



Digital build & consultancy

[www.panlogic.co.uk](http://www.panlogic.co.uk)

## Panlogic: Master Services Contract

Contract: Client Name

Client Contact Name

Client Contact Role

Client Contact Phone Number

Client Contact Email Address

DD Month 20XX

**General guidance note on contract structure**

This contract has been designed to create a flexible framework structure where individual projects are called off by the client (as described in a Scope of Work) under a pre-agreed set of generic general terms and conditions. By adopting a framework or 'master' agreement structure the both parties can agree to implement a series of defined projects over time without the need to re-negotiate the legal terms agreed by them at the outset of the commercial relationship.

Specialised services may merit their own specific additional terms and conditions and these appear in the contract as schedules to the general terms and conditions.

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## FRONT SHEET

This Master Services Agreement ("Agreement") is entered into on the **Date** day of **Month** 20**XX** between:

(1) **OrganisationName** Limited a company registered in England and Wales under Company Number **XXXXXX** whose registered office is at **Address** ("Client"); and

(2) **OrganisationName** Limited a company registered in England and Wales under Company Number **XXXXXX** whose registered office is at **Address** ("Agency").

### OVERVIEW:

- (1) The Client wishes to purchase and the Agency wishes to provide a range of digital services and deliverables as more particularly described in one or more Scopes of Work.
- (2) The parties agree that such digital services and deliverables shall be supplied in accordance with the terms of this Agreement.

### INCORPORATION OF OTHER DOCUMENTS

The following Documents are hereby incorporated into and made a part of this Agreement:

1. [Front Sheet](#)
2. [General Terms and Conditions](#)
3. [Scope of Work](#)

In addition the following Schedules are also incorporated into and made part of this Agreement when selected

Schedules:	Tick to select
1. Software and/or Website Development Services	<input checked="" type="checkbox"/>
2. Hosting and/or Support Services	<input checked="" type="checkbox"/>
3. Consultancy	<input checked="" type="checkbox"/>
4. Data Services	<input checked="" type="checkbox"/>
5. Social Media	<input checked="" type="checkbox"/>
6. Etc.	<input checked="" type="checkbox"/>

**Signatories**

**AS WITNESS WHEREOF** this Contract has been signed the day and year first above written.

Authorised Client Signatory (e.g. a Company Director or Authorised Client Approver) for and on behalf of XXXX:

<b>Signed</b>	
<b>Name</b>	
<b>Position</b>	
<b>Dated</b>	

Authorised Client Signatory (e.g. a Company Director or Authorised Client Approver) for and on behalf of XXXX:

<b>Signed</b>	
<b>Name</b>	
<b>Position</b>	
<b>Dated</b>	

Authorised Signatory for and on behalf of Panlogic:

<b>Signed</b>	
<b>Name</b>	
<b>Position</b>	
<b>Dated</b>	

## GENERAL TERMS AND CONDITIONS

### 1 Definitions & Interpretation

1.1 References to this Agreement include its schedules and unless otherwise indicated, references to clauses, schedules and appendices are to clauses of and schedules to and appendices to this Agreement. Save for any Special Terms, which shall take precedence over the Schedules and General Terms, where any provision contained in the Schedules or a Scope of Work conflicts with any provision of these General Terms the following order of precedence shall apply:

- 1.1.1 Scope of Work
- 1.1.2 Schedules
- 1.1.3 General Terms

1.2 Unless the context otherwise requires references to:

- 1.2.1 a person includes a legal person (such as a limited company) as well as a natural person;
- 1.2.2 the words “include” and “including” shall be construed without limitation; and
- 1.2.3 any enactment includes any subordinate legislation made from time to time under it and is to be construed as references to that enactment as from time to time amended or modified or any enactment for the time being replacing or amending it.

1.3 Words in the singular include the plural and vice versa and words in one gender include any other gender

1.4 A reference to any party includes its successors in title and permitted assigns

1.5 The headings in this Agreement are for ease of reference only and shall be disregarded in construing or interpreting the Agreement.

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

"Acceptance Criteria"	means those criteria (including any specific hurdles), agreed in advance, that will need to be met in order for the Client to accept the Agency's Deliverables;
"Act"	The Data Protection Act 1998 and as amended
"Advertising Regulator"	means the Office of Communications (“Ofcom”), the Advertising Standards Authority (“ASA”), the ASA (Broadcast) and any other UK or EU regulator or statutory or regulatory body relevant to the Deliverables and/or the Services to be provided under this Agreement;
"Affiliates"	means any company, partnership or other entity which at any time directly or indirectly controls, is controlled by or is under common control with either party including as a subsidiary, parent or holding company;
"Associates"	means, in respect of a party to this Agreement, that party's employees, officers, agents, sub-contractors or authorised representatives;
"Authorised Agency Approver"	means those personnel of Agency specified in the applicable Scope of Work who have the authority to contractually bind Agency in all matters relating to this Agreement;
"Authorised Client"	means those personnel of Client specified in the applicable Scope of Work who have

<b>Approver"</b>	authority to contractually bind Client in all matters relating to this Agreement;
<b>"Background Materials"</b>	means Deliverables in existence prior to the date on which it is intended to use them for a Project (including any modification of these for any particular Project) and in relation to which the Intellectual Property Rights are owned by Agency;
<b>"Business Day"</b>	means any day other than: (i) a Saturday, Sunday or public holiday in England; or (ii) any day between 24th December in any year and 1st January in the immediately following year (inclusive);
<b>"Client Data"</b>	Any data provided to Agency by or on behalf of Client
<b>"Client Equipment"</b>	means Client's own computer system being all such hardware, Client Software and/or communications lines (including any public communication lines) required for each Project;
<b>"Client Materials"</b>	means the Data, Client Equipment, Client Software, documents and any other materials or information owned by or licensed to Client that are provided to Agency and/or its Associates by, or on behalf of, Client or are used by Agency and/or its Associates in connection with the provision of the Services;
<b>"Client Software"</b>	means Software owned by or licensed to Client by a third party;
<b>"CMS"</b>	The Content Management System software used by The Agency to provide content management functionality in relation to the Scope of Work
<b>"Consultancy Services"</b>	<p>means the services provided by Agency to Client, which include, but may not be limited to, any/all of the following:</p> <p><i>Strategy</i></p> <ul style="list-style-type: none"> <li>this may include the strategy definition either in relation to the Client organisation as a whole or specifically in relation to the digital outputs and offering of the organisation</li> <li>Change management: this may include the advising Client on how to change their culture(s), system(s) and/or process(es)</li> <li>Payment By Results (PBR): this may include advising Client on the opportunity identification and metrics definition for PBR in relation to the initiative(s) / project(s) defined within the Scope of Work.</li> </ul> <p><i>Requirements</i></p> <ul style="list-style-type: none"> <li>Stakeholder mapping: this may include mapping internal or external Stakeholders, their likely reactions to the initiative(s) / project(s) as defined in the Scope of Work, how to mitigate any issues as a result of any negative reactions from them and how to communicate/liase with them.</li> <li>User/Stakeholder research: this may include undertaking any research with any Stakeholders. This might include, but should not be limited to: focus groups, workshops, telephone interviews, face-to-face interviews, online interviews, online surveys, questionnaires and vox pops.</li> <li>Work-shopping: this may include the convening of appropriate Stakeholders to elicit their insights, knowledge, experience or thoughts about the initiative(s) / project(s) defined within the Scope of Work.</li> <li>Requirements synthesis: this may include drawing together the outputs of any User/Stakeholder research to define a list of Client requirements for the initiative(s) / project(s) defined within the Scope of Work. This may also include grouping, prioritising, phasing and ranking of requirements, both qualitatively and quantitatively.</li> <li>User Personas, User Journeys and User Scenarios: <ul style="list-style-type: none"> <li>This may include the creation of archetypal End Users personas for the initiative(s) / project(s) defined within the Scope of Work.</li> </ul> </li> </ul>



