including personnel of its subcontractors) to access the networks, applications, electronic data or other systems of the other party.
- 26.3. If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms provided that if any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid.
- 26.4. This Agreement, all SOWs and, if applicable, any DPA (each of which as amended from time to time in accordance with their respective terms, as the case may be) contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. Each of the parties acknowledges and agrees that:
 - a. in entering into this Agreement it has not relied on, and shall have no remedy in respect of, any statement, representation, warranty or understanding other than the statements, representations, warranties and understandings expressly set out in this Agreement; and
 - b. its only remedies in connection with any statements, representations, warranties and understandings expressly set out in this Agreement shall be for breach of contract as provided in this Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.
- 26.5. No modification or variation of this Agreement shall be valid unless it is in writing and signed by each of the parties to this Agreement or by their authorised representatives. Unless expressly set out in this Agreement, no modification or variation of this Agreement shall:
 - a. be construed as a general waiver of any provisions of this Agreement; or

- b. affect any rights, obligations or liabilities under this Agreement which have already accrued up to the date of such modification or waiver. The rights and obligations of the parties under this Agreement shall remain in full force and effect, except and only to the extent that they are so modified or varied.
- 26.6. Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 26.7. Each Party warrants that it has taken all necessary corporate action to authorise execution of this Agreement. This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all the counterparts together shall constitute one and the same instrument. The Parties agree that this Agreement may be executed by electronic signature (including using a digital signature platform) and that such execution shall have the same force and effect as delivery of an original handwritten signature.

27. Governing Law and Jurisdiction

- 27.1. 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 English law.

27.2. Internal escalation

- a. Any issue that may arise concerning this Agreement shall in the first instance be discussed reasonably between senior representatives of the parties as follows: in the case of the Client, the matter may be referred to the sponsor of the Project as set out in the SOW and in the case of the Agency the matter may be referred to the CEO, who shall take such steps as they consider appropriate to attempt to resolve the matter. The parties shall meet their own costs of participating in this dispute resolution procedure.
- b. Subject to the terms of this Agreement, while the dispute resolution procedure referred to in clause a is being followed, each party shall continue to perform its respective obligations in accordance with this Agreement.

27.3. Mediation, arbitration and courts

- a. If the dispute cannot be resolved in accordance with the procedure set out in clause 27.2, the parties will attempt to settle it by mediation in good faith in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure and the mediation will start, unless otherwise between the parties, within 14 days of one party issuing a request to mediate to the other party. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.
- b. The mediation will take place in London and the language of the mediation will be English. The Mediation Agreement referred to in the Model Procedure shall be governed by and construed and take effect in accordance with the substantive law of England and Wales.
- c. If the dispute is not settled by mediation within 14 days of commencement of the mediation or within such further period as the parties may agree, the dispute may, if both parties choose to do so, be referred to and resolved by arbitration or the parties may bring legal proceedings in the courts of England and Wales. If the parties choose arbitration, CEDR shall be the appointing body and administer the arbitration. CEDR shall apply the UNCITRAL rules in force at the time the arbitration is initiated. In any arbitration pursuant to this clause, the number of arbitrators shall be one and the seat or legal place of arbitration shall be London, England.
- d. While the procedure set forth in this clause is being followed, both parties shall continue to perform their respective obligations under this Agreement.

- e. Nothing in this clause shall prevent a party from initiating court proceedings in relation to the dispute, but while the mediation procedures in this clause apply, neither party shall be entitled to issue any other proceedings against the other party in relation to the dispute until the conclusion of the mediation procedures provided for in this clause.

Signed on behalf of the parties by their duly authorised representatives: