

# Terms & Conditions of Business

## DEFINITIONS AND INTERPRETATION

1.1. The following definitions shall apply in these Conditions:

Affected Party: has the meaning given to it in clause 16.2.

Agency: Cognition Consult Ltd, Registered in England, no.07939741, Runway East Arca, Temple Row, Birmingham, England, B2 5AF

Agency Materials: has the meaning given to it in clause 11.2.

Bought-In Costs: any costs for goods and services bought from third party suppliers by the Agency on behalf of the Client in performance of the Services, including but not limited to messaging, research development, artwork, design, printing, advertising, third party market research, exhibition and display materials, media monitoring, evaluation, advice.

Client: the person or firm who purchases Services from the Agency, as specified in the Statement of Work.

Client Default: has the meaning given to it in clause 5.3.

Commencement Date: has the meaning given to it in clause 2.1.4.

Commissioned Materials: has the meaning given to it in clause 11.4.

Conditions: these terms and conditions as amended from time to time in accordance with clause 20.2.

Contract: the contract between the Agency and the Client for the supply of Services in accordance with these Conditions and the Statement of Work. For the avoidance of doubt, the Statement of Work shall form part of the Contract.

Exceptional Expenses: costs incurred by the Agency in performance of the Services, including but not limited to in connection to travel, flights, accommodation and courier charges.

Fees: the Agency's charges for the Services as set out in the Statement of Work.

In-put Materials: has the meaning given to it in clause 5.1.

Force Majeure Event: has the meaning given to it in clause 16.1.

Pre-existing Materials: has the meaning given to it in clause 11.1.

Services: the marketing services set out in the Statement of Work.

Statement of Work: the detailed plan, agreed in accordance with clause 2, describing the Services to be provided by the Agency, the Fees relating to those Services, the timetable for the performance of the Services and other related matters.

Written Approval: shall have the meaning given to it in clause 9.1.

1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of these Conditions.

1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4. The Schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions. Any reference to these Conditions includes the Schedules.

1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.

1.6. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.7. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.8. References to clauses and Schedules are to the clauses and Schedules of these Conditions and references to paragraphs are to paragraphs of the relevant Schedule.

1.9. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.





## **2. BASIS OF CONTRACT**

2.1. The Statement of Work shall be agreed in the following manner:

2.1.1 Client shall ask the Agency to provide services in accordance with these Conditions and shall provide the Agency with as much information as the Agency reasonably requests in order to prepare a draft Statement of Work for the services requested;

2.1.2 following receipt of the information requested from the Client, the Agency shall, as soon as reasonably practicable either:

2.1.2.1 inform the Client that it declines to provide the requested services; or

2.1.2.1 provide the Client with a draft Statement of Work.

2.1.3 if the Agency provides the Client with a draft Statement of Work pursuant to clause 2.1.2.1 above, the Agency and the Client shall discuss and agree that draft Statement of Work; and

2.1.4 both parties shall sign the draft Statement of Work when it is agreed, at which point and on which date the Contract shall come into existence ("Commencement Date").

2.2. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

## **3. EXCLUSIVITY**

3.1. The Agency agrees that it shall not represent any Company or organisation whose interests directly conflict or directly compete with those of the Client without the Client's express written consent.

## **4. RESPONSIBILITIES OF THE AGENCY**

4.1. The Agency shall perform the Services with reasonable skill and care, to a standard to be reasonably expected from a competent and professional supplier of marketing, public relations and associated services.

4.2. The Agency shall use reasonable endeavours to meet any performance dates specified in the Statement of Work, but any such dates shall be estimates only and time for performance by the Agency shall not be of the essence for the performance of the Services.

## **5. RESPONSIBILITIES OF THE CLIENT**

5.1. The Client warrants that to the best of its knowledge and belief, all information provided by it to the Agency during the performance of the Services is accurate and complete and that the Client is entitled to provide such information, and has obtained all and any rights, licences and/or consents necessary to permit the use of any photography, artwork, literature or other materials provided by or on behalf of the Client (the "In-put Materials") for use by the Agency in performance of the Services.

The Client shall:

5.2.1 provide all cooperation to the Agency as may be required in order for the Agency to perform the Services;

5.2.2 appoint and/or have in place at all times a representative of the Client to liaise with the Agency in relation to the Services, such representative to have authority to contractually bind the Client;

5.2.3 provide, for the Agency, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as reasonably required by the Agency;

5.2.4 provide, in a timely manner, such In-put Materials and other information as the Agency may reasonably require, and ensure that it is accurate in all material respects;

5.2.5 inform the Agency of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises; and





5.2.6 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment, in all cases before the date on which the Services are to start.