	<ul style="list-style-type: none"> <li>○ This may include mapping User Journeys of how the User Personas would typically interact with the specific initiative(s) / project(s) defined within the Scope of Work.</li> <li>○ This may include mapping User Scenarios of how the User Personas might behave pre-, during and post- any interaction with the initiative(s) / project(s) defined within the Scope of Work.</li> </ul> <p><i>Systems and specification design (inc. prototyping)</i></p> <ul style="list-style-type: none"> <li>• Technical architecture: this may include defining the technical architecture for the initiative(s) / project(s) defined within the Scope of Work.</li> <li>• Functional and non-functional specifications (inc. use cases): this may include defining the functional and non-functional aspects of the initiative(s) / project(s) defined within the Scope of Work.</li> <li>• Acceptance criteria: this may include defining the criteria by which the Client will accept the initiative(s) / project(s) defined within the Scope of Work from the Agency.</li> <li>• Prototyping / Proof of concepts: this may include the creation of any: <ul style="list-style-type: none"> <li>○ Proof of concepts: typically a demonstration where the Client is 'walked through' a mocked-up service, usually showing creative design and page layouts. Final functionality and content are unlikely to be in place and the proof of concept is usually not on the final technical platform.</li> <li>○ Prototypes: typically a partial service on the final technical platform. This may or may not be a demonstrated service. Final creative design, page layouts, functionality and content may or may not be in place.</li> </ul> </li> </ul> <p>in relation to the initiative(s) / project(s) defined within the Scope of Work.</p> <ul style="list-style-type: none"> <li>• User experience: <ul style="list-style-type: none"> <li>○ Information Architecture: this may include the defining of the taxonomy, structure and nomenclature of the initiative(s) / project(s) defined within the Scope of Work.</li> <li>○ Wireframes: this may include the creation of wireframes of components of the initiative(s) / project(s) defined within the Scope of Work. These might be online or not. They are always indicative and never prescriptive of the final service.</li> </ul> </li> </ul> <p><i>Content</i></p> <ul style="list-style-type: none"> <li>• Content strategy: this may include defining the approach that Client needs to take in relation to content for the initiative(s) / project(s) defined within the Scope of Work.</li> <li>• Content audits: this may include defining the content that already exists (i.e. what exists, how it exists etc.) in relation to Client content for the initiative(s) / project(s) defined within the Scope of Work.</li> <li>• Content definition: this may include defining what needs to be exist in relation to Client content for the initiative(s) / project(s) defined within the Scope of Work.</li> <li>• Content generation: this may include the creation of the content defined within the Content definition work above.</li> </ul> <p><i>Procurement</i></p> <ul style="list-style-type: none"> <li>• Procurement definition and leadership: this may include guiding Client through a procurement exercise, including the definition of the procurement process, the writing of any procurement documentation, evaluating and scoring bids, attendance throughout the procurement process and making recommendations as to who should be successful etc.</li> <li>• Build evaluation (inc. compliance): this may include evaluating how any Client services currently operate, to understand whether they operate in a best practice manner and/or comply with existing legislation or regulations.</li> </ul>
"Data"	means Client's computer data (in machine-readable form);

<b>"Data Protection Legislation"</b>	means the law of the Territory and within the EU specifically the EC Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46/EC) and all local laws or regulations giving effect to this Directive.
<b>"Data Services"</b>	means that part of the Services comprising of the processing of Data by Agency as described in Schedule 4;
<b>"Default"</b>	Any act, statement, omission or negligence on the part of Agency in connection with the subject matter of this Agreement in respect of which Agency is legally liable to Client, whether in contract or tort, and a number of Defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such Default
<b>"Deliverables"</b>	means the Software, data, documentation and any other materials to be provided by Agency and/or its Associates under this Agreement as specified in a Scope of Work but excluding any Client Materials which have not been adapted or modified by or on behalf of Agency and/or its Associates in the course of the Services;
<b>"Effective Date"</b>	means the earlier of the first Project Commencement Date or the date on which the Services commenced for the first Project;
<b>"End Users"</b>	means those people or organisations that will be the users of the initiative(s) / project(s) as defined within the Scope of Work;
<b>"Foreground Materials"</b>	means those Deliverables created by Agency or commissioned by Agency from a third party in connection with a Project, (including any materials adapted, modified or derived from the Client Materials), together with the GUI;
<b>"Front Sheet"</b>	means the front sheet to this Agreement;
<b>"General Terms"</b>	means these general terms and conditions but excluding the Schedules;
<b>"GUI"</b>	means in relation to any Software application or asset, the graphical user interface of such Software application or asset consisting of any textual, graphical and design elements, including the positions of such elements on the screen but excluding the functionality of such Website and the software underlying such textual, graphical; and design elements;
<b>"Hosting and/or Support Services"</b>	means that part of the Services comprising of website and/or database hosting and/or Software technical support as described in Schedule 2;
<b>"Independent Auditor"</b>	means a suitably qualified and independent auditor;
<b>"Intellectual Property Rights"</b>	means the following rights, wherever in the world enforceable including all reversions and renewals: <ul style="list-style-type: none"> <li>(i) any patents or patent applications including any applications for same;</li> <li>(ii) any trade marks (whether or not registered) including any applications for registration of the same;</li> <li>(iii) inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration;</li> <li>(iv) copyright or design rights (whether registered or unregistered);</li> <li>(v) database rights;</li> <li>(vi) any goodwill in any trade or service name, trading style or get-up; and</li> <li>(vii) any and all other intellectual or proprietary rights.</li> </ul>

<b>"Losses"</b>	means losses, damages, liabilities, claims, penalties, costs and expenses (including legal and other professional expenses);
<b>"Online Media Planning and Buying and/or Online Marketing Services"</b>	means that part of the Services comprising of the planning and/or purchasing of online media and/or the provision of online marketing services as described in Schedule 3;
<b>"Open Source Software"</b>	means any Software which is developed, tested, or improved through public collaboration and distributed with the idea that it must be shared with others, ensuring an open future collaboration;
<b>"Personal Data"</b>	As set out in section 1(1) of the Act
<b>"Project"</b>	means any project(s) agreed between the parties from time to time under which Agency is to perform Services and supply Deliverables to Client, as more fully described in this Agreement and the applicable Scope of Work;
<b>"Project Commencement Date"</b>	means the commencement date of each Project as set out in the corresponding Scope of Work;
<b>"Project Term"</b>	means the period during which the Services for each Project will be provided as specified in the applicable Scope of Work;
<b>"Rate Card"</b>	means Agency's rate card (if applicable) set out in the applicable Scope of Work;
<b>"Records"</b>	means such accounts and records maintained by Agency of all expenditure which is reimbursable by Client under this Agreement and as are reasonably necessary for the purpose of enabling Client to conduct an audit of that expenditure including evidence to support any expenditure related to the purchasing of media;
<b>"Related Company"</b>	In relation to either party, any subsidiary or holding company of that party or any body corporate with a holding company in common with that party, where "subsidiary" and "holding company" have the meanings set out in section 736, Companies Act 1985
<b>"Scope of Work"</b>	means one or more documents in the form set out in the Appendix to the Front Sheet as agreed and signed by the parties from time to time containing a description of each Project.
<b>"Services"</b>	means the Services to be supplied by Agency under this Agreement;
<b>"Service Levels"</b>	means any service levels related to the Services set out in this Agreement or a Scope of Work;
<b>"Software"</b>	means computer programs in object code and/or source code format;
<b>"Software and/or Website Development Services"</b>	means that part of the Services comprising of the development of Software and/or a Website as described in Schedule 1;
<b>"Special Terms"</b>	means any terms specifically designated as varying these General Terms or the terms of any schedule, as set out in the applicable Scope of Work.
<b>"Specification"</b>	means the description of the Services and/or Deliverables set out in the applicable Scope of Work;
<b>"Stakeholders"</b>	means any people or organisations, either internal or external to the Client organisation, that may need to be consulted with in order to give their insights, knowledge, experience or thoughts about the initiative(s) / project(s) defined within the Scope of Work. Stakeholders may or may not also be End Users;

<b>"Term"</b>	means the period commencing on the Effective Date and ending on the later of the effective date of termination of this Agreement or the termination or expiry of the last Project Term;
<b>"Territory"</b>	means the United Kingdom, unless as otherwise expressly specified in the applicable Scope of Work;
<b>"Third Party Materials"</b>	means Deliverables the Intellectual Property Rights in which are owned by or are licensed by a third party but excluding any third party elements of the Foreground Materials and any Open Source Software (it includes any third party system, technology or other inter-related device (technical or otherwise) that interacts with the Scope of Work);
<b>"Transfer Point"</b>	means the point in time at which a Transferring Employee transfers to a Successor Agency or Client under TUPE (or, if the context allows, would transfer if TUPE were to apply);
<b>"Transferring Employee"</b>	means an employee who transfers (or, if the context admits, would transfer) to a Successor Agency (or Client) under TUPE;
<b>"Website"</b>	means any website(s) identified in a Scope of Work;
<b>"Works"</b>	The Scope of Work as detailed in Appendix X and can be found, at the time of this agreement, at <a href="http://www.XXXX.YYY">www.XXXX.YYY</a>

