



Digital Services Framework Agreement

(1) Client Name

(2) Twentysix Limited

twentysix contacts:

PLEASE REFER ALL COMMENTS REGARDING THIS AGREEMENT TO THE FOLLOWING TWENTYSIX AUTHORISED INDIVIDUAL:

GAIL DUDLESTON

CEO

+44 (0)113 320 2626

GAIL.DUDLESTON@TWENTYSIXDIGITAL.COM

RYAN SCOTT

MANAGING DIRECTOR

+44 (0)113 320 2626

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CLIENT CONFIDENTIAL

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) twentysix Limited incorporated and registered in England and Wales with company number 03178478 whose registered office is at c/o 90 Tottenham Court Road, W1T 4TJ. (“**Company**”).
- (2) [Company Name] incorporated and registered in England and Wales with [Company Number] whose registered office is [address] (“**Client**”).

AGREED TERMS

1 Definitions and interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement and any Statement of Work (if applicable):

“**Acceptance**” means the acceptance or deemed acceptance of the Deliverables by the Client in accordance with clause 10.

“**Acceptance Tests**” means any applicable tests to be carried out on any Deliverables as more particularly described in the Statement of Work.

“**Agreement**” means this agreement as originally executed or as amended from time to time and then executed on behalf of both Parties.

“**Brand Guidelines**” means the Client's guidelines for the use of the Client Materials and the Client's brand and trademarks provided to Company from time to time.

“**Budget Requirements**” means the Client's budgeted costs for a Project.

“**Business Day**” means a day other than a Saturday or Sunday or public holiday in England when Banks in London are open for business.

“**Campaign**” means an advertising or marketing campaign provided by the Company as part of their advertising and marketing Services including but not limited to digital advertising, social media marketing, managed marketing and online advertising.

“**Charges**” means the Company's charges for the Services as set out in the Statement of Work.

“**Client Materials**” means any text, content, picture, logo, software, information or material supplied by the Client to the Company for incorporation within the Deliverables or to enable the Company to provide the Services.

“**Concept**” means the designs, plans, samples, drawings, descriptions and specifications for Design Work prepared by the Company as part of the Services.

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“Constraint” means pre-existing criteria and/or restriction that may affect the provision of the Services and Deliverables including but not limited to underlying systems, adjacent systems, security requirements, Brand Guidelines, Marketing Policies, applicable laws and standards as set out in the Statement of Work or identified by the Company during the Project.

“Data Protection Legislation” means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Acts 1998 and 2018.

“Design Work” means a piece of design work, including but not limited to graphic designs, pictures, copy, text, images and logos, created as a result of the Services and provided as part of the Deliverables as more particularly described in the Statement of Work.

“Deliverables”: all documents, products and materials developed by the Company or its agents, contractors and employees as part of the Services in any form or media, including but not limited to end deliverables such as Software, Websites, Design Work and Campaigns and process deliverables such as Concepts, data, specifications, strategy plans and reports (including drafts).

“Generic Items” means all standard generic parts of the Deliverables including, without limitation, all software, tools, processes designs and other materials existing prior to the commencement of the relevant Statement of Work.

“Equipment” means the computer hardware, network and associated peripherals equipment specified in the relevant Statement of Work or such other equipment as may be agreed from time to time, whether such equipment is operated by the Client or a third party on the Client’s behalf or operated by or on behalf of the Company pursuant to a Statement of Work with the Client for the provision of the Services

“Existing Faults” means any faults in the Client Materials which existed prior to their being provided to the Company.

“IPRs” means all intellectual property rights including, without limitation, patents, utility models, copyrights, registered designs, unregistered design rights, applications for registration of any of these and the right to apply for any of these in any part of the world, rights in know-how and other confidential information.

“Marketing Policies” means the Client’s policies relating to the advertising and/or marketing of the Client’s products and services as specified in the Statement of Work.

“Materials” means any text, content, picture, logo, software, information or material used or developed in the relation to the Services which might be the Client’s Materials, as defined, or Materials provided used or developed by the Company or otherwise.

“Media Spend” means sums spent by the Company with or payable to third party media outlets or channels.

“Objectives” means the Client’s aims, goals, ambitions and desired outcomes for a particular Project,

“PPC Account” means a Pay Per Click account or account with a similar function

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“Personal Data” shall have the meaning given in the Data Protection Legislation

‘Phase’ means the distinct stages of work necessary for the completion of the Project. These phases are more particularly identified in the Statement of Work.

‘Produced Design’ means the Concept that is chosen by the Client to be produced and incorporated within the Deliverables.

“Project” means the provision by the Company of the Services to the Client for a particular purpose the scope of which will be as set out in the relevant Statement of Work.

“Project Team” means the contacts within the Company’s and the Client’s businesses appointed and authorised by the Company and the Client to liaise with each other about the Project in accordance with clause 12.