5.3. If the Agency's performance of its obligations under the Contract is prevented or delayed by:

5.3.1.any act or omission of the Client, its agents, subcontractors, consultants or employees

5.3.2.any failure or delay in the Client's performance of its obligations under the Contract; and/or

5.3.3.the fraud or negligence the Client, its agents, subcontractors, consultants or employees, (each a "Client Default"), the Agency shall not be liable for any delay in or failure of performance of its obligations (including any failure to achieve any milestone or other date) or for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such Client Default.

5.4. The Client shall be liable to pay to the Agency, on demand, all reasonable costs, charges or losses sustained or incurred by the Agency that arise directly or indirectly from any Client Default, subject to the Agency confirming such costs, charges and losses to the Client in writing.

5.5. The Client will indemnify the Agency against any loss or damage arising from any claim or allegation that the In-put Materials infringe the rights of any third party.

5.3. If the Agency's performance of its obligations under the Contract is prevented or delayed by:

5.3.1.any act or omission of the Client, its agents, subcontractors, consultants or employees

5.3.2.any failure or delay in the Client's performance of its obligations under the Contract; and/or

5.3.3.the fraud or negligence the Client, its agents, subcontractors, consultants or employees, (each a "Client Default"), the Agency shall not be liable for any delay in or failure of performance of its obligations (including any failure to achieve any milestone or other date) or for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such Client Default.

5.4. The Client shall be liable to pay to the Agency, on demand, all reasonable costs, charges or losses sustained or incurred by the Agency that arise directly or indirectly from any Client Default, subject to the Agency confirming such costs, charges and losses to the Client in writing.

5.5. The Client will indemnify the Agency against any loss or damage arising from any claim or allegation that the In-put Materials infringe the rights of any third party.

## 6. FEES

6.1. The Client shall pay the Fees in full and in cleared funds and in accordance with the Contract.

6.2. VAT will be included on invoices where appropriate at the prevailing rate from time to time.

6.3. The Client shall not be charged for the correction by the Agency of factual errors/omissions, spelling/grammatical errors and print production errors, which are the responsibility of the Agency.

6.4. If it is agreed that work shall be undertaken that is outside the scope of the Services, the Agency reserves the right to charge a further fee for any such additional work. Any such additional fee shall be subject to the Client's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed.

6.5. The Client agrees that, in respect of any media commissions paid by third party suppliers, the Client will pay such media commissions immediately in full to the Agency.

6.6. If the Client terminates the Contract on notice for whatever reason in accordance with clause 14 below and the Client does not wish the Agency to undertake any work during the notice period, the Agency will charge a payment in lieu equivalent to three times the average monthly fee calculated over the entire period of the Contract.



## **7. BOUGHT-IN COSTS AND EXPENSES**

7.1. In addition to the Fees, the Agency shall invoice the Client (at cost) for Bought-In Costs and Exceptional Expenses incurred by the Agency in performance of the Services.

7.2. The Agency shall obtain the Client's prior written approval for any Exceptional Expenses which exceed £100. For the avoidance of doubt, the Agency shall be entitled to engage third party suppliers to provide goods and services to the Client in performance of the Services and shall not be required to obtain the approval of the Client in respect of any Bought-In Costs associated with such third party suppliers..

## **PAYMENT TERMS**

8.1. Unless otherwise specified in the Statement of Work, the Agency shall invoice the Client:

8.1.1 for the Fees, on the Commencement Date; and

8.1.2 for all other payments including Bought-In Costs and Exceptional Expenses, at any time after the same have been incurred by the Agency.

8.2. The Client shall pay:

8.2.1 75% of the Fees within fourteen (14) days of the invoice and the remaining 25% of the Fees upon completion of the Services;

8.2.2 all other payments, including Bought-In Costs and Exceptional Expenses, within 30 days of the date of invoice. Bought-In Costs will be subject to a 15% handling charge.

8.3. If the Client fails to make payment in accordance with clause 8.2 above the Agency may:

8.2.1. Charge interest on any overdue amount at an annual rate of 5% above the prevailing base rate of Lloyds Bank plc, accruing on a daily basis from the due date for payment until payment is made, whether before or after any judgement and the Client shall pay the interest immediately on demand;

8.2.2. Suspend the provision of the Services until payment is made in full;

8.2.3. Demand immediate payment by the Client for:

8.2.3.1. Any costs of Services already supplied to the Client but not yet invoiced; and

8.2.3.2 Any unpaid Fees due which have not yet been paid by the Client; and

8.2.3.3 Any Bought-In Costs, associated handling fees and Exceptional Expenses already approved by the Client and incurred by the Agency.

