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# Terms & Conditions

Big Brand Ideas 2018

**Trunk.**

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## General terms

### 1 Basis of contract and term

- 1.1 The Contract shall come into existence in accordance with these Conditions on the Effective Date and shall:
  - (a) if BBI is acting on a Retainer Basis, continue for the Initial Period and thereafter subject to earlier termination in accordance with clause 22, unless and until terminated by either party giving not less than three months' notice in writing to the other party. Such notice shall be served no earlier than the date of expiry of the Initial Period; or
  - (b) if BBI is not acting on a Retainer Basis, continue until termination in accordance with clause 22.
- 1.2 Where BBI is not acting on a Retainer Basis, each Project shall commence on the Project Commencement Date set out in the Project Scope of Work and shall continue until the Project Completion Date, subject to earlier termination in accordance with the terms of clause 22.
- 1.3 Where BBI is acting on a Retainer Basis and the parties agree Projects in addition to the Annual Scope of Work, each such Project shall commence on the Project Commencement Date set out in the Project Scope of Work and shall continue until the Project Completion Date set out in the Project Scope of Work, subject to earlier termination in accordance with the terms of clause 22 and shall remain subject to these terms.
- 1.4 Any samples, drawings, descriptive matter or advertising issued by BBI, and any descriptions or illustrations contained in BBI's marketing material, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 1.5 The 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 trade, custom, practice or course of dealing.
- 1.6 Any quotation given by BBI shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

### 2 Appointment & scopes of work

- 2.1 BBI acts in all its contracts with third parties with regard to the provision of Services set out in the Scope of Work as a principal at law.
- 2.2 During the Term, BBI shall perform the Services and (where relevant) shall supply the Deliverables to the Client in accordance with agreed Scopes of Work.
- 2.3 The parties may agree new Projects from time to time by agreeing a new Project Scope of Work in writing. Once a Project Scope of Work has the signature of both an Authorised BBI Approver and Authorised Client Approver, such Project Scope of Work shall automatically form part of the Contract.
- 2.4 An Annual Scope of Work may include one or more parts of the Services Schedule which incorporates additions and amendments to these Conditions to reflect the different types of Services to be provided for the Retainer Fee. Any parts of such Services Schedule forms part of the Contract for the duration of the Annual Scope of Work.
- 2.5 A Project Scope of Work may include one or more parts of the Services Schedule which incorporates additions and amendments to these Conditions to reflect the different types of Services to be provided for the relevant Project. Any parts of such Services Schedule forms part of the Contract for the duration of the relevant Project set out in the Project Scope of Work.
- 2.6 BBI will not be obliged to perform any work on behalf of the Client in accordance with a Scope of Work until the relevant Scope of Work has been signed by both parties. Where relevant, BBI shall not be obliged to supply any Services and/or Deliverables until the Client has supplied a valid purchase order number for such Services and Deliverables.
- 2.7 BBI may charge for the preparation of an Annual Scope of Work or a Project Scope of Work on a time and materials basis in accordance with BBI's daily fee rates.

### 3 Client's obligations

- 3.1 The Client shall:
  - (a) co-operate with BBI in all matters relating to the Services;

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- (b) give BBI full and clear instructions as to its requirements for the Services and Deliverables to be included in a Scope of Work, including full details of the dates by which each stage of the proposed Services and Deliverables are proposed to commence and finish;
  - (c) give BBI clear briefings and ensure that all the facts given about the Accounts (if relevant) are accurate and shall ensure that its other suppliers and agencies act in willing co-operation with BBI;
  - (d) promptly inform BBI if the Client considers that any Deliverables submitted to the Client by BBI for approval are false or misleading or in any way contrary to law or applicable Advertising Regulation;
  - (e) promptly supply to BBI (at no charge) any Client Materials reasonably required by BBI or otherwise necessary to provide the Services and Deliverables and shall ensure that it has obtained and maintains all necessary consents rights and licences and comply with all relevant legislation as required to enable use by BBI of all Client Materials and to enable BBI to provide the Services;
  - (f) comply with all applicable laws and regulations with respect to its activities under the Contract;
  - (g) keep all BBI Materials at the Client's premises in safe custody at its own risk, maintain the BBI Materials in good condition until returned to BBI, and not dispose of or use BBI Materials other than in accordance with BBI's written instructions or authorisation;
  - (h) provide to BBI in a timely manner all documents, information, items and materials in any form (whether owned by the Client or a third party) required under a Scope of Work or otherwise reasonably required by BBI in connection with the Services and ensure that they are accurate and complete in all material respects;
  - (i) not store, distribute or transmit any material through the Services (or provide any material to BBI) that:
    - (i) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
    - (ii) facilitates illegal activity;
    - (iii) infringes the Intellectual Property Rights of any third party;
    - (iv) depicts sexually explicit images; and/or
    - (v) promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment, or any other illegal activities,
  - (j) comply with any additional responsibilities of the Client as set out in the relevant Scope of Work.
- 3.2 If the Client, its agents, subcontractors, consultants or employees do not fulfil their obligations under or in connection with the Contract (including its payment obligations), then to the extent that such failure prevents or delays BBI from performing any Services and/or providing any Deliverables in accordance with the Contract, BBI (without prejudice to any other right or remedy it may have) will be relieved of its obligations to the Client, or will be allowed an extension of time to perform its obligations equal to the delay caused by the Client, and BBI shall not be liable for any Losses incurred by the Client as a result of any such failure.

## 4 Service delivery

- 4.1 BBI will give the Client full and clear instructions as to the Client Materials it reasonably requires for the purposes of performing the Services and providing the Deliverables.
- 4.2 BBI shall:
- (a) use reasonable skill and care in its proper performance of the Services and provisions of the Deliverables;
  - (b) use reasonable endeavours to provide the Services, and deliver the Deliverables to the Client in accordance with the appropriate Scope of Work in all material respects;
  - (c) use reasonable endeavours to meet any performance dates or delivery dates specified in the Scope of Work but any such dates shall be estimates only and time for performance by BBI shall not be of the essence of the Contract;
  - (d) comply with all lawful and reasonable directions regarding the Services and Deliverables

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communicated to it from time to time by the Client (provided such directions do not deviate from or add to the Scope of Work and any such amendment must be agreed in accordance with clause 9); and

- (e) keep Client Materials (if any) reasonably safe and secure while they are in the possession or control of BBI.
- 4.3 If at any time BBI becomes aware that it may not be able to perform the Services or deliver any Deliverables by any date set out in the applicable Scope of Work (or any other deadline agreed by the parties in writing), BBI will notify the Client and give details of the reasons for the delay.
- 4.4 For the avoidance of doubt, BBI shall not be liable under or in connection with the Contract for any modifications, adaptations or amendments to any Deliverables made by the Client or by a third party or on the Client's behalf, not in the event that any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to acts or omissions of the Client and/or its Associates.

### 5 BBI: Other appointments

The relationship between the parties is non-exclusive and BBI shall therefore be entitled to provide any services or deliverables the same or similar to the Services and/or Deliverables to any third party.

### 6 Client: Other appointments

- 6.1 During a Project Term, the Client will not either itself and/or through another agency or other third party entity procure services which are the same or substantially similar to the Services and Deliverables in respect of the relevant Project in the Territory.
- 6.2 During the Term, the Client will not through another agency or other third party entity procure services which are the same or substantially similar to the Services and Deliverables in respect of a current Scope of Work in the Territory.