“Repairs” means any change or amendment made to the Client’s existing Software, Website or Social Media Pages which is intended to repair or fix an existing problem with the Software, Website or Social Media Pages which is identified as a Constraint in the Statement of Works.

“Services” means the services to be provided by the Company to the Client in relation to a particular Project described in the relevant Statement of Work.

“Social Media Pages” means the Client’s account or page with a website or application that enable users to create and share content or to participate in social networking that is either established or managed by the Company as part of the Services.

“Software” means any software to be developed by the Company for the Client under this Agreement in whatever form including but not limited to computer programs, applications, content management systems, mobile apps and games.

“Specification” means the Company’s written specification for a particular Project or Deliverable set out in the relevant Statement of Work, as amended from time to time in accordance with this Agreement or with the written agreement of the Company

“Statement of Work” means the contractual document which together with this Agreement sets out the terms of the contract between the Parties for the provision of the Services.

“Terms” means the terms and conditions set out in this Agreement.

“Third Party Software” means the third Party software (if any) specified in the relevant Statement of Work.

“Website” means any website or part of a website to be developed by the Company pursuant to this Agreement and under a Statement of Work, being a compilation of one or more pages combining text, data, sound, images or other material which is designed to be accessible over the Internet at a domain name address and which is more particularly described in the Statement of Work.

- 1.2 Reference in this Agreement to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. The headings in this Agreement are for convenience only and shall not affect their interpretation.

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1.3 Any reference to a Party or Parties within this Agreement includes both the Client and the Company.

1.4 The Terms set out in this Agreement are supplemental to the Statement of Work(s). In the event of any conflict or inconsistency between these Terms and the Statement of Work(s), the Terms shall prevail but only to the extent of that conflict or inconsistency.

2 This Agreement and Statements of Work

2.1 The Company shall supply and the Client shall purchase the Services subject to the Terms of this Agreement and any amended or additional terms set out in the relevant Statement of Work, which shall govern the provision of the Services to the exclusion of any other terms including any other terms to which any order of the Client may purport to be subject.

2.2 No variation to this Agreement or a Statement of Work shall be binding unless approved in writing by a director of the Company and a notified approved signatory of the Client.

2.3 Subject to a variation of this Agreement or Statement of Work pursuant to clause 2.2, this Agreement and the applicable Statement of Work embodies the entire understanding of the Parties and overrides any prior promises, undertakings or representations (though nothing contained in this Agreement or a Statement of Work shall operate to limit or exclude the liability of either Party for fraud).

2.4 Any manifest or obvious error or omission in any sales literature, quotation, price list, invoice, specification or other non-contractual document or information issued by the Company is subject to correction without any liability to the Company.

2.5 The Client shall be entitled from time to time to request in writing the provision of Services from the Company in relation to a particular Project setting out:

2.5.1 the scope of the Project and the Client's Objectives;

2.5.2 any requirements and specifications for the Services which it is requesting from the Company;

2.5.3 any relevant timescales, key dates or deadlines;

2.5.4 details of any Client Materials that will be provided;

2.5.5 a full explanation of the concept for any Deliverables;

2.5.6 any Brand Guidelines or Marketing Policies that will apply to the Project; and

2.5.7 any relevant Budget Requirements for the Project.

2.6 Within 20 Business Days of receipt of a written request from the Client, the Company shall either:

2.6.1 notify the Client that it is not able to provide the requested Services; or

2.6.2 complete a draft Statement of Work and shall submit the draft Statement of Work to the Client for agreement between the Parties.

2.7 A Statement of Work shall only enter into force, be legally binding or have any other effect if:

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2.7.1 the Statement of Work has been agreed and/or signed by the authorised representatives of both Parties to it; and

2.7.2 as at the date the Statement of Work is agreed and /or signed, this Agreement has not been terminated.

Each Statement of Work:

2.7.3 shall be entered into by the Client and the Company;

2.7.4 forms a separate contract between the Parties; and

2.7.5 shall incorporate the Terms, unless otherwise stated in the relevant Statement of Work.

2.8 If the Parties do not agree the draft Statement of Work in writing pursuant to clause 2.6 within 20 Business Days, then the draft Statement of Work shall be treated as immediately withdrawn and the Company shall have no liability to the Client, howsoever arising for such withdrawal.

3 Company Responsibilities

3.1 The Company shall provide the Services for a particular Project from the date specified in the relevant Statement of Work and shall use its reasonable endeavours to:

3.1.1 perform the Services in accordance with the Phases set out Statement of Work;

3.1.2 comply with the Brand Guidelines and Marketing Policies when preparing and providing the Deliverables and performing the Services;

3.1.3 deliver the Deliverables to Client;

3.2 The Company shall use its reasonable endeavours to propose and work to agreed timescales for the Project. However, these timeframes are not guaranteed and time shall not be of the essence in relation to the provision of any Services provided by the Company.

3.3 The quantity, quality and description of the Services and any resulting Deliverables is as set out or referred to in the Statement of Work. Any other descriptive material provided by the Company is provided only to assist the Client and does not form part of this Agreement.