8.4. The cost to the Agency of materials or services purchased overseas for the Services may be more or less than the cost anticipated at the date when the Agency ordered the relevant materials or services (or obtained the Client's approval for such costs) as a result of fluctuations in the rate of currency exchange. If so, the Agency shall charge the Client at the rate of currency exchange in operation on the date the Agency pays for the relevant materials or services, which shall be deemed to be the closing mid-point rate in London for that day as subsequently quoted in the next published edition of The Financial Times.

8.5. With the exception of Bought-In Costs and Exceptional Expenses, all Fees are fully inclusive of all general operating costs which include but are not limited to in-house mono and colour outputs, all communication costs, all subsistence costs, specialist databases, all subscriptions and all other costs incurred by the Agency in the performance of the Services.

8.6. All sums payable to the Agency under the Contract shall become due immediately on its termination, despite any other provision. This clause 8.6 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

8.7. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8.8. Time for payment shall be of the essence of the Contract.

## **9. APPROVALS AND AUTHORITY**

9.1. Any reference in these Conditions to the Client's "Written Approval" shall mean Written Approval by any directors, employees or representatives of the Client who as a matter of fact approve the Agency's work by any fax, letter, e-mail, oral approval, purchase order or signature on the Agency's documentation from any directors,



employees or representatives of the Client.

9.2. Written Approval by the Client of drafts and proofs shall be taken by the Agency as authorisation to proceed to publication and Written Approval of estimates provided by suppliers shall be the Client's authorisation for the Agency to enter into contracts with such suppliers on the basis of such estimates.



## 10. AMENDMENTS TO WORK IN PROGRESS

10.1. The Client may request the Agency to cancel or amend any and all plans, schedule or work in progress. The Agency will take all reasonable steps to comply with any such request provided that the Agency is able to do so within its contractual obligations to suppliers.

10.2. In the event of any such cancellation or amendment the Client will reimburse the Agency for any charges or expenses incurred by the Agency to which the Agency is committed. The Client shall also pay the Agency's Fees covering the cancelled or amended Services as well as any charges imposed on the Agency by third parties arising from the cancellation or amendment.

## 11. COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

11.1. Unless otherwise agreed in writing between the parties, the intellectual property rights in all artwork, copy and other work owned or controlled by the Agency prior to the Commencement Date (the "Pre-existing Materials") will rest at all times with the Agency.

11.2. The intellectual property rights in all artwork, copy and other work produced by the Agency in performance of the Services (the "Agency Materials") rests initially with the Agency.

11.3. On payment in full by the Client of all outstanding Fees, Bought-In Costs and Exceptional Expenses, and any other fees, charges and any interest thereon due under the Contract, copyright in the Agency Materials shall immediately be assigned to the Client, unless the Agency agrees in writing with the Client to other arrangements.

11.4. The Agency shall use reasonable endeavours to obtain all rights of use of any documents, information, artwork, copy or other materials commissioned by the Agency in the performance of the Services (the "Commissioned Materials") as agreed by the parties at the time such Commissioned Materials are commissioned.

11.5. The Client agrees that notwithstanding any of the above and save as otherwise expressly agreed in writing between the parties:

11.5.1. it shall grant to the Agency a perpetual licence to use any of the Agency Materials, the Commissioned Materials and/or the Client's trade marks, service marks, name and/or logos for the purposes of internal training or in the promotion by the Agency of its own business, provided that the wording of any case studies based on the Services performed by the Agency for the Client shall be agreed in writing between the parties prior to the publication of such case studies;

11.5.2. the Agency shall retain all intellectual property rights in any material contained in:

11.5.2.1. any presentation made or design submitted to the Client (including but not limited to in competition with any other agency);

11.5.2.2. campaign plans including specifications, copy, layouts, artwork, storyboards and/or scripts and estimates or quotations of the cost of the various items of advertising and services; and

11.5.2.3. any ideas or concepts or any works or materials created or produced encompassing such ideas or concepts,

to the extent that the Agency's presentation, design, campaign plan, ideas, concepts, works or materials are unsuccessful, not progressed to final approval, or (where the same are approved) not subsequently produced/implemented for the Client by the Agency; and

11.5.3. the Agency shall retain the right to use all know-how and residual knowledge obtained in connection with the Services and nothing in the Contract shall prevent the 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 the provisions of clause 12.