### 7 Personnel

BBI will allocate suitable personnel with appropriate levels of experience and seniority to provide the Services. The Client acknowledges and agrees that it may be necessary for BBI to replace the personnel providing the Services with alternative personnel with similar levels of seniority and experience.

### 8 Amendments and cancellations

- 8.1 In the event that either party wishes to make any material amendment or change to the scope or execution of an Annual Scope of Work, any such amendment shall be subject to the prior agreement of both parties in writing in accordance with this clause 8 and clause 9.
- 8.2 Where the parties have agreed any additional Project Scopes of Work, if either party wishes to make any material amendment to the scope or execution of a Project, any such amendment shall be subject to the prior agreement of both parties in writing in accordance with this clause 8 and clause 9.
- 8.3 In the event of any amendment to the scope or execution of an Annual Scope of Work or Project Scope of Work by the Client, the Fees payable to BBI in respect of the amended Project shall not decrease below the level of Fees that would have been payable had the Project not been amended, save with the prior written approval of BBI.
- 8.4 Pending approval (in accordance with clause 9) of any amendments to a Project, BBI shall (unless otherwise agreed) continue to perform and be paid for the Services as if such change had not been requested.
- 8.5 Subject to clause 8.7, 9.7 and 22.1 the Client may request BBI to cancel any Project or part thereof, including any plans, schedules or work in progress in respect of any Project. BBI will take all reasonable steps to comply with any such request provided that BBI is able to do so within its contractual obligations to suppliers.
- 8.6 In the event of any such cancellation the Client will reimburse BBI for all Fees up to the date of cancellation, together with any third party charges or other expenses or costs incurred by BBI or to which BBI is committed as well as any charges or other expenses

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or costs imposed on BBI by third parties arising from the cancellation including all sums agreed to be paid by BBI to a production company, provided that BBI shall use reasonable endeavours to mitigate any such third party charges or expenses wherever possible.

- 8.7 In addition to the above, in the event of cancellation of a Project or part thereof, including any and all plans or work in progress, by the Client, the Client shall pay the cancellation fees set out in the relevant Scope of Work to BBI.

## 9 Approvals and authority

- 9.1 For the purposes of these Conditions, any reference to "approval" to be given by the Client shall mean the Client giving approval by one of the following methods:
- (a) the Client issuing a purchase order bearing the signature of an Authorised Client Approver; or
  - (b) e-mail from the individual business e-mail address of an Authorised Client Approver; or
  - (c) the signature of an Authorised Client Approver on BBI's documentation.
- 9.2 For the purposes of the Contract, any reference to "approval" to be given by BBI shall mean BBI giving approval by one of the following methods:
- (a) e-mail from the individual business e-mail address of an Authorised BBI Approver; or
  - (b) the signature of an Authorised BBI Approver on the Client's documentation.
- 9.3 Any approval will set out the proposed changes and the effect that these changes will have on:
- (a) the Services;
  - (b) the Fees;
  - (c) the timetable for a Project; and
  - (d) any other terms of a relevant Scope of Work.
- 9.4 If the Client wishes to make a change to the Annual Scope of Work or the Project Scope of Work, it shall notify BBI and provide as much detail as BBI reasonably requires of the proposed changes including the timing of the proposed change.
- 9.5 Where a party is asked to give approval under or in connection with the Contract, such approval shall not be unreasonably withheld or delayed.
- 9.6 BBI will seek the Client's prior approval of:
- (a) any estimates or quotations for any third party costs to be paid by the Client; and
  - (b) any creative treatments, including scripts, storyboards, copy, layouts, design, artwork, proposed marketing activity; and the Client's approval of such estimates and creative treatments will be BBI's authority to enter into contracts with relevant third parties and to prepare draft Deliverables.
- 9.7 BBI will seek the Client's prior approval of any draft Deliverables and such approval will be BBI's authority to proceed with the use of the relevant Deliverables.
- 9.8 In the event that the Client does not approve of any matter requiring approval it shall notify BBI of its reasons for disapproval within 10 days of BBI's request. If the Client does not notify BBI of its disapproval in accordance with this clause 9.8, it shall be deemed approved.
- 9.9 In the event of any delay or failure of the Authorised Client Approver giving approvals (or disapprovals) requested under or in connection with the Contract, BBI will not be liable for any resulting delays or adverse impact caused to the delivery of a Project.
- 9.10 BBI may charge for the time it spends on preparing and negotiating amendments to an Annual Scope of Work or the Project Scope of Work which implement changes proposed by the Client in accordance with clause 10 on a time and materials basis at BBI's daily rates.

## 10 Project management

- 10.1 During the Term, BBI will keep the Client reasonably informed as to the progress and status of all Services and Deliverables. BBI will prepare and submit written reports at such intervals and in such format as is agreed by the parties and will promptly inform the Client of any actual or anticipated problems relating to delivery of the Deliverables.

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- 10.2 During the Term, if required by BBI, the parties' respective project managers shall arrange and attend meetings to review the status and progress of the Services, Deliverables and the Project(s), and to seek to resolve any issues that have arisen. Such meetings shall be held at such locations and at such intervals as shall be agreed by the parties.

### 11 Fees

- 11.1 In consideration of the provisions of the Services, the Client will pay BBI the Fees, Expenses and Third Party Costs.
- 11.2 Unless otherwise approved by the Client, or set out in a Scope of Work, all Third Party Costs shall be charged to the Client.
- 11.3 For the avoidance of doubt, the Fees are payable in addition to all payments for Expenses and Third Party Costs.
- 11.4 The following clauses 11.5 to 11.7 (inclusive) shall apply if BBI is providing the Services on a Retainer Basis.
- 11.5 In consideration of BBI providing the Services set out in the Annual Scope of Work and any Project Scope of Work, the Client shall pay BBI the Retainer Fee and the Project Fee which shall be payable in accordance with clause 11.8.
- 11.6 On or before the first anniversary of the Effective Date and then on or before each subsequent anniversary in each subsequent Year of the Term (and in the event that neither party have served notice to terminate in accordance with clause 22), the parties shall commence negotiations in good faith to agree the Retainer Fee for the next Year of the Contract and a new Annual Scope of Work for such Year. If the parties fail to reach agreement before the start of that Year, the preceding Year's Retainer Fee shall automatically be adjusted with effect from the commencement of that Year in accordance with the movement during the preceding Year in the All Items Index of Retail Prices published by the UK Office for National Statistics.
- 11.7 Subject to clause 11.6, the Retainer Fee is fixed for each Year of the Contract based on the Annual Scope of Work, and the Retainer Fee will not be increased or decreased, unless the parties mutually agree in writing to amend the Annual Scope of Work in accordance with clause 8.
- 11.8 The Fees, Expenses and Third Party Costs will be invoiced in accordance with the payment terms set out in the applicable Scope of Work (or in the absence of any payment terms in the Scope of Work, monthly in arrear) and shall be payable (subject to clause 12.5) within twenty eight [28] days of the date of the relevant invoice, or such other reasonable period as the parties may agree in the applicable Scope of Work in full and cleared funds to a bank account nominated in writing by BBI, and time for payment shall be of the essence of the Contract.
- 11.9 All sums stated in the Contract or in any Scope of Work, quotation or estimate exclude VAT and any other applicable sales tax (unless otherwise stated) which shall also be payable by the Client at the rate prevailing from time to time.
- 11.10 The terms of remuneration set out in the Contract do not cover the performance of services which are outside of a Scope of Work nor do they cover the performance of services outside the Territory. If any such services are required the terms relating to their provision together with the applicable fees will be agreed in writing by the parties.
- 11.11 In the event that the Client fails to make any payment in full when due to BBI under the Contract, then without prejudice to its other rights and remedies under or in connection with the Contract or otherwise in law, BBI shall be entitled to charge the Client interest on such overdue sum at the rate of 8 % above the base rate of Barclays Bank Plc in force from time to time calculated from the due date up to the date of payment.
- 11.12 The Client reserves the right to withhold payment of any invoice or part of an invoice where the Client (acting reasonably and in good faith) has a bona fide reason to challenge the validity or accuracy of such invoice. On receipt of any such invoice the Client shall:
- (a) immediately notify BBI in writing of the reason for such withholding;
  - (b) pay the undisputed part of such invoice in accordance with clause 11.5; and
  - (c) work promptly and in good faith with BBI to resolve any such dispute over the relevant invoice.
- 11.13 If any payment of the Fees, Expenses or Third Party Costs is subject to tax (whether by way of direct assessment or withholding at its source), BBI shall be entitled to receive from the Client such amounts as shall ensure that the net receipt to BBI of the Fees, Expenses