4 Design Work and Deliverables

4.1 Where applicable, the Company shall prepare a specified number of Concepts for a Project in accordance with the Specification set out in the Statement of Work which shall be sent to the Client so that the Client can select the Concept that shall become the Produced Design.

4.2 The Client shall be entitled to make the specified number of alterations or amendments to the Produced Design set out in the Statement of Work. Any further alterations or amendments requested by the Client shall be charged at the Company's standard rates.

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- 4.3 The Client shall be responsible for checking the accuracy and spelling of all Design Work produced by the Company and shall be solely liable in respect of any and all errors in the finished Produced Design where it has had the opportunity to carry out those checks.
- 4.4 The Client acknowledges that the Company has no control over the policies of third parties including but not limited to search engine providers and app stores with respect to the type of Software, Websites and/or content that they accept or the way in which Software and Websites are ranked either now or in the future. As a result:
- 4.4.1 The Company does not guarantee first position or consistent top ten positions for any particular keyword, phrase or search term as part of the Deliverables for a Project as it is solely at the discretion of the third parties themselves to list Software or a Website;
 - 4.4.2 Search engines may stop accepting submissions from the Company for an indefinite period of time with or without notice or cease to list a Website at its discretion. In such circumstances the Company shall not be liable to Client for any such actions of search engines;
 - 4.4.3 The Company shall not be responsible for any failure to provide the Services or Deliverables where changes have been made to the Website, Social Media Pages or Software by the Client or third parties or where the Client has chosen to link to or obtain a link from a particular website without prior consultation with the Company.
- 4.5 The Company shall use reasonable endeavours to identify and inform the Client of any Existing Faults which may affect the provision of Services and Deliverables. The Client acknowledges that if Existing Faults are subsequently discovered which effect the provision of the Services or Deliverables that the Company shall, upon the reasonable request of the Client, and subject to an agreement on costs between the Parties, use reasonable endeavours to carry out the Repairs to correct the Existing Fault to meet the Objectives.

5 Client Responsibilities

- 5.1 The Client acknowledges that the Company's ability to provide the Services is dependent upon the full and timely co-operation of the Client and the Client's staff and Project Team (which the Client agrees to provide), as well as the accuracy and completeness of the Client's instructions, the Client Materials and any information and/or data the Client provides to the Company.
- 5.2 Accordingly, the Client shall:
- 5.2.1 Provide the Company with access to, and use of, all information, data and documentation reasonably required by the Company for the performance of its obligations under this Agreement;
 - 5.2.2 Ensure the accuracy and lawfulness of any specification, information or materials(whether in written, electronic or other form) submitted by the Client for use in connection with the provision by the Company of the Services;
 - 5.2.3 Deal with requests for instructions promptly when requested; and
 - 5.2.4 Provide timely approval and sign off of any Statement of Work.
- 5.3 The Client shall perform the obligations specified in the relevant Statement of Work and shall use its reasonable endeavours to do so in accordance with any timescales set out in that

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Statement of Work. The Client shall reimburse the Company in full where a delay is caused in the provision of the Services by virtue of:

- 5.3.1 the Client's request for a variation to the Services (pursuant to clause 4); and/or
- 5.3.2 any action and/or omission of the Client (including, without limitation, its agents, sub-contractors and/or employees);

and such delay causes an increase in costs and/or expenses to the Company in carrying out its obligations under this Agreement.

- 5.4 Where as a result of delay or default by the Client in meeting a date by which it has been agreed that the Client shall provide, approve or otherwise deal with some matter which it is its responsibility to do, then in addition to reimbursement under clause 5.3, and unless the Client has provided the Company with at least two Business Days' notice of such delay or default, it shall be liable to the Company for its charges for any further time to the extent that the Company cannot otherwise fully deploy the resources reserved for the Client (in spite of the Company's reasonable endeavours to redeploy those resources), or are held on hold so as to be available pending the Client's action as a result of the Client's delay or default, unless otherwise agreed with the Client.
- 5.5 If the Client fails to respond to a request made by the Company within the time specified by the Company and/or unreasonably delays completion of one or more of the stages set out in the Statement of Work:
 - 5.5.1 the Company shall be entitled to invoice the Client for the next payment instalment due, regardless of whether the stage has been completed so long as the failure to complete the stage is through the failure of the Client; and
 - 5.5.2 any estimated timescales given by the Company shall be adjusted by the Company to take account of the effect of the delay.

6 Term

- 6.1 This Agreement shall commence on the date of this Agreement and shall, unless terminated earlier in accordance with its Terms or by law, continue in force until terminated by a party to it giving the other party not less than 3 months prior written notice.
- 6.2 On termination of this Agreement pursuant to clause 6.1, each Statement of Work then in force at the date of such termination shall nevertheless continue in full force and effect for the remainder of the term of such Statement of Work (as outlined in the relevant Statement of Work), unless terminated earlier in accordance with the terms of that Statement of Work.