## 12. CONFIDENTIAL INFORMATION

12.1. The parties acknowledge a duty not to disclose during or after the term of the Contract, without the other's prior written permission any confidential information either concerning the other's business, its business plans, customers or associated companies or resulting from studies or surveys commissioned and paid for by the Client. The parties also acknowledge that these Conditions and the terms of any Statement of Work including (without limitation) those relating to the Agency's remuneration are confidential information and cannot be disclosed without the prior written approval of the other party.

12.2. For the avoidance of doubt, the restrictions in this clause shall not prevent:

The disclosure or use of confidential information in the proper performance of the Agency's duties;

12.2.2. The disclosure of confidential information if required by law;

12.2.3. The disclosure of confidential information, which has come into the possession of the Agency or into the public domain otherwise than through, unauthorised disclosure; or

12.2.4. The disclosure of confidential information to a party's employees, agents, group companies, subcontractors and representatives who need to know such confidential information in order to perform the Services and/or perform their obligations under the Contract.

## LIABILITY

13.1. Nothing in the Contract limits or excludes in any way the Agency's liability:

13.1.1 For death or personal injury caused by the Agency's negligence;

13.1.2. For fraud or fraudulent misrepresentation;

13.1.3. For breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any liability which cannot be limited or excluded by law.

13.2. Subject to clause 13.1, and except where expressly set out in the Contract, all warranties, conditions or other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

13.3. Subject to clause 13.1, the Agency's maximum aggregate liability to the Client under or in connection with the Contract whether such claim arises in contract or in tort (including negligence), or otherwise shall in no circumstances exceed an amount equal to total remuneration payable to the Agency under the Contract.

13.4. Subject to clause 13.1, neither party shall be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

13.4.1. loss of profits;

13.4.2. loss of sales or business;

13.4.3. loss of agreements or contracts;

13.4.4. loss of anticipated savings;

13.4.5. loss of or damage to goodwill;

13.4.6. loss of use or corruption of software, data or information;

13.4.7. any indirect or consequential loss.



## 14. TERMINATION

14.1. The Agency may terminate the Contract immediately by service of notice in writing to the Client, if the Client:

14.2.1. is in material breach of any of the terms of the Contract, and in the case of a breach capable of remedy, fails to remedy such breach within 14 days of receipt of a written notice giving the full particulars of the breach and of the steps required to remedy it; or

14.2.2. fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

14.2.3. becomes subject to any of the following events (or the Agency reasonably believes that the Client shall become subject to any of the following events):

14.2.3.1. the Client suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

14.2.3.2. the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;

14.2.3.3. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;

14.2.3.4. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Client (being a company);

14.2.3.5. the holder of a qualifying floating charge over the assets of the Client (being a company) has become entitled to appoint or has appointed an administrative receiver;

14.2.3.6 a person becomes entitled to appoint a receiver over all or any of the assets of the Client or a receiver is appointed over all or any of the assets of the Client;

14.2.3.7 a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Client's assets and such attachment or process is not discharged within 14 days;

14.2.3.8 any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause

14.2.3.1 to clause 14.2.3.7 (inclusive);

14.2.3.9. suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

14.2.4. there is a change of control of the Client (within the meaning of section 1124 of the Corporation Tax Act 2010).



14.3. On termination or completion of the Contract:

14.3.1. the Client shall immediately pay to the Agency all of the Agency's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Agency may submit an invoice, which shall be payable immediately on receipt;

14.3.2. the Client shall return all Pre-existing Materials. If the Client fails to do so, then the Agency may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and

14.3.3. any clauses expressly or implicitly intended to survive termination of the Contract shall do so.

14.4. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

## **15. EMPLOYMENT RESTRICTION**

15.1. For the duration of the Contract and for twelve (12) months thereafter, neither party shall, without the written consent of the other, solicit or entice, either directly or indirectly, or attempt to solicit or entice (or attempt to solicit or entice (or authorise the taking of such action by any other person) any person who is employed by the other or has been employed by the other during the Contract or who has been involved with the services under the Contract.

15.2. If the Agency agrees to a member of its staff joining the Client pursuant to clause 15.1, the Agency may charge a fee in consideration for such consent equivalent to 50% of the gross annual salary that shall be paid by the Client to that employee. In addition, the Agency will charge in full any and all recruitment fees to the Client for replacing the employee. The Agency will invoice the Client immediately upon the commencement of the employment of the relevant employee by the Client and such invoice shall be payable by the Client immediately upon presentation and subject to the payment provisions set out in clause 8.