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and Third Party Costs after tax in respect of the payment is the same as it would have been were the payment not subject to such tax.

- 11.14 If the Client is overdue with any payment hereunder, then without prejudice to BBI's other rights or remedies:
- (a) BBI shall have the right to suspend performance of the Services on seven (7) days' written notice until BBI has received payment of the overdue amount together with any accrued interest; and/or
  - (b) BBI shall have the right to terminate the applicable Scope of Work immediately upon seven (7) days' written notice to the Client.
- 11.15 Where a surcharge is levied by a supplier against BBI due to late payment and this results from late payment by the Client, the Client shall immediately reimburse to BBI the amount of such surcharge, together with any accrued interest charged by the supplier in respect of the overdue amount.
- 11.16 Where a late copy charge is levied by a media owner against BBI due to copy being delivered late, and this does not result from BBI's negligent or wilful act or omission, then the Client shall immediately reimburse the amount of such late copy charge to BBI.
- 11.17 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).

## 12 Third party services & costs

- 12.1 BBI will invoice the Client in respect of all third party costs incurred by BBI on behalf of the Client in performing the Services, including (but not limited to):
- (a) third party or in-house production work required to produce the Deliverables including (but not limited to) illustrations, film production, artwork, photography, model fees, recordings, the services of performers or actors, animation, print and post production work and other content; and
  - (b) all costs incurred in taking legal or other advice or searches and enquiries, as agreed between the parties from time to time
- [collectively defined as "**Third Party Costs**".]
- 12.2 BBI will advise the Client promptly of any changes in the estimated cost of items of Deliverables.
- 12.3 In the event that the Client cancels or delays any part of the Services, the Client shall remain liable for all Third Party Costs and any associated cancellation charges incurred by BBI on behalf of the Client.
- 12.4 The actual cost to BBI of Third Party Costs in respect of materials or services purchased overseas for the Deliverables may be more or less than the cost anticipated at the date when BBI ordered the relevant materials or services (or obtained the Client's approval for such Third Party Costs) as a result of fluctuations in the rate of currency exchange. If so, BBI will charge the Client at the rate of currency exchange in operation on the date BBI pays for the relevant Third Party Costs, 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.
- 12.5 In the event that any Third Party Costs require payment in advance or sooner than the payment terms set out in clause 11.8, BBI will notify the Client as soon as reasonably practicable in advance and the Client shall pay such costs within the period set out in the relevant invoice.

## 13 Third party suppliers: business terms & selection

- 13.1 BBI enters into contracts with third party suppliers in respect of Services and Deliverables in accordance with such suppliers' standard or individual conditions and contracts ("Third Party Contracts").
- 13.2 Provided that BBI has notified the Client of any significant restrictions or contract terms contained in such Third Party Contracts:
- (a) the Client hereby acknowledges that its right to use or otherwise benefit from any Services or Deliverables acquired under such Third Party Contracts shall be as set out in such Third Party Contracts;

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- (b) any charges or liabilities (to the extent caused by an act or omission of the Client or its Affiliates or any third party acting for or on its behalf) for which BBI is liable under such Third Party Contracts (including cancellation payments) shall be the responsibility of the Client; and
  - (c) the Client hereby indemnifies and shall keep BBI indemnified against any Losses suffered or incurred by BBI that is caused by any act or omission of the Client which puts BBI in breach of any such Third Party Contracts.
- 13.3 BBI shall provide the Client with a copy of any relevant Third Party Contract if requested to do so and if authorised by the relevant third party.
- 13.4 BBI shall use reasonable care and skill in the selection and appointment of suppliers. Should the Client request, BBI will obtain more than one quote for a particular supply and discuss these with the Client before placing an order.
- 13.5 BBI shall obtain the Client's approval before commissioning services from any Affiliate.

## 14 Third Party Costs

- 14.1 BBI shall use reasonable care and skill in the selection and appointment of suppliers in regards to the best value versus cost.

## 15 Confidentiality

- 15.1 Each of the parties acknowledges that, whether by virtue of and in the course of the Contract or otherwise, it may receive or otherwise become aware of information relating to the other party, its clients, customers, businesses, business plans or affairs, which information is proprietary and confidential to the other party ("**Confidential Information**").
- 15.2 Confidential Information shall include any document marked "Confidential", or any information which the recipient has been informed is confidential or which it ought reasonably to expect the other party would regard as confidential.
- 15.3 Confidential Information shall exclude information which:
- (a) at the time of receipt by the recipient is in the public domain;
  - (b) subsequently comes into the public domain through no fault of the recipient, its officers, employees or agents;
  - (c) is lawfully received by the recipient from a third party on an unrestricted basis; and/or
  - (d) is already known to the recipient before receipt hereunder.
- 15.4 Each of the parties undertake to maintain the confidentiality of the other party's Confidential Information at all times and to use no less adequate measures than it uses in respect of its own confidential information to keep the other party's Confidential Information reasonably secure. Neither party shall at any time, whether during the Term or at any time thereafter, without the prior written approval of the other party, use, disclose, exploit, copy or modify any of the other party's Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the exercise of its rights and/or the performance of its obligations in connection with the Contract.
- 15.5 Each of the parties undertakes to disclose the other party's Confidential Information only to those of its Associates to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under the Contract.
- 15.6 The Client acknowledges and agrees that any identifiable and original idea or concept presented by BBI in relation to any promotion or advertising campaign developed by BBI shall be acknowledged as being available only for such promotion or campaign and shall not be used for any other purposes whatsoever without BBI's express prior written approval. Even where no promotion or campaign is agreed, the ideas and concepts presented to the Client shall remain strictly confidential and shall not be used in any way, including communication to any third party, without BBI's prior written approval.
- 15.7 The Client acknowledges that nothing in the Contract shall affect BBI's right to use as it sees fit any general marketing or advertising intelligence gained by BBI in the course of its appointment.
- 15.8 Neither party shall be in breach of this clause 15 if it discloses the other party's Confidential Information in circumstances where such disclosure is required by law, regulation or order of a competent authority, provided that the other party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.



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- 15.9 Each party hereby indemnifies the other party from and against all Losses arising out of or in connection with the other party's breach of this Clause 15, including breach by each party's Associates.
- 15.10 The terms of and obligations imposed by this Clause 15 shall survive the termination of the Contract for any reason.