7 Alterations to the Statement of Work

- 7.1 If at any time the Client wishes to alter all or any part of a Specification in respect of a Statement of Work, then the Client shall provide the Company with full written particulars of the desired alterations and with such further information as the Company may reasonably require.

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7.2 If the Company agrees to implement the alterations to all or any part of the Specification, the changes to be made, together with any adjusted timescales, Charges payable by the Client and any other relevant information shall be appended to the relevant Statement of Work as a change request schedule (the “**Change Request Schedule**”). The Change Request Schedule shall form part of this Agreement.

7.3 The Company may charge, in accordance with its standard hourly/daily rates from time to time in force, for time spent in considering and responding to change requests served by the Client pursuant to this clause 7 where the time required to consider such change requests exceeds one Business Day.

8 Charges

8.1 Except where otherwise specified in the Statement of Work, the Client shall reimburse to the Company any reasonable expenses properly incurred by the Company and approved by the Client in performing the Services.

8.2 Unless otherwise indicated in the relevant Statement of Work, the quoted price is exclusive of any applicable VAT or other sales tax, which the Client shall, where applicable, pay in addition in the manner and at the rate from time to time prescribed by law.

9 Payment

9.1 Except where otherwise stated in the relevant Statement of Work:

9.1.1 a deposit shall be payable (in the sum indicated in the Statement of Work) upon the Parties agreement of the draft statement of work pursuant to clause 2.5 above;

9.1.2 the Charges or the balance of the Charges (as the case may be) shall be payable at the times specified in the relevant Statement of Work;

9.1.3 where the Company has agreed to undertake any Media Spend, the Company may invoice the Client at the beginning of the month immediately preceding the month in which the expense is to be incurred, and will unless otherwise agreed in writing require payment to have been received cleared in its bank account before incurring that expense;

9.1.4 where no time for payment is specified in the Statement of Work, the Company may invoice the Client for the Charges on or at any time after the provision of the Services to which the Charges relate.

9.2 All invoices shall be payable by the Client within 30 days of invoice receipt and shall be paid in full without deduction or set off, in British Pound Sterling by BACS (Bank Automated Clearing System).

9.3 If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy of the Company, the Company may:-

9.3.1 immediately terminate this Agreement in accordance with clause 12.1 below; and/or

9.3.2 suspend the provision of the Services and/or any particular campaign or activity; and/or

9.3.3 in the case of clause 9.1.3 applying, not undertake the activity in question; and /or

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- 9.3.4 appropriate any payment made by the Client to such of the Services (or materials, software or services supplied under any other Statement of Work between the Client and the Company by virtue of this Agreement) as the Company may think fit (notwithstanding any purported appropriation by the Client); and/or
- 9.3.5 charge the Client interest (before and after any judgment) on the amount unpaid, at the rate of 3% per annum above the Company's bank's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

10 Delivery and acceptance of the Software and/or Website

- 10.1 The Company will complete the design and development of the Software and Website in accordance with the Phases and Specifications set out in the Statement of Work. Once each relevant Phase of the Project is complete the Company shall run the Acceptance Tests set out in the Statement of Work which will test compliance of the Software or Site with the specifications set out in the Statement of Work.
- 10.2 Acceptance of the Software or Website shall be deemed to have taken place upon the occurrence of any of the following events:
 - 10.2.1 the Software or Website has passed all relevant Acceptance Tests. The Company shall notify the Client when the tests have been passed and provide the results of the Acceptance Tests to the Client in writing;
 - 10.2.2 the Client uses any part of the Software or Website for any revenue-earning purposes or to provide any services to third parties other than for test purposes; or
 - 10.2.3 the Client unreasonably delays the Company in being able to the start of the relevant Acceptance Tests or any retests for a period of seven Business Days from the date on which the Company is ready to commence running such Acceptance Tests or retests.
- 10.3 If any failure to pass the Acceptance Tests results from a defect which is caused by an Existing Fault or an act or omission of the Client, or by one of the Client's sub-contractors or agents for whom the Company has no responsibility ('**Non-Supplier Defect**'), the Software or Website shall be deemed to have passed the Acceptance Tests.
- 10.4 The Company shall provide assistance reasonably requested by the Client in remedying any Non-Supplier Defect or Existing Fault by supplying additional services or products. The Client shall pay the Company's additional Fees for such services and products.
- 10.5 If the Software or the Website fail the Acceptance Tests, the Company shall remedy any Defects promptly in order to ensure that the Software or Website passes the Acceptance Tests on a retest.
- 10.6 If such a retest demonstrates that the Software or Website is still not in accordance with the Specification, the Client may, by written notice to the Company, elect:
 - 10.6.1 to fix (without prejudice to its other rights and remedies) a new date for carrying out further tests on the Software or Website on the same terms and conditions as the retest. If the Software or Website fails such further tests, the Client shall be entitled to proceed under **Error! Reference source not found..**