## **16. FORCE MAJEURE**

16.1. "Force Majeure Event" means any circumstance not within a party's reasonable control including, without limitation:

16.1.1. acts of God, flood, drought, earthquake or other natural disaster;

16.1.2. epidemic or pandemic;

16.1.3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

16.1.4. nuclear, chemical or biological contamination or sonic boom;

16.1.5. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

16.1.6. collapse of buildings, fire, explosion or accident; and

16.1.7. any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);

16.1.8. non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and

16.1.9. interruption or failure of utility service.

16.2. Provided it has complied with clause 16.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event ("Affected Party"), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.



16.3. The Affected Party shall:

16.3.1. as soon as reasonably practicable after the start of the Force Majeure Event but no later than 3 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and

16.3.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

16.4. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving 7 days' written notice to the Affected Party.

16.5. If the Force Majeure Event prevails for a continuous period of more than 2 months, either party may terminate the Contract by giving 7 days' written notice to all the other party. On the expiry of this notice period, the Contract will terminate. Such termination under this clause 16.5 or clause 16.4 shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.

## **17. COMPLIANCE WITH LAWS**

In performing its obligations under the Contract, each party shall comply with the requirements of all legislation in force from time to time and which, in respect of the Agency, is applicable to its provision of the Services.

## **18. NOTICES**

18.1. Any notice, invoice or other communication including notice of termination which either party is required or permitted by the Contract to serve on the other party shall be sufficiently served if sent to the other party at its specified address in the Contract (or such other address as is notified to the other party in writing) by first-class, registered or recorded delivery post by email to the email address specified by the other party's authorised representative.

18.2. Any notice, invoice or other communication shall be deemed to have been received:

18.2.1. if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second working day after posting; or

18.2.2. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 18.2.2, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

## **19. DISPUTE RESOLUTION**

If any claim or dispute arises under or in connection with the Contract, the parties shall attempt to settle such claim or dispute by negotiation prior to commencing legal proceedings.

## **20. GENERAL**

20.1. A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of the Contract.

20.2. Except as otherwise expressly set out in these Conditions, no variation to the terms of the Contract or any Statement of Work under it shall be valid unless made in writing and signed by or on behalf of each of the parties.

20.3. The Contract is personal to the Client and the Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.





20.4. The Agency may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

20.5. If any term of the Contract 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 the Contract and shall in no way affect the legality, validity or enforceability of the remaining terms.

20.6. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

20.7. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20.8. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

20.9. The Contract shall be governed by and construed in accordance with the law of England and Wales and each party hereby irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales over any claim or matter arising under or in connection with the Contract or the legal relationships established by the Contract.

## **21. DATA PROTECTION**

21.1. In this clause 21:

21.1.1. Data Controller, Data Processor, Data Subject, Personal Data, Personal Data Breach and processing shall have the respective meanings given to them in the Data Protection Laws (and related expressions shall be construed accordingly);

21.1.2. Data Protection Laws means any applicable law relating to the processing, privacy and use of Personal Data including: the General Data Protection Regulation (EU) 2016/679 (GDPR); the Data Protection Act 2018; any laws that replace, extend, re-enact, consolidate or amend any of the foregoing (provided that the impact of any such replacement, extension or amendment is agreed in accordance with clause 20.2).

21.1.3. Sub-Processor means any agent, sub-contractor or other third party engaged by the Agency (or by any other Sub-Processor) for carrying out any processing of the Personal Data.

21.1.4. Losses means all claims, damages, liabilities, fines, interest, penalties, costs, charges, sanctions, expenses and/or compensation.

21.2. Where the Agency processes Personal Data limited to business contact details of the Client's personnel (employees, agents and/or sub-contractors) for the purposes of administration of the Contract, it will do so as a Data Controller (but only in respect of such Personal Data) and strictly in accordance with the Data Protection Laws.

Compliance with Data Protection Laws

21.3. Save as provided in clause 21.2, the Client is the Data Controller and the Agency is the Data Processor for the purposes of the processing of Personal Data. The Agency shall process Personal Data in compliance with the obligations placed on it under the terms of this clause 21.

21.4. The Client shall at all times comply with all Data Protection Laws in connection with the processing of Personal Data. The Client shall ensure all instructions given by it to the Agency in respect of Personal Data shall at all times be in



accordance with the Data Protection Laws.