### 16 BBI warranties

- 16.1 BBI warrants that:
- (a) it has full power and authority to enter into the Contract and that by doing so it will not be in breach of any obligation to a third party;
  - (b) the personnel who perform the Services are and shall be competent and suitable, whether as to qualifications, experience or otherwise, to provide the Services;
  - (c) subject to clause 16.4, the use of the Deliverables by the Client in accordance with the Contract and for the purposes set out in the Scope of Work will not infringe the copyright of any third party and;
  - (d) to the best of its knowledge and belief and subject to clause 16.4, as at the date of delivery of the Deliverables the use of the Deliverables in accordance with the Contract for the purposes set out in the Scope of Work will comply with all Advertising Regulations in the UK, save that where the Client's business involves any industry sector which is subject to its own industry specific Advertising Regulations or other code, regulation, statute or law (collectively "**Specialist Advertising Regulations**") the Client shall be responsible for ensuring that the Deliverables are compliant with such Specialist Advertising Regulations.
- 16.2 BBI shall not be in breach of the warranty at clause 16.1(c) to the extent of the infringement arises from:
- (i) the use of Client Materials in the development of, or the inclusion of the Client Materials in the Service or any Deliverable;
  - (ii) any modification of any Deliverable, other than by or on behalf of BBI; and
  - (iii) compliance with the Client's specifications or instructions.
- 16.3 All warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise are hereby excluded to the fullest extent permitted by law, including any condition of satisfactory quality or fitness for a particular purpose.
- 16.4 The Client releases BBI from any liability under or in connection with the Contract and hereby indemnifies BBI against any Losses incurred by BBI to the extent that such Losses arise as a result of:
- (a) the Deliverables infringing third party Intellectual Property Rights, breaching Advertising Regulations or other laws and regulations, where BBI had previously notified the Client of a specific risk that the Deliverables infringed third party Intellectual Property Rights or breached Advertising Regulations or other laws and regulations and BBI had obtained the prior approval of the Authorised Client Approver to use such Deliverables notwithstanding such notified risk; and/ or
  - (b) the incorporation of Client Materials into the Deliverables provided that BBI has incorporated and used such Client Materials in the Deliverables in accordance with any instructions given by the Client from time to time.

### 17 Client warranties

- 17.1 The Client warrants that:
- (a) it has full power and authority to enter into the Contract and that by doing so it will not be in breach of any obligation to a third party;
  - (b) the Client Materials will not, when used in accordance with the Contract and any written instructions given by the Client, infringe third party copyright;
  - (c) to the best of its knowledge and belief, the Client Materials will comply with all applicable laws and regulations including all Advertising Regulations; and
  - (d) the Client Materials are accurate and complete in all material respects.

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### 18 Liability

- 18.1 Subject to clause 18.2 BBI's maximum aggregate liability to the Client under or in connection with the Contract (including all Scopes of Work and any indemnity contained in the Contract), whether in contract, tort (including negligence) for breach of statutory duty or otherwise, shall be limited to the greater of £1,000,000 and 110% of the average annual charges [calculated by reference to the charges in successive 12-month periods from the date of the Contract] paid by the Client under the Contract.
- 18.2 Nothing in the Contract shall exclude or in any way limit either party's liability for fraud, death or personal injury caused by its negligence or any other liability to the extent such liability may not be excluded or limited as a matter of law.
- 18.3 Subject to clause 18.2 (and including for the avoidance of doubt any indemnity contained in the Contract), in no event will either party be liable under or in connection with the Contract for:
- (a) loss of actual or anticipated income or profits;
  - (b) loss of or damage to goodwill or reputation;
  - (c) loss of anticipated savings;
  - (d) loss of agreements or contracts;
  - (e) loss of sales or business;
  - (f) loss of use or corruption of software, data or information; or
  - (g) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.
- 18.4 Where one party ("**Indemnifying Party**") agrees to indemnify and keep the other party ("**Indemnified Party**") indemnified under the Contract, such indemnity is subject to the Indemnified Party complying with the following process in the event that a third party claim arises:
- (a) the Indemnified Party must promptly notify the Indemnifying Party in writing of such claim;
  - (b) the Indemnified Party must not make any admission of liability, settlement or compromise without the prior written consent of the Indemnifying Party;
  - (c) the Indemnified Party must give the Indemnifying Party express authority to conduct all negotiations and litigation and to defend and/or settle all litigation arising from such claim, provided that the Indemnifying Party regularly consults the Indemnified Party on the conduct and defence of the claim;
  - (d) the Indemnified Party must provide the Indemnifying Party with all available information and assistance in relation to such claim as the Indemnifying Party may reasonably require at the Indemnifying Party's cost and expense; and
  - (e) if within ninety [90] days after the Indemnifying Party's receipt of notice of any such claim, the Indemnifying Party fails to take action to defend or settle such claim, the Indemnified Party may at the Indemnifying Party's expense undertake the defence, compromise or settlement of the claim as it sees fit.

### 19 Insurance

- 19.1 BBI shall take out and maintain insurance policies to the value sufficient to meet its liabilities under or in connection with the Contract. Upon the Client's reasonable request BBI will provide the Client with evidence that such insurance is in place.
- 19.2 The Client acknowledges and agrees that nothing in the Contract shall place any obligation upon BBI to obtain insurance cover in relation to risks arising from terrorism or military action or any threat of terrorism or military action and BBI shall not be liable to the Client under the Contract for any loss of any kind arising from any such action or threat.

### 20 Intellectual property rights

- 20.1 BBI acknowledges that ownership of Client Materials and ownership of all Intellectual Property Rights in any Client Materials (including any modifications or adaptations of such Client Materials produced in the course of providing the Services and Deliverables) shall remain vested in the Client or its licensors. The Client hereby grants to BBI a fully paid-up,

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non-exclusive, royalty-free, non-transferable licence during the applicable Project Term to use the Client Materials solely for the purposes of providing the Services and Deliverables and otherwise for solely promotional purposes in respect of BBI's Services.

### 20.2 The Client:

- (a) warrants that the receipt and use in the performance of this agreement by BBI, its agents, subcontractors or consultants of BBI Materials shall not infringe the rights, including any Intellectual Property Rights, or any third party; and
- (b) shall indemnify BBI against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by BBI arising out of or in connection with any claim brought against BBI, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt or use in the performance of this agreement of the Client Materials.

### 20.3 In relation to the Deliverables:

- (a) BBI and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Client Materials;
- (b) BBI grants the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this agreement to copy the Deliverables (excluding the Client Materials) for the purpose of receiving and using Deliverables in its business;
- (c) the Client shall not sub-licence, assign or otherwise transfer the rights granted in clause 21.3(b) without the prior written consent of BBI.

20.4 The Client acknowledges that all Intellectual Property Rights in BBI Materials and BB Proprietary Materials shall be owned by and remain the property of and vested in BBI. Subject to BBI receiving payment of all Fees attributable to BBI Proprietary Materials licensed under this clause, BBI hereby grants to the Client a licence to use such BBI Proprietary Materials or BBI Materials as are included in the Deliverables, in the Territory, for the period of time and for the purposes set out in the Scope of Work.

20.5 Prior to delivery of the Deliverables, BBI shall obtain such licences or consents in respect of Third Party Materials as shall be necessary in order that the Client can use such Third Party Materials for the purposes set out in the Scope of Work. BBI shall notify the Client of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Materials, and the Client hereby indemnifies and keeps BBI indemnified against any Losses suffered by BBI as a result of the Client or its Affiliates breaching any such restrictions.