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- 10.6.2 If the Software or Website continues to fail to pass the Acceptance Tests, then failing any other agreed resolution by the parties, the issue shall be referred by the parties for resolution under clause 21

11 Third Party Software

- 11.1 Where the provision of the Services and Deliverables requires the use of Third Party Software, this clause 11 shall apply.
- 11.2 The Company shall supply the Third Party Software and shall procure that the relevant third party ("Third Party Licensor") licenses the Third Party Software to the Client on the standard terms of the Third Party Licensor (subject in each case, to the Company executing such licence or other agreement as may be required by the Third Party Licensor). The Client shall abide by the terms of the licence of any Third Party Software throughout its use of the Third Party Software.
- 11.3 The Company gives no assurances about the Third Party Software and the Client acknowledges that its only remedy concerning any fault or problem in respect of the Third Party Software is the right it has against the Third Party Licensor under the licence of the Third Party Software.

12 Project Organisation

- 12.1 The Parties shall appoint a Project Team who shall be authorised to make decisions about the Project on behalf of the Company and Client. The Project Team shall be agreed between the Parties and set out in writing, together with details of the roles and responsibilities of each Project Team Member.
- 12.2 If either Party wishes to make a change to the Project Team they must give the other party at least 10 Business Days written notice of the change.
- 12.3 If a dispute arises out of or in connection with this Agreement, the Statement of Work or the performance, validity or enforceability of them, the Parties shall follow the escalation procedure set out in the Statement of Work or if none, the Dispute Resolution Procedure set out in clause 21.

13 Warranties

- 13.1 The Company warrants that:
- 13.1.1 it will provide the Services with reasonable care and skill;
- 13.1.2 upon Acceptance in accordance with clause 10, any Website or Software supplied as part of the Deliverables will, when properly used on the Equipment and provided that no changes being made to the Website, Social Media Pages or Software by the Client or third parties without prior written agreement with the Company, comply in all and material respects and will materially comply with and perform in accordance with the Specification in the relevant Statement of Work for a period of thirty days from Acceptance;
- 13.1.3 any Website or Software supplied as part of the Deliverables will comply with the laws of all countries to which Company is advised prior to the preparation of any Statement of Work that such Website or Software is required to comply; provide

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that this warranty shall not apply to written Website content as visible to a visitor to the Website; and

13.1.4 as at delivery, the media on which the Software and Website are provided will be free from defects in materials or workmanship.

- 13.2 Without prejudice to clause 13.1.1 and to its obligations under clause 13.1 above, the Company does not warrant that the operation of either the Website or that the Software will be error-free.
- 13.3 The Company shall not be considered in breach of its warranty in clause 13.1.2 to the extent that any failure of the Website or Software to comply in all material respects with the Specification in the relevant Statement of Work arises from any defect or error in any Equipment.
- 13.4 The Client shall give notice to the Company as soon as it is reasonably able upon becoming aware of a breach of any of the warranties contained in clause 13.1 above.
- 13.5 Subject to the Client complying with clause 13.4 and providing (where possible) a documented example of the relevant defect or failure, the Company shall remedy any breach of any of the warranties set out at clause 13.1 by the provision of remedial services (including at the Company's option replacement of defective items) free of charge. The Company shall have no liability or obligation under that warranty or obligation other than to remedy breaches of it in accordance with this clause 13.5.
- 13.6 Except as expressly provided in this Agreement, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the Services or any items delivered or to be delivered under this Agreement are excluded to the fullest extent permissible by law.
- 13.7 For the avoidance of doubt, any unauthorised modifications, use or improper installation of the Software and/or the Website by or on behalf of the Client shall render all the Company's warranties null and void.

14 IPRs

- 14.1 The IPRs in the Design Work shall vest in the Client upon payment for them being made by the Client. The Parties shall execute all documents necessary to give effect to this clause 14.1.
- 14.2 Other than in respect of the Design Work, the Company, upon payment being made, will grant to the Client a perpetual, non-exclusive, royalty-free licence (without the right to grant sub-licences) of its IPRs in the Deliverables and Generic Items in so far as it is necessary to enable the Client to operate, use maintain and update the Deliverables, as the case may be.
- 14.3 The Client shall use the Deliverables exclusively for the purposes of and in the furtherance of its business and shall not sell, assign or transfer any IPR rights granted under this Agreement to any third party without the Company's prior consent or otherwise commercially exploit the same for profit.