## 2 Appointment & Scope of Work

- 2.1 Subject to the terms and conditions of this Agreement, Agency shall from time to time during the Term perform the Services and supply the Deliverables to Client. Details of each Project agreed between the parties from time to time shall be set forth in a Scope of Work which shall be prepared by Agency with such assistance from Client as Agency may reasonably require.
- 2.2 The relationship between the parties is **non-exclusive/exclusive** and the Client shall **not** be entitled to appoint any other Agency to perform services and deliver deliverables.
- 2.3 Upon approval of the Scope of Work by both parties, the terms of the Scope of Work shall be binding upon the parties and shall be incorporated into and form part of this Agreement.
- 2.4 Agency shall not be obliged to supply any Services and/or Deliverables specified in a Scope of Work until Agency has signed such Scope of Work.
- 2.5 Agency shall only be obliged to supply Services and Deliverables as expressly set out in a Scope of Work. For the avoidance of doubt, unless otherwise agreed in writing by Agency, Client shall be solely responsible for all trademark, design and patent searches and/or enquiries relating to the Deliverables and notwithstanding any other provision of this Agreement, Agency shall have no liability to Client under or in connection with this Agreement for the result of such enquiries and/or searches.
- 2.6 For the avoidance of doubt, Agency shall not be liable under or in connection with this Agreement for any modifications, adaptations or amendments to any Deliverables made by Client or by a third party on 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 Client and/or its Associates.

### 3 Term

- 3.1 This Agreement shall have effect on and from the Effective Date and, subject to the termination terms, shall continue in full force for a minimum period of **XX months/years** (the “Initial Term”) unless or until terminated by either party in accordance with the terms.
- 3.2 Each Project shall commence on the Project Commencement Date and shall, subject to earlier termination in accordance with the terms, continue in operation for the Project Term.

### 4 Client's Obligations

- 4.1 Client shall be responsible for:
- (a) specifying fully and clearly to Agency its requirements from the Services and Deliverables, including a description of the services required and the dates by which such services or each stage of the proposed services are to commence and finish; and
  - (b) providing to Agency all information reasonably required by Agency to enable it to fulfil its obligations under this Agreement and ensuring that all such information is accurate and up to date.
- 4.2 If the performance of any Services hereunder requires the use of any Client Materials then Client agrees to provide Agency promptly (and in any event no later than any date agreed by the parties) with the Client Materials at no charge.
- 4.3 Client acknowledges that Agency's ability to perform its obligations under this Agreement is dependent on Client or Client's Associates fulfilling their obligations, including but not limited to those under clauses 4.1 and 4.2. To the extent that Client or Client's Associates do not fulfil their obligations under this Agreement, then (without prejudice to Agency's other rights and remedies) Agency will be relieved of its obligations to Client to the extent that Agency is prevented from performing the Services in accordance with this Agreement and Agency shall not be liable for any costs, charges, damage or losses of whatever nature sustained by Client arising directly from any failure of Client or Client's Associates to fulfil their obligations under this Agreement.

### 5 Service Delivery

- 5.1 Agency acknowledges that Client is relying on Agency's skill, expertise and experience in the performance of the Services hereunder. Accordingly, Agency shall be responsible for specifying to Client to allow Client to supply to Agency, so far as is available to Client, such Client Materials as are reasonably required by Agency for the purposes of performing the Services. Agency shall review all Client Materials supplied by Client to Agency promptly on receipt and shall promptly following receipt notify Client of any further materials reasonably required by Agency for the purposes of performing any Services.
- 5.2 Agency shall:

- 5.2.1 apply such time, attention, resources, trained personnel and skill as may be necessary or appropriate for its proper performance of the Services;
- 5.2.2 comply with all lawful and reasonable directions regarding the Services communicated to it from time to time by Client;
- 5.2.3 keep Client Materials safe and secure while they are in the possession or control of Agency; and
- 5.2.4 deliver all Deliverables by the dates set out in the applicable Project Plan or any other delivery date(s) agreed by the parties in writing.
- 5.3 If at any time Agency becomes aware that it will not (or is unlikely to) perform the Services or deliver Deliverables by any date set out in the applicable Project Plan or as otherwise agreed by the parties in writing, Agency shall immediately notify Client of such delay and provide Client details of the reasons for it.
- 5.4 Agency shall as soon as possible and in any event not later than **seven (7) days** after notification under Clause 5.3, give Client full written details of the reasons for the delay and the consequences of the delay.
- 5.5 Notwithstanding the cause of the delay, Agency shall deploy additional resources and take reasonable steps to eliminate or mitigate the consequences of the delay and, if required, shall submit a Change Order under Clause 8.

## 6 Acceptance

- 6.1 Upon delivery to Client of completed Deliverables, Client shall examine such Deliverables and notify Agency in writing within the time period set out in the Project Plan, or such other date agreed by the parties in writing, as to whether it accepts such Deliverables (“**Accepts**”) or rejects them if, in Client’s reasonable opinion, they materially fail to conform to the Specification and/or the Acceptance Criteria and/or this Agreement as set out in the Scope of Work.
- 6.2 If Client rejects Deliverables (or any part thereof) under Clause 6.1 it shall inform Agency in writing as to the reasons for such rejection, and, if reasonable, shall require Agency to correct and resubmit such Deliverables within **seven (7) days** (or such other period as agreed by the parties in writing) for re-examination in accordance with the provisions of this Clause 6, at no extra cost to Client.
- 6.3 Any Deliverables resubmitted by Agency pursuant to Clause 6.2 above shall be subject to the procedure set out in Clause 6.1. If, in Client’s reasonable opinion, the resubmitted Deliverables (or any part thereof) do not materially conform to the Scope of Work and/or this Agreement, Client shall at its discretion and without prejudice to its rights and remedies set out in this Agreement, be entitled to:
- 6.3.1 accept such part of the resubmitted Deliverables (or any part thereof) as Client may decide and, if applicable, pay a pro-rated reduction in the Fees in respect of such part; or
- 6.3.2 require Agency to correct the defects identified at no extra cost to Client by such date agreed by the parties, in which case the revised Deliverables shall be subject to all the provisions of this Agreement (including Clause 6); or
- 6.3.3 terminate this Agreement and/or the applicable Scope of Work immediately for the irremediable breach of Agency.
- 6.4 The parties acknowledge that unless otherwise agreed in writing, all notices under this Clause 6 may be sent by an Authorised Client Approver by email.

## 7 Personnel

- 7.1 If at any time during the Term, Client reasonably considers that the performance or conduct of Agency's Associates engaged in the provision of the Services is unsatisfactory, Client shall have the right to require the provision of, and Agency shall promptly provide, replacement Associates.
- 7.2 Agency shall instruct all Associates who perform any Services at Client's premises to become familiar with and to abide by all health and safety laws and regulations, and any security, safety and other codes of practice for contractors and employees applicable at such premises.
- 7.3 Agency acknowledges that none of its Associates who perform the Services shall become an employee of Client and Client shall not have any obligation to pay any such Associate's salary, national insurance, social security or any other amounts required by law or by contract to be paid to or in respect of any such personnel by his or her employer. Agency shall effect and maintain in force for the benefit of Client and itself full employer's liability insurance in respect of any such Associates who are employees of Agency.

## 8 Amendments

- 8.1 At any time during the Term Client may request, or Agency may recommend, changes to all or any part of a Project(s) by delivering a change order to the other party and such further information as that party may reasonably require (a "Change Order").
- 8.2 A Change Order originating from Client shall be a "Client Change Order" and a Change Order originating from Agency shall be an "Agency Change Order". Upon receiving a Client Change Order and prior to issuing a Agency Change Order, Agency shall assess the effects upon the Project should the proposed change be implemented, including (without limitation) assessing the anticipated impact of the proposed change on the Services and/or Deliverables and/or any other aspect of the Project and the timescales for the performance thereof and any change in the Fees and Expenses and other charges payable to Agency. Agency shall provide Client with a written notice setting out the results of such assessment (a "Change Assessment Notice") within **seven (7) days** of receipt of a Client Change Order, and immediately on production of an Agency Change Order.
- 8.3 If, after Agency has delivered the Change Assessment Notice under Clause 8.2, Client wishes to proceed with any change, Client will approve the Change Assessment Notice and return it to Agency. A Change Assessment Notice approved by Client shall constitute a written amendment to this Agreement in accordance with Clause 28.7.
- 8.4 Agency shall be entitled to charge Client at the rates specified in the Rate Card (or if no Rate Card is specified at its standard hourly rates) for the time spent in assessing a Client Charge Order and preparing the Change Assessment Notice relating to such Client Change Order.
- 8.5 Pending approval of any change, Agency shall (unless otherwise agreed) continue to perform and be paid for the Services as if such change had not been requested.