20.6 Notwithstanding any of the above and save as otherwise expressly provided for in a Scope of Work or the relevant parts of the Services Schedule, BBI shall:

- (a) be able during and after the Term to use any Deliverables which have been broadcast, published, distributed or otherwise made available to the public, and the Client's name and logo for the purposes of promoting its work and its business including on BBI's website, in credentials pitches and in its showreel. Any other use by BBI shall be subject to the Client's prior approval; and
- (b) retain all know-how obtained in connection with the Services and Deliverables.

During the Term, if BBI is asked to take part in a competitive pitch or other similar process for the Client, then notwithstanding any of the previous provisions of this clause 20, BBI shall retain ownership of all Intellectual Property Rights in any Materials forming part of the pitch process, save to the extent that BBI is successful in such pitch and the parties agree that such Materials will be used in a Project set out in a Scope of Work in accordance with the Contract.

20.7 For the avoidance of doubt, BBI shall not be liable under or in connection with the Contract for any modifications, adaptations or amendments to any Deliverables made by the Client or by a third party on the Client's behalf, nor in the event that any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to the acts or omissions of the Client and/or its Associates.

20.8 The terms of and obligations imposed by this clause 20 shall survive the termination of the Contract for any reason.

## 21 Advertising standards

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- 21.1 Both parties acknowledge that they have a responsibility to comply with all Advertising Regulations.
- 21.2 The parties will co-operate with each other in ensuring that suitable objective factual product and other information is available as required to satisfy the requirements of any applicable Advertising Regulation.

## 22 Termination

- 22.1 The Client may terminate or cancel a Project subject to clause 8 and payment of all Third Party Costs and Fees as referred to in clause 8 at any time.
- 22.2 Either party may terminate the Contract or any Project immediately upon written notice to the other party:
- (a) under clause 25.4; or
  - (b) in the event of any material breach of the Contract by the other party which breach is not remediable or, if remediable, is not remedied within thirty (30) days after the service by the party not in default of a written notice on the defaulting party, specifying the nature of the breach and requiring such breach to be remedied; or
  - (c) if the other party suspends, or threatens to suspend payment of its debts or is unable to pay its debts as they fall due, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - (d) if the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal or enters into any compromise or arrangement with its creditors [other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other party with other companies]; or
  - (e) if a petition is filed, or a notice is given, or a resolution is passed or an order is made for or in connection with the winding up of that other party [other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other party with other companies]; or
  - (f) if an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
  - (g) the holder of a qualifying floating charge over the assets of that other party [being a company] has become entitled to appoint or has appointed an administrative receiver;
  - (h) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
  - (i) a creditor or encumbrancer of the other party 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 other party's assets and such attachment or process is not discharged within 14 days;
  - (j) an event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 24.2(c) to clause 24.2(i) [inclusive]; or
  - (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 22.3 Without affecting any other right or remedy available to it, BBI may terminate this agreement with immediate effect by giving written notice to the Client if there is a change of control of the Client.
- 22.4 If BBI is acting on a Retainer Basis, either party may terminate the Contract by serving not less than three months' written notice on the other party provided that such period of notice expires no later than the last day of the Initial Period.

## 23 Consequences of termination

- 23.1 Termination of a Project in accordance with the terms of the Contract by either party shall not serve to terminate the Contract which shall continue in full force and effect.
- 23.2 Upon termination of the Contract under Clause 22.2 of Clause 24.3 all outstanding Projects shall also be terminated.

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## General terms

- 23.3 Upon termination of the Contract or a Project for any reason:
- (a) the Client shall pay BBI all Fees, Expenses and Third Party Costs due to BBI (in accordance with clause 8 where relevant) including during the notice period; and
  - (b) subject to clause 23.3 (a) each party shall on the reasonable request of the other party promptly deliver or dispose of any and all materials and property belonging or relating to the other party (including all Confidential Information) and all copies of the same, which are then in its possession, custody or control and which relate to all affected Projects, and shall on the request of the other party certify in writing that the same has been done.
- 23.4 If prior to termination of the Contract, BBI has (at the request of the Client) prepared detailed plans or proposals for future Deliverables in respect of which BBI has not been paid, BBI shall be entitled to receive remuneration from the Client based on BBI's time spent preparing such plans or proposals.
- 23.5 Provisions of the Contract which are either expressed to survive its termination or which from their nature or context are contemplated to survive termination shall remain in full force and effect notwithstanding termination of the Contract. Notwithstanding the generality of the foregoing, the following clauses shall survive termination of the Contract:
- (a) Clause 15 (Confidentiality);
  - (b) Clause 16 (BBI warranties);
  - (c) Clause 17 (Client warranties);
  - (d) Clause 18 (Liability);
  - (e) Clause 19 (Insurance);
  - (f) Clause 20 (Intellectual Property Rights);
  - (g) Clause 23 (Consequences of Termination);
  - (h) Clause 24 (Non-Solicitation);
  - (i) Clause 26 (Notices);
  - (j) Clause 28 (TUPE);
  - (k) Clause 32 (General); and
  - (l) Clause 34 (Governing law and jurisdiction).
- 23.6 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 agreement which existed at or before the date of termination or expiry.

## 24 Non-solicitation

- 24.1 During the Term and for a further period of 12 months after its termination, neither party shall (except with the prior written approval of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party either in the provision or receipt of any Services or Deliverables, other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- 24.2 Any consent given by BBI in accordance with clause 26.1 shall be subject to the Client paying to BBI a sum equivalent to 20% of the then current annual remuneration of BBI's employee consultant or subcontractor or, if higher, 20% of the annual remuneration to be paid by the Client to that employee consultant or subcontractor.

## 25 Force majeure

- 25.1 Neither party shall be liable for any delay in performing or failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any act, event, non-happening, omission or accident beyond its reasonable control (a "**Force Majeure Event**").
- 25.2 Force Majeure Events shall include but not be limited to the following events affecting either party or its Associates:
- (a) strikes, lock-outs or other industrial action (other than strikes, lock-outs or other

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- industrial action of any Associates of the party seeking to rely on the Force Majeure Event);
- (b) civil commotion, riot, invasion, war (whether declared or not), terrorism, or threat of or preparation for war or terrorist attack;
  - (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic or other natural disaster;
  - (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport; and/or
  - (e) compliance with any law or governmental order, rule, regulation or direction.
- 25.3 The party whose performance is affected by a Force Majeure Event shall, as soon as reasonably practicable after becoming aware of the Force Majeure Event, provide a written notice to the other party, giving details of the Force Majeure Event, its likely duration and the manner and extent to which its obligations are likely to be prevented or delayed.
- 25.4 If any Force Majeure Event occurs, the date(s) for performance of the affected obligation(s) shall be postponed for so long as is made necessary by the Force Majeure Event, provided that if any Force Majeure Event continues for a period of or exceeding two (2) months, the non-affected party shall have the right to terminate the Contract immediately on written notice to the affected party. Each party shall use its reasonable endeavours to minimise the effects of any Force Majeure Event.
- 25.5 If any production of the Deliverables is cancelled, delayed or disrupted due to an act or threatened act of terrorism or military action:
- (a) BBI shall use its reasonable endeavours to recover any Third Party Costs relating to the cancelled, delayed or disrupted Deliverables and will account to the Client for any such Third Party Costs it is able to recover;
  - (b) the Client will be liable to BBI and will reimburse BBI for any Third Party Costs relating to the cancelled, delayed or disrupted Deliverables which BBI is not able to recover or which BBI is committed to pay, as well as any Losses suffered by BBI as a result of such act or threatened act of terrorism or military action.