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- 14.4 The Client may also use any website development tools, techniques and skills, data processing techniques, software programming or development techniques, ideas and know-how belonging to the Company and which existed prior to the execution of the relevant Statement of Work or were gained during the performance of the Services to the extent needed to operate, maintain and update the Website and Software, as the case may be.
- 14.5 Except as expressly agreed in the Statement of Work, all IPRs in the Deliverables, but excluding the Client Materials and Design Work (as provided in clause 14.1, shall be the property of the Company). The IPRs in the Generic Items shall always be the property of the Company.
- 14.6 The Company expressly retains all rights in, or in relation to, all Concepts that are not progressed past the initial design stages and which do not become a Produced Design together with the rights in any and all work generated or developed in the future which is based on the Concepts or an underlying work in relation to the Concepts and any other rights (whether known now, or created later, and whether or not in the contemplation of the parties at the time of the Statement of Work) for its own and/or third party exploitation.
- 14.7 For the avoidance of doubt, nothing in this Agreement or in the Statement of Works shall amount to the transfer of IPRs in any Generic Items or shall prevent the Company from using, in the furtherance of its normal business, website development tools, techniques and skills, data processing techniques, software programming or development techniques, ideas and know-how which existed prior to the execution of the relevant Statement of Work or were gained during the performance of the Services.

15 IPR Indemnity

- 15.1 If the use by the Client of the Website, Software or Materials according to this Agreement and/or the receipt of the Services is subject to a third party claim that the third party's IPRs have been infringed (an Infringement Claim), the Company will indemnify the Client against that claim provided that:
- 15.1.1 the Client notifies the Company about the Infringement Claim immediately and allows the Company to take complete control of the Infringement Claim;
 - 15.1.2 the Client makes no admissions or settlements without the Company's consent and does nothing to prejudice the Company's defence of the Infringement Claim;
 - 15.1.3 the Client gives the Company all assistance reasonably requested by the Company in connection with the Infringement Claim;
 - 15.1.4 the Infringement Claim does not arise as a result of the use of the Website, Software and/or Materials in combination with equipment or programs not specified in the relevant Statement of Work or approved in writing by a director of the Company; and
 - 15.1.5 the Infringement Claim does not arise as a result of the inclusion within the Materials, Website or Software of Client Materials provided by the Client for such inclusion.
- 15.2 The Company shall have no obligation to indemnify the Client in respect of an Infringement Claim to the extent that the Infringement Claim is the result of the use by the Company of information or Client Materials provided by the Client.
- 15.3 In the event there is an Infringement Claim, the Company may use reasonable commercial efforts to negotiate the right for the Client to continue to receive the Services, use the Website, Software or Materials (as the case may be), modify the Services or modify or replace

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the Website, Software or Materials. If the Company's negotiations are unsuccessful the Company may terminate this Agreement and refund the sums paid by the Client.

- 15.4 This clause 15 states the entire liability of the Company to the Client in respect of any Infringement Claim.

16 Client Materials

- 16.1 The Client warrants that:

16.1.1 it is the sole legal and beneficial owner of the IPRs in the Client Materials or has benefit of a sufficient licence granted by the sole legal and beneficial owner of the IPRs in the Client Materials;

16.1.2 the Client Materials do not infringe any applicable laws, regulations or third party rights including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party IPRs

;

- 16.2 The Company may reject any Client Materials which appear to the Company, acting reasonably, to be unsuitable to be incorporated into and/or used as part of a Project or in the provision of the Services or appear to breach any of the provisions at clause 16.1 ("Unsuitable Client Materials").

- 16.3 The Client shall replace any Unsuitable Client Materials within 10 Business Days of notification of the unsuitability of the Client Materials by the Company. If the Unsuitable Client Materials are not so replaced, the Company shall use the Unsuitable Client Materials in the provision of the Services but at the Client's risk pursuant to clause 16.4.

- 16.4 The Company shall use reasonable endeavours to ensure good results in respect of the Services where Unsuitable Client Materials are used. However, the Client acknowledges and accepts that the Company shall have no liability whatsoever, whether in contract, tort, negligence or otherwise and howsoever arising, for any error, default, defect, functionality and/or imperfection in the Deliverables or Services where such defect is due wholly or in part to the provision of Unsuitable Client Materials by the Client.

- 16.5 Any additional work required as a result of the Client supplying Unsuitable Client Materials shall be charged to the Client at an amount to be agreed between the Parties and based on the Company's standard rates.

The Client shall indemnify the Company and keep the Company fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatever nature arising out of or in connection with any claim that the use by the Company or its sub-contractors of any Client Materials infringes any applicable law or the IPRs or other rights of any third party.

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17 Liability

Except in the case of death or personal injury caused by the Company's negligence (in respect of which the Company's liability shall be unlimited) and except for any other matters for which the Company's liability may not by law be restricted or excluded, the Company's total liability in respect of any contractual breach or representation, statement or tortious act or omission (including negligence) howsoever arising under or in connection with a Statement of Work (a "Default") shall not exceed the total Charges paid or payable by the Client to the Company in respect of the Statement of Work to which the Default relates in the 12 calendar months prior to the notification of the Default to the Company.