21.5. The Client shall indemnify and keep indemnified the Agency against all Losses arising out of or in connection with any breach by the Client of its obligations relating to the processing of Personal Data.

#### Instructions

21.6. The Agency shall only process (and shall ensure Agency personnel only process) the Personal Data in accordance with this clause 21 and the Schedule (and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and in such a case the Agency shall inform the Client of that legal requirement before processing, unless such applicable law prohibits the Agency from so notifying the Client).

21.7. If the Agency believes that any instruction received by it from the Client is likely to infringe the Data Protection Laws it shall inform the Client and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.

#### Security

21.8. Taking into account the state of technical development and the nature of processing, the Agency shall implement and maintain the technical and organisational measures set out in the Schedule to protect the Personal Data against accidental, unauthorised or under lawful destruction, loss, alteration, disclosure and/or access.

#### Sub-Processing and Personnel

21.9. The Agency shall:

21.9.1 save as provided in clause 21.11, not permit any processing of Personal Data by any Sub-Processor or other third party (except its personnel) without the written authorisation of the Client;

21.9.2 appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 21 in respect of Personal Data;

21.9.3 remain liable to the Client under the Contract for all the acts and omissions of each Sub-Processor and each of its/their personnel as if they were its own; and

21.9.4 ensure that all persons authorised by the Agency or any Sub-Processor to process Personal Data are subject to a written contractual obligation to keep the Personal Data confidential.

#### Assistance

21.10. The Agency shall (at the Client's cost):

21.10.1 assist the Client in ensuring compliance with the Client's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under Data Protection Laws) taking into account the nature of the processing and information available to the Agency;

21.10.2 taking into account the nature of the processing, assist the Client (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Client's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Personal Data; and

21.10.3 refer all requests and communications received from Data Subjects or any supervisory authority to the Client which relate to any Personal Data promptly (and in any event within 3 days of receipt) and shall not respond to any without the Client's written approval and in accordance with the Client's instructions unless and to the extent required by law.

#### International Transfers

21.11. The Client agrees that the Agency may transfer the processing of Personal Data to other group companies of the Agency and to third party Sub-Processors located inside or outside of the European Economic Area as necessary for the performance of the Services under the Contract for all sub-processing activities. Notwithstanding the general consent given by the Client, the Agency shall inform the Client of any intended changes concerning the addition or replacement of any Sub-Processor within a reasonable time prior to implementation of such change.







## Records and Audit

21.12. The Agency shall, in accordance with Data Protection Laws, make available to the Client such information that is in its position or control as is necessary to demonstrate the Agency's compliance with its obligations under the Contract. The Agency shall permit audits by the Client for this purpose, subject to a maximum of one audit in any 12 month period.

## Breach

21.13. The Agency shall notify the Client without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Personal Data.

## Deletion/Return

21.14. On ceasing to provide the Services relating to the processing of Personal Data, at the Client's cost and option, the Agency shall either return all of the Personal Data to the Client or securely dispose of the Personal Data except to the extent any applicable law requires the Agency to store such Personal Data.

## Data Processing Details

Processing of the Personal Data by the Agency under the Contract shall be for the subject-matter, duration, nature and purposes and involve the types of personal data and categories of Data Subjects set out below:

### 21.15

#### 1. Subject-matter, nature and purpose of processing:

The Agency will process the Personal Data set out below in this Schedule 1 in order to:

- send marketing communications to the Client's existing and prospective clients and contacts;
- analyse and assess the Client's existing and prospective clients;
- devise marketing strategies for the Client;
- carry out the Services described in the Statement of Work, and otherwise perform the Services under the Contract.

#### 2. Duration of the processing:

Unless required to retain the information for a longer period under any legal obligation, the Personal Data will be retained for as long as necessary to provide the Services or for the term of the Contract (whichever is shortest).

#### 3. Types of personal data:

Name, job title, employer/business, address, email address, telephone number, mobile phone number, bank details.

#### 4. Categories of data subjects:

- Client staff and personnel;
- Potential and existing clients and contacts of the Client.

#### Technical and organisational security measures:

The Agency shall implement and maintain the following technical and organisational security measures to protect the Personal Data:

In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Personal Data to be carried out under or in connection with the Contract, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Personal Data transmitted, stored or otherwise processed, the Agency shall implement appropriate technical and organisational security measures appropriate to the risk, including is appropriate those matters mentioned in Articles 32(a) to (d) of the GDPR.