## 26 Notices

- 26.1 A notice given to a party under or in connection with the Contract shall be in writing and sent to the party at the address given in the Contract or as otherwise notified in writing to the other party, and addressed to a director, partner or senior officer of that party.
- 26.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

<b>Delivery method</b>	<b>Deemed delivery date and time</b>
Delivery by hand.	On signature of a delivery receipt.
Pre-paid first class recorded delivery post or next working day delivery service providing proof of postage.	9.00 am on the second Business Day after posting.
Pre-paid airmail providing proof of postage.	9.00 am on the fifth Business Day after posting

- 26.3 For the purpose of this clause and calculating deemed receipt all references to time are to local time in the place of deemed receipt.
- 26.4 This clause does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

## 27 Assignment and sub-contracting

- 27.1 BBI shall be entitled to sub-contract its performance of the Services and/or Deliverables provided that any sub-contracting shall not relieve BBI from its obligations to the Client under the Contract.
- 27.2 Neither party may assign, transfer or charge or otherwise dispose of the Contract or any

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of its rights or obligations arising hereunder without the prior written approval of the other party.

### 28 Tupe

- 28.1 For the purposes of this clause 28 the following terms shall have the following meaning:
- (a) **"BBI Employee"** means any employee of BBI who transfers or would transfer to the Client or Successor BBI by virtue of TUPE;
  - (b) **"Outgoing BBI"** means an the agency engaged to carry out services substantially similar to the Services immediately prior to the transfer of such services to BBI;
  - (c) **"Successor BBI"** means any alternative agency appointed by the Client to perform services substantially similar to the Services following termination of the Contract;
  - (d) **"Transferring Employee"** means any employee of the Client or the Outgoing BBI who transfers or would transfer to BBI by virtue of TUPE;
  - (e) **"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 28.2 If TUPE is applicable in relation to the Services under a Scope of Work, the provisions of this clause 30 shall apply on commencement of that Scope of Work.
- 28.3 The parties acknowledge that commencement of the provision of the Services and/or Deliverables under the Contract may amount to a service provision change in accordance with TUPE.
- 28.4 The Client warrants that it has (or has procured that the Outgoing BBI has) compiled and provided to BBI not less than three months prior to the Effective Date the employee liability information as defined by Regulation 11[2] of TUPE together with such additional information and documents relating to the Transferring Employees as BBI may reasonably request in order to ascertain whether the provision of the Services and/or Deliverables under the Contract falls under the scope of TUPE and the extent of any liabilities which may transfer to BBI by virtue of TUPE. The Client (or Outgoing BBI) shall have promptly informed BBI of any material change to such information.
- 28.5 In the event that TUPE applies on the Effective Date such that the contracts of employment of any Transferring Employees have effect as if originally made between such employees and BBI (or are alleged to do so), the Client hereby indemnifies and keeps indemnified BBI from and against all Losses whenever or howsoever arising, directly or indirectly, in connection with or as a result of any claim or demand (whether tortious, contractual, statutory or otherwise):
- (a) by any Transferring Employee arising out of (or alleged to arise out of) his/her employment with or its termination by the Client or the Outgoing BBI, or any other act or omission of the Client or the Outgoing BBI occurring up to and including the Commencement Date and for which BBI is liable or alleged to be liable by reason of the operation of the TUPE; and
  - (b) by any Transferring Employee arising from or connected with any failure by the Client or the Outgoing BBI to comply with its obligations to inform and (if applicable) consult with the appropriate representatives of such employees pursuant to Regulation 13 of TUPE or otherwise, except to the extent that any such failure arises either wholly or partly as a result of any act or omission of BBI to provide the Client or the Outgoing BBI in good time with the information necessary for it to comply with Regulation 13[2](d) of TUPE.
- 28.6 The parties acknowledge that termination or expiry of the provision of the Services and/or Deliverables under the Contract may amount to a service provision change in accordance with TUPE.
- 28.7 Subject to the Client and/or the Successor BBI providing a confidentiality undertaking, BBI shall compile and provide to the Client or to the Successor BBI not less than one month after notice of termination of the Contract has been served the employee liability information as defined by Regulation 11[2] of TUPE relating to any BBI Employees. BBI shall promptly inform the Client or the Successor BBI of any material change to such information.
- 28.8 In the event that TUPE applies on the termination of the Contract such that the contracts of employment of any BBI Employees have effect as if originally made between such employees and the Client, BBI hereby indemnifies and keeps indemnified the Client BBI from and against all Losses whenever or howsoever arising, directly or indirectly, in connection with or as a result of any claim or demand (whether tortious, contractual,

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statutory or otherwise):

- (a) by BBI Employee arising out of his/her employment or its termination by BBI or any other act or omission of BBI occurring between the Effective Date and the termination of the Contract and for which the Client is liable by reason of the operation of TUPE;
- (b) by any Employee of BBI arising from or connected with any failure by BBI to comply with its obligations to inform and (if applicable) consult with the appropriate representatives of such employees pursuant to Regulation 13 of TUPE, except to the extent that any such failure arises either wholly or partly as a result of any act or omission of the Client or the Successor BBI to provide BBI in good time with the information necessary for it to comply with Regulation 13(2)(d) of TUPE;

28.9 The Client hereby indemnifies and keeps indemnified BBI from and against all Losses which BBI incurs after the termination or expiry of the Contract arising from any act or omission of the Client or any Successor BBI in relation to any of BBI Employees.

## 29 Third party rights

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

## 30 Data protection

- 30.1 Each party warrants to the other that it is and will continue to be appropriately notified under the terms of any applicable Data Protection Legislation and any other relevant data protection laws, legislation and regulation. For the purposes of this clause, "personal data", "data controller", "data subject" and "processes" shall have the meanings given under Data Protection Legislation.
- 30.2 The Client and BBI acknowledge that for the purposes of the Data Protection Act 1998 and the Data Protection Legislation, the Client is the data controller and BBI is the data processor in respect of any personal data.
- 30.3 Where BBI or its Associates processes personal data on behalf of the Client, then BBI shall, and shall procure that its Associates shall:
- (a) process such data solely in accordance with the Client's instructions from time to time and in accordance with its duties under Data Protection Legislation;
  - (b) (having regard to the state of technological development and the cost of implementing such measures) adopt and maintain reasonably appropriate security and organisational measures against unauthorised, unlawful processing, accidental loss or destruction of such data;
  - (c) notify the Client promptly in the event that it or its Associates receive any request from a data subject for access to that person's personal data, where such personal data is processed by or on behalf of BBI as part of the Services; and
  - (d) notify the Client promptly in the event that it or its Associates receive any complaint, notice or communication that relates directly to its compliance with Data Protection Legislation and/or the processing of personal data under or in connection with the Contract.
- 30.4 BBI shall not transfer the personal data outside the European Economic Area without the prior approval of the Client.
- 30.5 The Client warrants and undertakes that it has all necessary rights and has obtained all necessary consents and notices to provide personal data to BBI and to require BBI to process personal data on its behalf.
- 30.6 The Client acknowledges that BBI is reliant on the Client for direction as to the extent which BBI is entitled to use and process the personal data. Consequently, BBI will not be liable for any claim brought by a data subject arising from any action or omission by BBI, to the extent that such action or omission resulted directly from the Client's instructions.
- 30.7 BBI may authorise a third party (sub-contractor) to process the personal data provided that the sub-contractor's contract:
- (a) is on terms which are substantially the same as those set out in the Contract; and
  - (b) terminates automatically on termination of the Contract for any reason.
- 30.8 Each party warrants to the other that it will process the personal data in compliance



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with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

30.9 Both parties will comply with all applicable requirements of the Data Protection Legislation.

### 31 Anti bribery

31.1 Both parties:

- (a) shall comply with the Bribery Act 2010 and any guidance issued by any governmental department relating to such legislation ["**Bribery Act**"]
- (b) shall not engage in any activity, practice or conduct anywhere in the world which would constitute an offence under the Bribery Act if such activity, practice or conduct had been carried out in the UK;
- (c) shall maintain in place throughout the Term (and enforce where appropriate) its own policies and procedures to ensure compliance with the Bribery Act;
- (d) shall promptly report to the other any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of the Contract; and
- (e) shall ensure that it imposes written terms on any sub-contractor connected with the matters arising under the Contract which are at least equivalent to those imposed on BBI in this clause.