17.1 Notwithstanding anything else contained in this Agreement (and without limiting the Company's liability in respect of injury to or death of any person caused by its negligence) the Company shall not be liable to the Client for:

17.1.1 any loss of profits, goodwill or any type of special, indirect or consequential loss whether arising from negligence, breach of contract or otherwise howsoever;

17.1.2 any defect in the Website, Software, Materials and/or Services or instructions arising from any drawing, design, specification or other information supplied by the Client, whether in written, electronic or other format.

17.2 If a number of Defaults give rise to substantially the same loss then they shall be regarded as the same Default for the purpose of calculating the Company's maximum liability pursuant to clause 18.1.

17.3 Whilst the Company takes reasonable steps to prevent the introduction of computer viruses, it cannot guarantee that viruses will not enter the Client's systems through, via or as a result of the Company's systems or the provision of the Services, the Software and/or the Website. Accordingly, the Company shall not have any liability whatsoever (whether for breach of contract, negligence, tort or otherwise and howsoever arising) for any such viruses where reasonable steps have been taken by or on behalf of the Company to prevent their introduction into the Client's systems.

18 Termination

18.1 Upon Termination of this Agreement for any reason each Party shall return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information and shall:

18.1.1 Erase all the other Party's Confidential Information from its computer systems (to the extent possible); and

18.1.2 Each Party shall certify in writing to the other Party that it has complied with the requirements of this clause 18.

18.2 The Company may terminate this Agreement immediately by notice in writing to the Client if the Client fails to pay any sum due under a Statement of Work in respect of which payment is due, by the due date.

18.3 Either Party may terminate this Agreement or any Statement of Work to which the breach relates immediately by notice in writing to the other if the other commits a material breach of this Agreement or the relevant Statement of Work, provided that if the breach is capable of remedy (being actual remedy as opposed to remedy by payment of damages or compensation) the notice shall only be given if the other Party shall not have remedied the

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same within 20 Business Days of having been given notice in writing specifying the breach and requiring it to be remedied.

- 18.4 Either Party may terminate this Agreement or any Statement of Work where the other Party has a bankruptcy order made against it; becomes insolvent or goes into liquidation, receivership or administration; has an administrator appointed; is wound up; has an encumbrancer take possession of any of its assets; enters into a composition or arrangement with its creditors; being a partnership, has a bankruptcy order made against any of the partners or a notice served by a partner for dissolution of the partnership; or takes or suffers any similar or analogous action in any jurisdiction.
- 18.5 In the event of any termination by the Company under this clause 18, then if any Services have been provided but not paid for, the Charges shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 18.6 In the case of the Company holding any sums on behalf of the Client for services not provided or expenses not incurred, refund such sums to the Client;
- 18.7 In the case of any sums being due by the Client to the Company, the Company will retain ownership of any accounts (such as PPC Accounts) until payment. Upon payment the Company shall transfer to the Client all access rights, passwords or other measures and means necessary to use such accounts;

Any termination of this Agreement under clauses 18.1 to 18.3 shall automatically terminate any Statement of Work that remains unperformed as at the date of termination, unless otherwise agreed between the Parties in writing. Termination of this Agreement or a Statement of Work for any reason shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into or continuance in force of any provision of this Agreement or the Statement of Work which is expressly or by implication intended to come into or continue in force on or after such termination.

19 Confidentiality and Protection of Personal Data

- 19.1 Each Party shall keep strictly confidential all information concerning the business and affairs of the other obtained from the other either pursuant to this Agreement or prior to and in contemplation of this Agreement, shall use the same exclusively for the purposes of this Agreement, and shall disclose the same only to those of its directors, employees, professional advisers and sub-contractors to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement.
- 19.2 The obligations of clause 19.1 above shall survive the termination of this Agreement but shall not apply to any information which:-
- 19.2.1 the recipient can demonstrate was already in its possession and at its free disposal prior to receipt under the circumstances mentioned at clause 19.1 above;
 - 19.2.2 is subsequently disclosed to the recipient without any obligation of confidence by a third party who has not derived it directly or indirectly from the disclosing Party; or
 - 19.2.3 enters the public domain through no act or default of the recipient, its agents or employees.