## 9 Approvals and Authority

- 9.1 Any reference in this Agreement to Client's "**approval**" shall mean approval by an Authorised Client Approver and any reference in this Agreement to Agency's "**approval**" shall mean approval by an Authorised Agency Approver.
- 9.2 For the purposes of this Agreement "**approval**" shall be signified by:
- 9.2.1 any fax, letter, proposal or purchase order from Client bearing the signature of an Authorised Client Approver or any fax, letter or proposal from Agency bearing the signature of an Authorised Agency Approver;
  - 9.2.2 e-mail emanating from the individual business e-mail address of an Authorised Client Approver or email emanating from the individual business email address of an Authorised Agency Approver; or
  - 9.2.3 the signature of an Authorised Client Approver on Agency's documentation or the signature of an Authorised Agency Approver on Client's documentation.
- 9.3 Client's approval of copy, layouts or artwork to be produced in any media including electronic media will be Agency's authority to purchase third party services and/or materials and prepare proofs. Client's approval of proofs will be Agency's authority to proceed with the production and distribution of the associated Deliverables.
- 9.4 Client's approval of estimates or quotations for creative, technical and production costs will be Agency's authority to enter into contracts with third parties for the supply of those items.
- 9.5 Client's approval of Functional Specification will constitute approval that the solution as specified will meet their organisational objectives.

## 10 Fees

- 10.1 The Client shall pay Agency the fees calculated for a Project and/or pursuant to a Retainer in accordance with the terms of the applicable Scope of Work (the "**Fees**").
- 10.2 The terms of remuneration set out above do not cover the performance of Services or the use of Deliverables outside the Territory. If such Services or usages are required additional Fees will be payable.
- 10.3 In addition to the Fees, Agency will invoice Client in respect of all reasonable expenses (e.g. travelling, hotel and subsistence expenses) incurred by Agency in connection with the supply of the Services (the "**Expenses**") provided that such Expenses are in accordance with Client's expenses policies set out in the applicable Scope of Work, or have received Client's prior approval.
- 10.4 The Fees and Expenses will be invoiced in accordance with the payment terms set out in the applicable Scope of Work and shall be payable within **thirty (30) days** of the date of the relevant invoice, or such other period as the parties may agree in the applicable Scope of Work.
- 10.5 All sums stated in this Agreement or in any Scope of Work, quotation or estimate exclude VAT (unless otherwise stated) which shall also be payable by Client at the rate prevailing from time to time.



- 10.6 Where Fees have been calculated by reference to agreed time allocations for particular Services, any Services conducted in excess of such time allocations set out in the applicable Scope of Work will be approved in advance by Client and charged to Client using the hourly rates set out in the Rate Card.
- 10.7 In the event that Client fails to make any payment properly due to Agency under this Agreement, Agency shall be entitled to charge Client interest on such overdue sum at the rate of 5% above the base rate of XXX Bank in force from time to time calculated from the due date up to the date of payment.
- 10.8 Agency shall be solely responsible for all taxes, national insurance or other withholdings or contributions which may be payable out of, or as a result of the receipt of any Fees or other monies paid or payable in respect of, the Services.
- 10.9 All payments to be made by Client under this Agreement shall be paid free and clear of any deductions, withholdings for, or on account of, tax, set-offs or counterclaims, except any deduction or withholding which is required by law.
- 10.10 If Client is overdue with any payment hereunder, then without prejudice to Agency's other rights or remedies:
- 10.10.1 Agency shall have the right to immediately suspend performance of the Services until Agency has received payment of the overdue amount together with any accrued interest; and/or
- 10.10.2 Agency shall have the right to terminate the applicable Scope of Work immediately upon written notice to Client.
- 10.11 The Service Charges outlined in the schedules shall be subject to an annual increase of no more than 4% above RPI in any one calendar year. The date for annual review will be the XX Month March 20XX.
- 10.12 Unless otherwise stated, all third party costs are not covered by the pricing schedule within this document and may increase at a percentage rate defined by the third party
- 10.13 Client will pay amounts equal to any VAT resulting from this Agreement on receipt of Agency's invoice.

## 11 Third Party Services & Costs

- 11.1 In addition to the Fees and Expenses Agency will invoice Client in respect of the following pre-approved third party costs incurred by Agency on behalf of Client in performing the Services:
- 11.1.1 the cost of all third party production or technical work required to produce the Deliverables;
- 11.1.2 the cost of media purchased on behalf of Client;
- 11.1.3 any other third party costs approved by Client (e.g. software licences)

(collectively defined as "Third Party Costs").

## 12 Third Party Suppliers:

- 12.1 Business Terms & Selection

The Agency shall use its best endeavours to ensure the rights and liabilities as between Client and Agency in respect of third party Services and Deliverables shall correspond to those between Agency and such suppliers under such conditions, including any rights of amendment, omission and cancellation.

12.2 Software Development Kits (SDK), Application Programming Interfaces (API), Runtime Development Environment (RDE) and Integrated Development Environment (IDE)

12.2.1 The Agency shall not be liable for any Third Party constraints such as the changing of SDKs, APIs, RDEs and/or IDEs mid-way through a Project;

12.2.2 At the outset of a Project a particular version of an SDK, an RDE and an IDE will be identified to develop on. If the Third Party release new version of these during the duration of the Project, Agency will not be liable for any updates required to adopt these latest versions; and

12.2.3 Should any update be required Client and Agency will come to a commercial arrangement to facilitate the update.

## 13 Confidentiality

13.1 Each of the parties acknowledges that, whether by virtue of and in the course of this Agreement or otherwise, it shall receive or otherwise become aware of information relating to the other party, its clients, customers, businesses, business plans or affairs, which information is proprietary and confidential to the other party ("**Confidential Information**").

13.2 Confidential Information shall include any document marked "**Confidential**", or any information which the recipient has been informed is confidential or which it ought reasonably to expect the other party would regard as confidential.

13.3 Confidential Information shall exclude information which:

13.3.1 at the time of receipt by the recipient is in the public domain;

13.3.2 subsequently comes into the public domain through no fault of the recipient, its officers, employees or agents;

13.3.3 is lawfully received by the recipient from a third party on an unrestricted basis;

13.3.4 is already known to the recipient before receipt hereunder;

13.3.5 The receiving party considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on terms protecting the information; and/or

13.3.6 A disclosing party has given its consent in writing.

13.4 Each of the parties undertake to maintain the confidentiality of the other party's Confidential Information at all times and to keep the other party's Confidential Information secure and protected against theft, damage, loss or unauthorised access. Neither party shall at any time, whether during the term of this Agreement or at any time thereafter, without the prior written consent 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 hereunder.

13.5 Each of the parties undertakes to disclose the other party's Confidential Information only to those of its Associates to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement.

- 13.6 Neither party shall be in breach of this Clause 13 if it discloses the other party's Confidential Information in circumstances where such disclosure is required by law, regulation or order of a competent authority, provided that the other party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.
- 13.7 Each party shall indemnify the other from and against all losses, damages, costs, liabilities and expenses (including legal expenses) arising out of or in connection with the other party's breach of this Clause 13, including breach by each party's Associates.
- 13.8 The terms of and obligations imposed by this Clause 13 shall survive the termination of this Agreement for any reason
- 13.9 Both parties agree to joint press releases outlining the work to be carried out (ignoring the value of the project, unless otherwise agreed) to be distributed to an agreed media list and subject to Client's approval procedure.