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32.1 The failure of either party to enforce or exercise at any time any term or any right under the Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect that party's later right to enforce or to exercise it.

32.2 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 provided that if any provision of the Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid.

32.3 The Contract contains the entire agreement between the parties and supersedes and extinguishes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. Each of the parties acknowledges and agrees that:

- (a) in entering into the Contract it has not relied on, and shall have no remedy in respect of, any statement, representation, warranty or understanding other than the statements, representations, warranties and understandings expressly set out in the Contract; and
- (b) its only remedies in connection with any statements, representations, warranties and understandings expressly set out in the Contract shall be for breach of contract as provided in the Contract. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

32.4 No modification or variation of the Contract shall be valid unless it is in writing and signed by each of the parties to the Contract. Unless expressly set out in the Contract, no modification or variation of the Contract shall:

- (a) be valid if made by e-mail;
- (b) be construed as a general waiver of any provisions of the Contract; or
- (c) affect any rights, obligations or liabilities under the Contract which have already accrued up to the date of such modification or waiver. The rights and obligations of the parties under the Contract shall remain in full force and effect, except and only to the extent that they are so modified or varied.

32.5 Nothing in the Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

32.6 If there is an inconsistency between any of the provisions of the Contract and the provisions of the appropriate parts of the Services Schedule, the provisions of the

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Contract shall prevail.

- 32.7 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

### 33 Multi-tiered dispute resolution procedure

- 33.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this agreement, the parties shall follow the procedure set out in this clause:
- (a) 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 Authorised Client Approver and the Authorised BBI Approver shall attempt in good faith to resolve the Dispute;
  - (b) if the Authorised Client Approver and the Authorised BBI Approver are for any reason unable to resolve the dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a director, partner or other senior office of the Client, and a director or other senior officer of BBI who shall attempt in good faith to resolve it; and
  - (c) if the director, partner or other senior office of the Client, and the director or other senior officer of BBI are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. The mediation will start not later than 45 days after the date of the ADR notice.

### 34 Governing law and jurisdiction

- 34.1 This Contract shall be governed by and construed in accordance with the laws of England and Wales.
- 34.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales to resolve any dispute between them arising under or in connection with the Contract (save in respect of enforcement of judgments where their jurisdiction shall be non-exclusive).

### 35 Interpretation

- 35.1 In the Contract, references to clauses, schedules and appendices are to clauses of and schedules to and appendices to the Contract. Where any provision contained in the Services Schedule or a Scope of Work conflicts with any provision of the Conditions the following order of precedence shall apply (unless otherwise expressly stated in the Scope of Work):
- (a) Services Schedule;
  - (b) Conditions;
  - (c) Scope of Work.
- 35.2 Unless the context otherwise requires:
- (a) a person includes a legal person (such as a limited company) as well as a natural person;
  - (b) the words "include" and "including" shall be construed without limitation; and
  - (c) any reference to an enactment of legislation includes any subordinate legislation made from time to time under it and is to be construed as references to that enactment as from time to time amended or modified or any enactment replacing it.
- 35.3 The headings in the Contract are for ease of reference only and shall be disregarded in construing or interpreting the Contract.
- 35.4 The following terms shall have the corresponding meanings for the purposes of these Conditions:
- (a) "**Accounts**" means the Client's products and services that are the subject of the

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Services as referred to in a Scope of Work;

- (b) **"Advertising Regulation"** means any present or future applicable code of practice or adjudication of the Committee of Advertising Practice, Broadcast Committee of Advertising Practice or the Advertising Standards Authority and includes any applicable modification, extension or replacement thereof in force from time to time, together with other UK laws, statutes and regulations which are directly applicable to the Services;
- (c) **"Affiliates"** means any company, partnership or other entity which at any time directly or indirectly controls, is controlled by or is under common control with either party including as a subsidiary, parent or holding company;
- (d) **"Annual Scope of Work"** means the Scope of Work setting out the Services to be provided in respect of the Retainer Fee by BBI on an annual Retainer Basis, and as may be amended by the parties from time to time in writing;
- (e) **"approval"** means approval given in accordance with clause 9.1;
- (f) **"Associates"** means a party's employees, officers, agents, sub-contractors or authorised representatives;
- (g) **"Authorised BBI Approver"** means those personnel of BBI specified in the applicable Scope of Work who have the authority to contractually bind BBI in all matters relating to the Contract (and any successor notified to the Client);
- (h) **"Authorised Client Approver"** means those personnel of the Client specified in the applicable Scope of Work who have the authority to contractually bind the Client in all matters relating to the Contract (and any successor notified to BBI);
- (i) **"BBI"** means Big Brand Ideas Limited, a company registered in England and Wales under Company Number 07659739 whose registered office is at King Edward House, Jordangate, Macclesfield, Cheshire SK10 1EE;
- (j) **"BBI Materials"** means those Materials specifically created by BBI for the purposes of a Project by officers, employees or freelancers of BBI (including any Materials adapted, modified or derived from the Client Materials);
- (k) **"BBI Proprietary Materials"** means software (including all programming code in object and source code form), methodology, know-how and processes and Materials in relation to which the Intellectual Property Rights are owned by (or licensed to) BBI and which are:
  - (i) in existence prior to the date on which it is intended to use them for a Project; or
  - (ii) created by or for BBI outside of a Project and which are intended to be reused across its business;
- (l) **"Business Day"** means any day other than:
  - (i) a Saturday, Sunday or public holiday in the UK; or
  - (ii) any day between 24 December in any year and 1 January in the immediately following year (inclusive);
- (m) **"Client"** means the person of firm who purchases the Services from BBI;
- (n) **"Client Materials"** means any Data, client equipment, computer systems, software, documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Client which are provided to BBI and/or its Associates by or on behalf of the Client;
- (o) **"Conditions"** means these terms and conditions as amended from time to time;
- (f) **"Contract"** means the contract between BBI and the Client for the supply of Services in accordance with the Conditions, Scopes of Work and Services Schedule;
- (g) **"Data"** means the Client's computer data (in machine readable form);
- (h) **"Data Protection Legislation"** means:
  - (i) up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR 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 Act 1998; and/or
  - (ii) in non-EU countries, any similar or equivalent laws, regulations or rules relating to information or data about individuals.