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- 19.3 The recipient shall procure that all its directors, employees, professional advisers and sub-contractors who have access to any information of the disclosing Party to which the obligations of clause 19.1 apply (“**Information**”) shall be made aware of and subject to those obligations.
- 19.4 Nothing contained in clause 19.1 shall prevent the recipient from disclosing Information whose disclosure is required by law provided that, in such circumstances, the recipient shall have:
- 19.4.1 informed the disclosing Party promptly upon becoming aware of the relevant legal requirement (to the extent that such action is in conformity with applicable law); and
- 19.4.2 first given written notice to the authority requiring the disclosure that the information is the confidential information of a third party.
- 19.5 Both parties will comply with all applicable requirements of the Data Protection Legislation in the performance of this Agreement and any Statement of Work. This clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 19.6 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Company is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 19.7 The Client will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company for the duration and purposes of this agreement.
- 19.8 The Company shall immediately inform the Client if, in its opinion, an instruction pursuant to this Agreement or this a Statement of Work infringes Data Protection legislation, and may at the Company's discretion decline to follow such an instruction; or if it nonetheless complies with such instruction, it shall be indemnified by the Client against all liability, costs, penalties or other consequences of carrying out that instruction, including such costs as shall reasonably be incurred by the Company in defending itself (whether in terms of legal representation or publicity) against the consequences of following that instruction .
- 19.9 The subject matter and duration of the processing under the Agreement, the nature and purpose of the processing, the type of personal data processed and the categories of data subjects will be set out in any Data Protection Impact Assessment carried out relating to any specific element of the Services to which they are relevant.
- 19.10 Without prejudice to the generality of clause 19.7, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under this agreement:
- 19.10.1 process that Personal Data only on the written instructions of the Client unless the Company is required by the laws of the United Kingdom, any member of the European Union or by the laws of the European Union applicable to the Company to process Personal Data (Applicable Laws). Where the Company is relying on laws of the United Kingdom, a member of the European Union or European Union law as the basis for processing Personal Data, the Company shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Client;
- 19.10.2 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or

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destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

19.10.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential and have undergone adequate training in the use, care, protection and handling of Personal Data;

19.10.4 not to appoint a subcontractor to process Personal Data without:

19.10.4.1 A general written authorisation from the Client that the Company may approach such sub-contractors as outlined in any authorisations or instructions to the Company; and

19.10.4.2 Imposing contractual data protection obligations on such subcontractor which are no less onerous than this set out in this Agreement; and

19.10.5 not transfer any Personal Data outside of the United Kingdom or the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

19.10.5.1 the Client or the Company has provided appropriate safeguards in relation to the transfer;

19.10.5.2 the data subject has enforceable rights and effective legal remedies;

19.10.5.3 the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

19.10.5.4 the Company complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

19.10.6 assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

19.10.7 notify the Client without undue delay on becoming aware of a Personal Data breach providing full details of such breach. The Company shall fully co-operate with the Client and take such reasonable steps as are directed by the Client to assist in the investigation, mitigation and remediation of each personal data breach, in order to enable the Client to

19.10.7.1 perform a thorough investigation into the personal data breach, and

19.10.7.2 formulate a correct response and

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- 19.10.7.3 to take suitable further steps in respect of the personal data breach in order to meet any requirement under Data Protection Legislation;
- 19.10.8 at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 19.10.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 19.

20 Force Majeure

- 20.1 Neither Party will be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Agreement or a Statement of Work that is caused by a Force Majeure Event. A Force Majeure Event is defined below in clause 20.2.
- 20.2 A Force Majeure Event means any circumstance not within a Party's reasonable control including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.
- 20.3 If a Force Majeure Event takes place that affects the performance of either Party's obligations under this Agreement or any Statement of Work:
- 20.3.1 the Party affected by the Force Majeure Event will notify the other Party as soon as reasonably possible; and
- 20.3.2 the obligations under this Agreement or any Statement of Work of the Party affected will be suspended and the time for performance of their obligations will be extended for the duration of the Force Majeure Event.

21 Dispute Resolution

- 21.1 If any dispute arises in connection with this agreement which they are not otherwise able to resolve:
- 21.2 either party shall give to the other written notice of the dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the parties shall attempt in good faith to resolve the Dispute;
- 21.3 if the parties are for any reason unable to resolve the Dispute within 21 days of service of the Dispute Notice, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 21 Business Days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (ADR notice) to the other party to the dispute, referring the dispute to mediation.
- 21.4 If there is any point on the logistical arrangements of the mediation, other than nomination of the mediator, upon which the parties cannot agree within 14 Business Days from the

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date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them.

- 21.5 Unless otherwise agreed, the mediation will start not later than 28 Business Days after the date of the ADR notice. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

General

- 22.1 Any notice required or permitted to be given by either Party to the other under this Agreement or a Statement of Work shall be in writing addressed to the other Party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the Party giving the notice.
- 22.2 No failure or delay by either Party in exercising any of its rights under this Agreement or a Statement of Work shall be deemed to be a waiver of that right, and no waiver by either Party of any breach of this Agreement or a Statement of Work by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

If any provision of this Agreement or a Statement of Work is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the Statement of Work and the remainder of the provision in question shall not be affected.

The Company may assign, license or sub-contract all or any part of its rights or obligations under this Agreement or any Statement of Work without the Client's consent except to the extent restricted, forbidden or requiring consent under clause 19 (Protection of Personal Data). This Agreement and all Statements of Work personal to the Client who may not assign, license or sub-contract any of its rights or obligations without the Company's prior written consent.

- 22.3 A person who is not a Party to this Agreement has no rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 22.4 This Agreement and all Statements of Work are governed by the laws of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

Signed by Director
for and on behalf of **twentysix Limited**

.....
Director

Signed by
for and on behalf of [company name]

.....
Director

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