## 14 Agency Warranties

- 14.1 Agency warrants and undertakes that:
- 14.1.1 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;
  - 14.1.2 the Associates who perform the Services are and shall be competent and suitable, whether as to qualifications, experience or otherwise, to provide the Services;
  - 14.1.3 the Services will be carried out in a competent and professional manner and with reasonable skill and care, strictly in accordance with the terms of this Agreement;
  - 14.1.4 on the date of delivery to Client, the Deliverables will comply in all material respects with their Specifications and/or this Agreement;
  - 14.1.5 the Deliverables will not, when used in accordance with this Agreement, to the best of the Agency's knowledge and belief, infringe the Intellectual Property Rights and shall comply with all applicable laws and regulations in the Territory; and
  - 14.1.6 unless otherwise set out in the applicable Scope of Work, in respect of the rights assigned and granted by Agency in Deliverables, Agency shall, prior to delivery to Client, obtain all Intellectual Property Rights in the Deliverables and/or all necessary licences, releases or permissions (as applicable) signed by all relevant persons and the irrevocable right for Client to use the Deliverables without further payment.
  - 14.1.7 it will designate a Point of Contact who will be its principal representative with Client on matters related to the management and performance of Agency responsibilities under this Agreement.
- 14.2 The express terms of this Agreement are in lieu of all Agency's warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, including any condition of satisfactory quality or fitness for a particular purpose whether or not any purpose has been notified to Agency, all of which are hereby excluded to the fullest extent permitted by law.

## 15 Client Warranties

- 15.1 Client warrants and undertakes that:
- 15.1.1 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;
  - 15.1.2 the Client Materials will not, when used in accordance with this Agreement, infringe the Intellectual Property Rights and shall comply with all applicable laws and regulations;
  - 15.1.3 the Client Materials are accurate and complete in all material respects;
  - 15.1.4 it shall not obtain or attempt to obtain access to or interfere with any programs or data of Agency or of any other client of Agency in the possession of Agency;
  - 15.1.5 it will perform its obligations under this Agreement with reasonable care and skill;
  - 15.1.6 appoint a "Client Co-ordinator" who will be Client's principal representative and point of contact with Agency on matters related to the management and performance of Client's responsibilities under this Agreement;
  - 15.1.7 it will comply with the operating, management and control processes agreed between the parties in respect of the Services;
  - 15.1.8 due to the nature of U.S. patent law, it excludes Agency from any U.S. patent infringements
  - 15.1.9 it has all the necessary consents for Agency to process any data that can uniquely identify an individual ("Personal Data") in accordance with Client's instructions; and
  - 15.1.10 it is not intended for the Transfer of Undertakings Protection of Employees Regulations 2006 to apply to this contract or to the transfer of the business to The Agency, but in the event that there is any claim against Agency by a previous agency employee appointed by Client under these Regulations then Client hereby indemnifies Agency for any costs, fees, liabilities.

## 16 Liability

- 16.1 Subject to sub-Clause 16.2 each party's maximum aggregate liability under or in connection with this Agreement (including any indemnity contained in this Agreement), whether in contract, tort (including negligence) or otherwise, shall not exceed the total of the Fees paid during the previous 12 months and shall in no circumstances exceed £250,000.
- 16.2 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 the same may not be excluded or limited as a matter of law.
- 16.3 Subject to sub-Clause 16.2, in no event will either party be liable under or in connection with this Agreement for loss of actual or anticipated income or profits, loss of goodwill or reputation, loss of anticipated savings, loss of data or for 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.
- 16.4 Agency shall not be liable to Client for any loss arising out of any failure by Client:
- 16.4.1 to input and upload to the Scope of Work accurate and complete data
  - 16.4.2 to provide always-on access to integrated third party systems

- 16.4.3 to perform its obligations under this Agreement
- 16.4.4 to keep full and up-to-date security copies of the computer programs and data it uses in accordance with best computing practice.

## 17 Insurance

- 17.1 During the Term, and for at least **3 years** thereafter Agency shall take out and maintain insurance policies to the value sufficient to meet its liabilities under or in connection with this Agreement. Upon Client's request Agency will provide Client with evidence that such insurance is in place.
- 17.2 The Client acknowledges and agrees that nothing in this Agreement shall place any obligation upon the Agency to obtain insurance cover in relation to risks arising from terrorism or military action and the Agency shall not be liable to the Client under this Agreement for any loss of any kind arising from terrorism or military action.

## 18 Intellectual Property Rights

- 18.1 Unless otherwise expressly provided for in a Scope of Work or the Schedule(s) the following provisions shall apply:
  - 18.1.1 Agency acknowledges that ownership of (including, without limitation, ownership of all Intellectual Property Rights in) any Client Materials, including any modifications or adaptations of such Client Materials produced in the course of the Services, shall remain vested in Client or its licensors. Client hereby grants Agency a non-exclusive licence during the applicable Project Term to use the Client Materials solely for the purposes of providing the Services;
  - 18.1.2 subject to the remaining provisions of this Clause 18 and subject to Agency receiving payment of all Fees at the end of the Term attributable to the Foreground Materials assigned under this clause, Agency shall assign at the end of the Term with full title guarantee, free of all encumbrances and in the case of copyright, by way of a present assignment of future copyright, all of the Intellectual Property Rights in the Foreground Materials, together with the right to sue for past infringement of the Intellectual Property Rights in the Foreground Materials;
  - 18.1.3 Client acknowledges that all Intellectual Property Rights in the Background Materials shall be owned by and remain the property of and vested in Agency. Subject to Agency receiving payment of all Fees attributable to the Background Materials licensed under this clause, Agency grants during and at the end of the Term to Client a world-wide, perpetual, irrevocable, non-exclusive, assignable, royalty-free licence (with full right to sublicense) to use, reproduce, exploit, modify, alter or integrate the Background Materials with other works and products without restriction;
  - 18.1.4 Client acknowledges that ownership of (including, without limitation, ownership of all Intellectual Property Rights in) any Third Party Materials shall remain vested in Agency's licensors. Subject to clause 18.1.5 and subject to Agency receiving payment of all Fees attributable to the Third Party Materials licensed under this clause, Agency shall grant to Client a world-wide, perpetual, irrevocable, non-exclusive, assignable, royalty-free licence (with full right to sublicense) to use, reproduce, exploit, modify, alter, integrate with other works without restriction;

- 18.1.5 the Intellectual Property Rights in Deliverables comprising of creative work including musical compositions, musical recordings, photographs, and radio, TV and cinema commercials passes to Agency under standard forms of agreement. As these place restrictions on future usage, assignments or the licensing of Intellectual Property Rights to Client in such Deliverables will be subject to the rights of third parties and will be made only by special arrangement on terms indemnifying Agency against subsequent claims by third parties;
- 18.1.6 Agency agrees, at Client's request and expense, to take all such actions and execute all such documents as may in Client's opinion be reasonably necessary to enable 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 Client's rights under this Clause 18.
- 18.2 Notwithstanding any of the above and save as otherwise expressly provided for in a Scope of Work or the Schedule(s), Agency shall:
- 18.2.1 be able during and after the term of this Agreement to use any Deliverables for the purpose of promoting its own business;
- 18.2.2 retain all Intellectual Property Rights in any material contained in any presentation made in competition with any other agency in the event of Agency's presentation being unsuccessful;
- 18.2.3 shall retain all know how obtained in connection with the Services and nothing in this Agreement shall prevent Agency from using any know how, methodologies, ideas or concepts acquired before or during the performance of the Services for any purpose, subject always to Agency's obligations of confidence to Client under Clause 13; and
- 18.2.4 save with the written consent of Agency, Client shall not at any time other than in Client's above or below the line advertising or on the packaging of Client's products, use or license any use outside the Territory of any cartoon figure, model or other character whose visual appearance has been created exclusively for Client by Agency or its Associates. Agency's consent for any other use of such characters shall not be unreasonably withheld, but where income is to be generated by, for example, activities in the nature of character merchandising, Agency's consent will be conditional on prior agreement between the parties and where appropriate with its Associates, on reasonable fees or royalties.
- 18.3 Agency shall indemnify Client from and against all losses, damages, costs, liabilities and expenses (including legal expenses) arising out of or in connection with any third party demand, claim, action or allegation that the performance of the Services and/or the use of or dealing with any Deliverable infringes the Intellectual Property Rights or any other right of a third party or is contrary to applicable law (a "Claim") and, which is subject to a final judgment or an agreed settlement. Client shall be responsible for: (i) promptly notifying Agency in writing of such Claim; (ii) giving Agency express authority to conduct all negotiations and litigation, and to defend and/or settle all litigation, arising from such Claim, provided that Agency regularly consults Client on the conduct and defence of the Claim and that Agency only settles any such claim having obtained prior written approval from Client which shall not be unreasonably withheld; and (iii) providing Agency with all available information and assistance in relation to such Claim as Agency may reasonably require at Agency's expense.
- 18.4 If within **ninety (90) days** after Agency's receipt of notice of any Claim, Agency fails to take action to defend the same, Client may at Agency's expense undertake the defence, compromise or settlement of the Claim. Upon the assumption of the defence of the Claim, Client may defend compromise or settle the Claim as it sees fit.

18.5 Without limitation to the foregoing, in the event that the performance of the Services hereunder and/or the use of or dealing with any Deliverable infringes the Intellectual Property Rights or any other right of a third party, Agency shall at Client's sole election: (i) procure for Client the right to continue to receive the Services (and use the Deliverable(s)) in question, free of any liability for such infringement; or (ii) modify the Services (including the Deliverables) in question so that they become non-infringing while otherwise complying with the requirements of this Agreement; or (iii) substitute the Deliverable(s) in question with functionally equivalent non-infringing Deliverable(s).

18.6 The terms of and obligations imposed by this Clause 18 shall survive the termination of this Agreement for any reason.

## 19 Non-Solicitation

Each party undertakes that it shall not during the term of this Agreement and for a period of **six (6) months** following its expiry or termination (howsoever occasioned) employ, solicit or contract the services of any person who is or was employed or engaged by the other party in the provision of the Services or the provision of goods and services under any other Agreement between Agency and Client.

## 20 Force Majeure

20.1 Neither party shall be liable for any delay in performing or failure to perform its obligations 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 but not be limited to the following:

- 20.2.1 strikes, lock-outs or other industrial action (other than strikes, lock-outs or other industrial action of any Associates of the party seeking to rely on the Force Majeure Event);
- 20.2.2 civil commotion, riot, invasion, war (whether declared or not) or threat of or preparation for war;
- 20.2.3 fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
- 20.2.4 impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
- 20.2.5 compliance with any law or governmental order, rule, regulation or direction.

20.3 Any failure to perform or delay in performance by any sub-contractor of Agency shall not be a Force Majeure Event unless Agency was itself subject to a Force Majeure Event.

20.4 The party whose performance is affected by a Force Majeure Event shall, within **two (2) Business Days** of 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.



- 20.5 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 **two (2) months**, the non-affected party shall have the right to terminate this Agreement forthwith on written notice to the affected party. Each party shall use its reasonable endeavours to minimise the effects of any Force Majeure Event.
- 20.6 During the period for which any Force Majeure Event preventing or delaying Agency's performance continues, Client may engage one or more third parties of its choice to supply the Services and Deliverables that Agency is unable to supply (or is unable to supply within agreed timescales) and Client shall no longer be liable to pay Agency the Fees and Expenses related to the Services and Deliverables so substituted.

## 21 Notices

- 21.1 Any notice, invoice or other communication which either party is required by this Agreement to serve on the other party shall be sufficiently served if sent to the other party by registered post or recorded delivery at the address specified in this Agreement (or such other address as is notified to the other party in writing), marked for the attention of that party's Managing Director.
- 21.2 Notices sent by registered post or recorded delivery shall be deemed to be served **three (3) Business Days** following the day of posting. Notices sent by facsimile transmission shall be deemed to be served on the day of transmission if transmitted before **4.00 p.m. on a Business Day**, but otherwise on the next following Business Day. In all other cases, notices are deemed to be served on the day when they are actually received.

## 22 Project Management

- 22.1 During the Term, Agency shall keep Client fully informed as to the progress and status of all Services and Deliverables and shall prepare and submit to Client written reports at such intervals and in such format agreed by the parties for such purpose which shall also highlight any actual and/or anticipated problems or difficulties relating to the same.
- 22.2 During the Term, the parties' respective project managers shall at each party's own cost arrange and attend (personally or by representative) progress and review meetings to review the status and progress of the Services, Deliverables and/or any Project(s), discuss developments, consider proposals, agree actions and seek to resolve any issues arising. Such meetings shall be held at such locations and at such intervals reasonably required by Client.
- 22.3 Unless otherwise agreed in the Scope of Work, contact reports providing each party with a written record of matters of substance discussed at meetings or in telephone conversations between the parties will be supplied by Agency to Client within a reasonable time and in any event not less than **#ofDays (XX)** Business Days after such discussions. If the subject matter of a contact report is not questioned by Client **#ofDays (XX)** Business Days of its receipt, it will be taken to be a correct record of the meeting or telephone conversation to which it refers.



## 23 Advertising Standards

- 23.1 Both parties shall comply with all applicable laws and advertising regulations issued, made or given by any Advertising Regulator.
- 23.2 The parties will co-operate with each other in ensuring that suitable objective factual product and other information is available as required to satisfy the requirements of any applicable law or advertising regulation.
- 23.3 Agency may add any applicable levies payable in respect of the funding of any UK self-regulatory system in respect of digital advertising to all relevant invoices submitted to Client. The parties agree that Client shall be solely liable for the payment of such levy.

## 24 Assignment and Sub-Contracting

- 24.1 Agency shall be entitled to sub-contract its performance of the Services with the prior written consent of Client, not to be unreasonably withheld or delayed. Agency shall ensure that it enters into a written contract with such sub-contractor prior to the sub-contractor's commencement of the supply of services and that such contract reserves the right under the Contracts (Rights of Third Parties) Act 1999 for Client to enforce the terms of that contract as if it were Agency. Any sub-contracting permitted by Client shall not relieve Agency from its obligations to Client under this Agreement.
- 24.2 Client may assign, charge or sub-contract this Agreement or any of its rights or obligations arising hereunder at any time.
- 24.3 Agency may not assign, transfer or charge or otherwise dispose of this Agreement or any of its rights or obligations arising hereunder without the prior written consent of Client.

## 25 Third Party Rights

Save in respect of Client's Affiliates identified in an applicable Scope of Work or a Successor Agency, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## 26 Data Protection

- 26.1 Each party warrants to the other that it is and will continue to be appropriately notified under the terms of any applicable Data Protection Legislation and any other relevant data protection laws, legislation and regulation in the Territory.
- 26.2 Where Agency or its Associates processes personal data (as defined in Data Protection Legislation) on behalf of Client, then Agency shall, and shall procure that its Associates shall:

- 26.2.1 process such data solely in accordance with Client's instructions from time to time (consistent with its duties under such Data Protection Legislation);
- 26.2.2 adopt and maintain appropriate security measures for processing data, both in terms of the technology used and how it is managed.
- 26.3 Agency shall indemnify Client from and against all losses, damages, costs, liabilities and expenses (including legal expenses) arising out of or in connection with Agency's and/or its Associates' breach of this Clause 26.
- 26.4 Client is responsible for all risks of loss of or damage to its data except for loss or damage caused by the negligence of Agency, its agents or subcontractors.
- 26.5 Client shall indemnify Agency against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith made or brought by any person in respect of any loss damage or distress caused to that person by breach of the provisions of Clause 15.1.9 above or the Act by Client, its staff or agents.

## 27 Dispute resolution

- 27.1 If any claim or dispute arises under or in connection with this Agreement, the parties will attempt to settle such claim or dispute by negotiation.
- 27.2 If any claim or dispute cannot be settled by negotiation within 21 days after either party has made a written offer to the other party to negotiate a settlement to such claim or dispute, the parties shall, before resorting to court proceedings, attempt to resolve the claim or dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 27.3 If the parties have not settled any claim or dispute by mediation within 42 days from the initiation of the mediation, the dispute shall be referred to and finally resolved by the courts in accordance with Clause 28.5.

## 28 General

- 28.1 Releases and waivers:
- 28.1.1 any party may, in whole or in part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it in this Agreement by any other party or parties without in any way prejudicing or affecting its rights in respect of that or any other liability or right not so released, compounded, compromised, waived or postponed.
- 28.1.2 no single or partial exercise, or failure or delay in exercising any right, power or remedy by any party shall constitute a waiver by that party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under this Agreement or otherwise.
- 28.2 The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to 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 right later to enforce or to exercise it.

- 28.3 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.
- 28.4 This Agreement 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:
- 28.4.1 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
- 28.4.2 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.
- 28.5 The construction, validity and performance of this Agreement shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales to resolve any dispute between them.
- 28.6 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.
- 28.7 Subject to Clause 8.3, no modification or variation of this Agreement (or any document entered into pursuant to or in connection with this Agreement) shall be valid unless it is in writing and signed by or on behalf of each of the parties to this Agreement. Unless expressly set out herein, no modification or variation of this Agreement shall: (i) constitute or be construed as a general waiver of any provisions of this Agreement; and (iii) 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.

**SCHEDULE 1: SOFTWARE AND/OR WEBSITE DEVELOPMENT SERVICES****1 Definitions**

<b>"Functional Specification"</b>	means the document prepared by Agency in consultation with Client indicating the functional criteria that the Software and/or Website must meet;
<b>"Source Materials"</b>	means all logic, logic diagrams, flowcharts, algorithms, routines, sub-routines, utilities, modules, file structures, coding sheets, coding, source codes, listings, functional specifications and program specifications and all other materials and documents necessary to enable a reasonably skilled programmer to maintain, amend and enhance the Software and/or Website in question without reference to any other person or document and whether in eye-readable or machine-readable form.

**2 Use of Open Source Software**

- 2.1 It is acknowledged that Agency may use Open Source Software as part of the Deliverables provided that: (i) Agency shall have supplied to Client full details of which Deliverable(s) and/or part(s) thereof it is proposed shall include such Open Source Software and in what manner, together with full details of which licence(s) apply to such Open Source Software; and (ii) Client has approved same, such approval not to be unreasonably withheld or delayed.
- 2.2 Client's use of Open Source Software shall be governed by the terms of the applicable open source licence(s). Client warrants and undertakes that it will comply with the terms of the applicable open source licence(s) as such terms apply to Client's use of the applicable Open Source Software.

**3 Development of the Specification**

- 3.1 following the execution of a Scope of Work, Agency shall, in collaboration with Client, commence the preparation of the Functional Specification for the Software or Website and Agency shall submit the completed Functional Specification to Client for approval.
- 3.2 Within **Fourteen (14) Business Days** of Client's receipt of the Functional Specification Client shall either notify Agency of its approval or respond to Agency with such comments and/or requests for amendment as it shall reasonably judge appropriate.
- 3.3 Agency shall consider all reasonable comments and/or requests for amendment received from Client.
- 3.4 The process described in paragraphs 3.2 and 3.3 shall be repeated until such time as Client shall have approved the Functional Specification.
- 3.5 Upon approval of the Functional Specification by Client, Agency shall then develop the Specification based upon the Functional Specification and Agency warrants and undertakes that the Specification shall meet, in all material respects, the business requirements of Client set out in the Functional Specification.

**4 Testing and Acceptance**

- 4.1 Acceptance by Client of Deliverables consisting of Software or a Website shall occur in accordance with this paragraph 4.1:

- 4.1.1 The Parties shall co-operate in preparing the Acceptance Criteria which shall be designed to test the Software's and/or the Website's compliance that at the date of delivery Deliverables comply with the Specifications.
- 4.1.2 Agency and Client shall agree suitable dates for running the acceptance tests if such dates are not already specified in the Scope of Work.
- 4.1.3 Assisted by Agency, Client will carry out the acceptance tests in accordance with the Acceptance Criteria.
- 4.1.4 Promptly, and in any event within **fourteen (14) Business Days** of completion of acceptance testing for each part of the Software and/or Website or such other period as agreed by the parties, Client shall accept or reject such Software and/or Website by issuing Agency a notice to that effect ("**Acceptance/Rejection Notice**") which shall contain reasonable details of any material deviation from the Specifications. Client shall only be entitled to issue a Rejection Notice upon the basis that (and by detailing the manner in which) each part of the Software and/or Website exhibits a fault which materially affects the functionality of the Software and/or Website to the extent that a user's ability to use the Software and/or Website is materially impaired.
- 4.1.5 It is acknowledged by Client that acceptance of each part of the Software and/or any Website shall be deemed to occur on the earliest of the following events:
- 4.1.5.1 receipt by Agency of an Acceptance Notice; or
- 4.1.5.2 if Client puts the Software or Website to any live operational use, other than for the purposes of testing.
- 4.1.6 If Client shall serve a valid Rejection Notice in accordance with paragraph 4.1.4, Agency shall:
- 4.1.6.1 promptly provide Client with a Change Order setting out any changes required to the Scope of Work as a consequence of the Rejection Notice including, without limitation, detailing by when the defective Deliverables will be corrected or replaced together with changes required to the delivery date of any undelivered Deliverables; and
- 4.1.6.2 correct and/or replace the defective Deliverables within the date agreed by the parties pursuant to the Change Order referred to in paragraph 4.1.6.1, so that they perform in accordance with their relevant Specifications in all material respects and re-deliver the same to Client.
- 4.1.7 Upon resubmission, Client shall re-perform the acceptance tests in accordance with paragraph 4.1.3.
- 4.2 Upon failing the acceptance tests for a second time, then Client shall at its discretion and without prejudice to its rights and remedies set out in this Agreement, be entitled to:
- 4.2.1 accept such part of the resubmitted Deliverables (or any part thereof) as Client may decide and, if applicable, pay a pro-rated reduction in the Fees in respect of such part; or
- 4.2.2 require Agency to correct the defects identified at no extra cost to Client by such date agreed by the parties, in which case the revised Deliverables shall be subject to all the provisions of this Agreement; or
- 4.2.3 terminate this Agreement and/or the applicable Scope of Work immediately under Clause **Error! Reference source not found.** of this Agreement for the irremediable breach of Agency.
- 4.3 For the avoidance of doubt Client shall not be entitled to reject Software or a Website by reason of any failure to provide any facility or function not specified in a Specification.

- 4.4 Software and Website Deliverables shall not be rejected on account of minor deviations from their Specifications which do not materially affect a user's ability to use the Software or Website ("**Minor Discrepancies**"). Client shall annotate any Minor Discrepancies on the Acceptance Notice, accepting such Deliverables by signature of such notice. Agency shall then promptly rectify such Minor Discrepancies.

**SCHEDULE 2: HOSTING AND/OR SUPPORT SERVICES**

A separate Service Level Agreement will be established for all specific clauses relating to:

- Account Servicing
- Hosting and Server Support
- Application Support
- Maintenance

**SCHEDULE 3: DATA SERVICES****1 Definitions**

<b>"Input Data"</b>	means the Data to be supplied to Agency by, or on behalf of, Client as detailed in the applicable Scope of Work for use by Agency in the provision of the Services;
<b>"Output Data"</b>	means the output data resulting from the processing of the Input Data on the System.

**2 Processing of the Input Data and Delivery of the Output Data**

- 2.1 Client shall prepare and format the Input Data and shall at its own cost deliver it to Agency at Agency's premises in accordance with the applicable Scope of Work.
- 2.2 Agency shall not be liable for any loss or damage sustained by Client as a result of the Input Data being delivered late, or being illegible or otherwise not in accordance with the format agreed in the applicable Scope of Work.
- 2.3 Any re-formatting of the Input Data which may have to be carried out by Agency shall be carried out in accordance with the provisions of the applicable Scope of Work and Agency shall be entitled to charge an additional fee for such work as agreed with Client.
- 2.4 Client shall be responsible for keeping back-up copies of the Input Data and maintaining such records and data as Client believes necessary to allow reconstruction of the Input Data should this be necessary.
- 2.5 Where Client intends to encrypt the Input Data it shall obtain approval (not to be unreasonably withheld or delayed) for the use of such encryption from Agency prior to sending the Input Data to Agency.
- 2.6 Following receipt of the Input Data from Client Agency shall process it and deliver the Output Data to Client in accordance with the applicable Scope of Work.

**3 Security copies and reconstruction of the Data**

- 3.1 Agency may at its cost and at a frequency it deems necessary take a single security copy of the Data and shall keep such security copies until the earlier of:
- 3.1.1 the Data is rendered obsolete by two newer copies; or
- 3.1.2 Client asks in writing for the Data to be destroyed or returned; or
- 3.1.3 **nine (9) months** have elapsed without use of the Data by or on behalf of Client.

**4 Loss of the Input Data or Output Data**

- 4.1 If the Input Data or any part thereof shall be lost, destroyed or damaged whilst in Agency's possession prior to processing, then Agency shall forthwith notify Client who shall promptly supply Agency with a copy of the records and data held by Client pursuant to paragraph 2.4 of this Schedule, whereupon Agency shall use such copy for processing. The cost of replacement and the delivery of such copy shall be borne by Agency.
- 4.2 If the Output Data or any part thereof shall be lost, damaged or destroyed prior to its delivery to Client, then Agency shall produce a further copy as soon as possible thereafter and in no event later than **five (5) Business Days**. The cost of producing such further copy shall be borne by Agency.



## 5 Rectification of Errors

If the Output Data or any part thereof is incorrect by reason of any negligent act or default of Agency or its Associates, then, provided that Agency has been notified of the error in question within **ten (10) Business Days** after Client's receipt of the Output Data, or, if later, within **two (2) Business Days** after the error could reasonably have been expected to be discovered by Client, Agency shall promptly correct and reprocess the Input Data free of charge to produce the Output Data in the correct form.

## 6 Effect of Termination

- 6.1 Upon termination of the Agreement (howsoever occasioned) Client shall have the right to require Agency to do any one or more of the following in respect of Data in Agency's possession or control:
- 6.1.1 to deliver up to Client all copies of such Data;
  - 6.1.2 to dump on to any agreed media such Data or any part thereof and to deliver up such media to Client;
  - 6.1.3 to erase all or any of such Data from the media on which it is stored; and/or
  - 6.1.4 to deliver up to Client all copies of such Data or to destroy the same.

**SCHEDULE 4: SOCIAL MEDIA****1 Definitions**

<b>“Moderation Guidelines”</b>	means the Moderation Guidelines identified in a Scope of Work;
<b>“Pre-Moderation”</b>	means that all UGC submitted to the Social Media Site shall be reviewed before such UGC is published on the Social Media Site;
<b>“Post-Moderation”</b>	means that all UGC posted to the Social Media Site is reviewed after such UGC has been published on the Social Media Site;
<b>“Reactive Moderation”</b>	means that UGC posted on the Social Media Site is not generally moderated and is only reviewed when a user(s) of the Social Media Site reports the UGC as unsuitable via an appropriate mechanism;
<b>“Social Media Site”</b>	means the social media website(s) identified in a Scope of Work;
<b>“User-Generated Content”</b>	means content, including text, still and moving images and sound, posted by a user of the Social Media Site for publication on the Social Media Site.

**2 Moderation**

- 2.1 Agency shall undertake **Pre-Moderation/Post-Moderation/Reactive Moderation** (the **“Moderation Services”**) by reference to the application of the Moderation Guidelines.
- 2.2 Client acknowledges that the Moderation Services require a reasonable amount of flexibility in the interpretation and application of the Moderation Guidelines by the moderator(s). The parties will work closely throughout the Project Term in order to detail examples of circumstances where the Client deems an adjustment in the manner in which the Moderation Guidelines are applied is required. Should such a change be required, Agency shall ensure that the moderator(s) is given relevant training and or guidance.
- 2.3 Client shall be responsible for providing the Agency (as may be notified to Client from time to time) with sufficient and continued access to any computer systems and/or software programs which the Agency may require in order to provide the Moderation Services. The failure to provide such access shall relieve the Agency from its obligations to provide those aspects of the Moderation Services which are actually affected during such period that the Agency cannot access such systems or software but shall not relieve Client of its obligation to pay the relevant Fees for this period.
- 2.4 To the fullest extent permissible at law, Client acknowledges that the Agency shall have no liability under or in connection with this Agreement where the Agency can demonstrate that the Agency has complied in all material respects with the Moderation Guidelines.

**APPENDIX X: [SAMPLE] SCOPE OF WORK****1 Project definition**

This Scope of Work is issued pursuant to and is in accordance with the agreement entered into between the parties dated **Date**.

<b>Project:</b>	<p>Set out a short description of the Project.</p> <p>For Social media projects: does it involve the use of existing third party social media platforms ("third party platforms"), the client's existing website(s) or bespoke social media platforms ("bespoke platforms")? Please see the "Social Media Site" section below.</p> <p><b>To go here</b></p>
<b>Project Term:</b>	<p>Set out the commencement date for this Project and its duration and whether for a fixed term or an initial term and then rolling subject to notice.</p> <p><b>To go here</b></p>
<b>Services &amp; Deliverables:</b>	<p>Set out a description of the Services and Deliverables to be supplied by Agency for this Project, including any specification of the Deliverables and any applicable additional service levels agreed.</p> <p>For Social media projects, outline:</p> <ul style="list-style-type: none"> <li>• content to be provided by Agency;</li> <li>• any promotions or competitions (including any prizes);</li> <li>• any third party platforms and how the Agency will utilise such platforms (please see the below definition of "Social Media Site");</li> <li>• any bespoke social media platforms, including their specification and functionality, and Background Materials and who is responsible for maintaining specific parts;</li> <li>• whether any website moderation services are to be provided (see the definitions in Schedule 5);</li> <li>• if moderation services are to be provided, guidelines against which to moderate will be necessary (see "Moderation Guidelines" below);</li> <li>• whether Agency is to be responsible for clearing any third party rights (such as the use of music accompanying any user-generated content);</li> <li>• whether Agency is responsible for drafting terms of use for use of the platform and, for example, any promotions run on the platform;</li> <li>• whether Agency is responsible for drafting a privacy policy.</li> </ul> <p><b>To go here</b></p>
<b>Project Plan:</b>	<p>Set out the timing of each phase of the Services and/or delivery of the Deliverables.</p> <p><b>To go here</b></p>
<b>Fees &amp; Expenses:</b>	<p>Set out the calculation of the fees and expenses (including rules for the recovery of expenses) payable to Agency for this Project e.g. details of any fixed price, time and materials and/or capped time and/or materials in which case Agency's Rate Card should be attached, together with invoice dates or milestones that trigger payment. Also set out costs that might be payable on cancellation of the Project covered under this Scope of Work. If a retainer fee is agreed ensure this is clearly stated.</p> <p><b>To go here</b></p>
<b>Client Materials:</b>	<p>Set out details of the Data, Client Equipment, Client Software, documents and any other materials or information (including access to any relevant systems) to be provided to Agency and/or its Associates.</p> <p><b>To go here</b></p>
<b>Special Terms:</b>	<p>Set out any special terms that are intended to take precedence over the terms of the General Terms and/or the Schedules to the General Terms such as Intellectual Property Rights (IPR), warranties, etc.</p> <p>These will be influenced, for example, by:</p> <ul style="list-style-type: none"> <li>• particular restrictions contained in applicable third party platform's terms of use;</li> <li>• IPR provisions contained in any applicable third party platform's terms of use that do not correspond with the</li> </ul>

	<p>IPR provisions in the General Terms/Schedule;</p> <ul style="list-style-type: none"> <li>• agreement between the parties on which of them assumes risk for certain liabilities (e.g. defamatory UGC);</li> <li>• considering which party will bear the loss in the event that a user provides warranties and/or indemnities, but does not have the financial means to meet any damages in a successful legal claim;</li> <li>• whether the Client will be submitting UGC or other content to a platform operated by the Agency (as the Agency could be liable for certain acts of the client).</li> </ul> <p>To go here</p>
<b>Legal and Regulatory Terms:</b>	<p>Set out details of any known legal and/or regulatory clearances required</p> <p>To go here</p>
<b>Authorised Agency Approver:</b>	<p>Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Agency for this project.</p> <p>To go here</p>
<b>Authorised Client Approver:</b>	<p>Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Client for this Project.</p> <p>To go here</p>
<b>Client Affiliates:</b>	<p>Set out details of Client Affiliates who are entitled to call off services and deliverables and/or receive the services and deliverables.</p> <p>To go here</p>
<b>Third Parties:</b>	<p>Set out details of any required third party contracting relationships</p>
<b>Social Media Site:</b>	<p>Set out details of the Social Media Site(s) to be used (i.e. whether it is Client's own website or a third party website), including URLs.</p> <p>To go here</p>
<b>Moderation Guidelines:</b>	<p>If Agency is contracting to moderate UGC, set out full details of the guidelines that UGC is to be moderated against (or append to this Scope of Work). These will vary greatly depending on, for example, the target audience of the Social Media Site (is it aimed at children or young people?) and the nature of the Client's business.</p> <p>To go here</p>

## 2 Schedule of fees

Date	Deliverables	Fees
DD Month	To go here	EX,XXX
DD Month	To go here	EX,XXX
DD Month	To go here	EX,XXX
DD Month	To go here	EX,XXX
DD Month	To go here	EX,XXX
DD Month	To go here	EX,XXX
DD Month	To go here	EX,XXX
DD Month	To go here	EX,XXX
DD Month	To go here	EX,XXX
DD Month	To go here	EX,XXX
<b>TOTAL</b>		<b>EXX,XXX</b>
VAT		EX,XXX
<b>GRAND TOTAL (inc. VAT)</b>		<b>EXX,XXX</b>