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## General terms

- (i) **"Deliverables"** means the advertising, creative and other materials which are to be provided by BBI as specified in a Scope of Work, including BBI Materials, Third Party Materials and BBI Proprietary Materials where applicable;
- (j) **"Effective Date"** means earlier of the date on which (i) BBI issues written acceptance of the Client's order for the Services and (ii) a Scope of Work is signed by both parties;
- (k) **"Expenses"** means reasonable travelling, hotel, subsistence and other expenses incurred by BBI in connection with the supply of Services and Deliverables, provided that such Expenses have either received the Client's prior written approval or where applicable are in accordance with any expenses policies which have been supplied to BBI and set out in the applicable agreed Scope of Work;
- (l) **"Fees"** means:
  - (i) if BBI is providing the Services on a Retainer Basis, the Retainer Fee and, if applicable, the Project Fees; or
  - (ii) if BBI is not providing the Services on a Retainer Basis, the BBI fees for a Project as set out in the applicable Scope of Work or otherwise agreed in writing;
- (m) **"GDPR"** means the General Data Protection Regulation [(EU) 2016/679];
- (n) **"Initial Period"** means the period of one year, commencing on the Effective Date, unless otherwise stated in the scope of work;
- (o) **"Independent Auditor"** means a suitably qualified and independent auditor;
- (p) **"Intellectual Property Rights"** means the following rights, wherever in the world enforceable, including all reversions and renewals and all applications for registration:
  - (i) any patents or patent applications;
  - (ii) any trade marks (whether or not registered);
  - (iii) inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration;
  - (iv) copyright or design rights (whether registered or unregistered);
  - (v) database rights;
  - (vi) performer's property rights as described in Part II, Chapter X of the Copyright Designs and Patents Act 1988 and any similar rights of performers anywhere in the world;
  - (vii) any goodwill in any trade or service name, trading style or get-up; and
  - (viii) any and all other intellectual or proprietary rights.
- (q) **"Losses"** means losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses), subject to clause 18.1 and 18.3;
- (r) **"Materials"** means any artwork, copy, models, designs, photographs, commercial, feature film, character, music, voice over, sound recording, performance, book, painting, logo, or any other material protected by Intellectual Property Rights, but not including any software;
- (s) **"Moral Rights"** means all rights described in Part I, Chapter IV of the Copyright Designs and Patents act 1988 and any similar rights of authors anywhere in the world;
- (t) **"Project"** means any project[s] agreed between the parties from time to time under which BBI is to perform Services and supply Deliverables to the Client, as more fully described in the Contract and the applicable Scope of Work, or if BBI is providing the Services on a Retainer Basis, any project[s] agreed between the parties from time to time under which BBI is to perform Services and/or supply Deliverables to the Client over and above those under an Annual Scope of Work, as more fully described in this Contract and the applicable Project Scope of Work;
- (u) **"Project Commencement Date"** means the commencement date of each Project as set out in the corresponding Scope of Work;
- (v) **"Project Completion Date"** means the date by which each Project is to be completed, as set out in the corresponding Scope of Work;
- (w) **"Project Notice Period"** means the period of notice for cancellation of a Project as set out in the Scope of Work;

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## General terms

- [x] "**Project Scope of Work**" means a Scope of Work for a Project agreed by the parties in writing from time to time"
- [y] "**Project Term**" means the period during which the Services for each Project will be provided as specified in the applicable Scope of Work;
- [z] "Retainer Basis" means that BBI will be providing the Services to the Client on a yearly basis [as opposed to a Project basis], subject to an Annual Scope of Work and these Conditions;
- [aa] "**Retainer Fee**" means BBI fees for the Services to be provided on a Retainer Basis under the Annual Scope of Work as may be amended by the parties from time to time in accordance with this Contract.
- [bb] "**Services Schedule**" means the schedule attached to these Conditions;
- [cc] "**Scope of Work**" means one or more documents as agreed and signed by the parties from time to time containing the scope and a description of the relevant Services, and which include the Annual Scope of Work (if BBI is acting on a Retainer Basis) and any Project Scopes of Work;
- [dd] "**Services**" means the Services to be supplied by BBI under the Contract as set out in the relevant Scope of Work, which includes the provision of Deliverables;
- [ee] "**Special Terms**" means any terms specifically designated as varying these Conditions or the terms of any schedule, as set out in the applicable Scope of Work.
- [ff] "**Term**" means the period commencing on the Effective Date and ending on the effective date of termination of the Contract in accordance with clause 22;
- [gg] "**Territory**" means the United Kingdom, unless expressly specified otherwise in the applicable Scope of Work. Publication and marketing on globally accessible mediums such as the internet shall not mean that the Territory is deemed to be world-wide;
- [hh] "**Third Party Costs**" has the meaning set out in clause 12.1;
- [ii] "**Third Party Materials**" means those Materials which are either commissioned by BBI from third parties during the Term and incorporated into the Deliverables, or which have been created by a third party and which are in existence at the time it is desired to make use of them for inclusion in the Deliverables, but which excludes software which is owned or licensed by a third party;
- [jj] "**Trunk**" is a trading style of Big Brand Ideas Limited, a company registered in England and Wales under Company Number 07659739 whose registered office is at King Edward House, Jordangate, Macclesfield, Cheshire SK10 1EE;
- [kk] "**Year**" means a twelve month period commencing on the Effective Date and each anniversary of the Effective Date during the Term.

### Creative advertising services (online and/or offline)

#### 1 Additional clauses

- 1.1 The following clauses set out in Part 1 of this Services Schedule shall be incorporated into the Conditions for the duration of the applicable Scope of Work if the Client is providing the Creative Advertising Services (Online and/or Offline) (as set out in the Scope of Work):  
Character Merchandising (to be added at end of Clause 20: Intellectual Property Rights)
- 1.2 Save with the prior written approval of BBI and notwithstanding any other provision of this Contract, the Client shall not at any time other than in the Client's above or below the line advertising or on the packaging of the Client's products, use or license any use outside the Territory of any cartoon figure, model or other character whose visual appearance has been created exclusively for the Client by or on behalf of BBI or its Associates. BBI's approval for any other use of such characters shall not be unreasonably withheld, but where income is to be generated by, for example, activities in the nature of character merchandising, BBI's approval will be conditional on prior agreement between the parties and where appropriate with its Associates, as to the payment of reasonable fees and/or royalties.
- 1.3 For the purposes of this clause, the following terms shall have the following meanings:
  - (a) **"Above the Line Advertising"** means conventional, impersonal, mass-media use of advertising transmitted by print, poster outdoor (in traditional media spaces), cinema, television (in traditional advertising slots between programming and TV idents and bumpers) radio (in traditional advertising slots between programming), digital via banner ads and pop up ads on the internet or on any other impersonal, mass-media platform on which the advertising is distributed]
  - (b) **"Branded Content Material"** means Materials which are not created for or used in Above the Line Advertising and which comprise audio-visual material and/or live events, and whose primary purpose is to entertain and/or inform a target audience and not to promote or advertise the Client, but in relation to which the Client is associated (for example through product placement, Advertiser funded programming, sponsorship, or other means). Branded Content Material includes (but is not limited to) TV, radio and TV like programmes, programme formats and content (regardless of the media and distribution channel) films, books, comics, games and apps.
- 1.4 The parties agree that Branded Content Material is excluded from the definition of BBI Material, and that any use of such Branded Content Material shall be subject to the parties agreeing appropriate additional terms, including agreement as to royalties and revenue share between the parties arising out of use of such Branded Content Materials.

### Social media services

#### 1 Additional clauses

- 1.1 The following clauses set out in Part 2 of this Services Schedule shall be incorporated into the Conditions for the duration of the applicable Scope of Work if the Client is providing the Social Media Services (as set out in the Scope of Work):

#### 2 Definitions

- 2.1 The following definitions shall be added to the Conditions:
  - (a) **"Brand Ambassador(s)"** means those individuals engaged by or on behalf of the Client to communicate to the public via Social Media Sites regarding the Client and its Accounts (including bloggers, vloggers and other influencers);
  - (b) **"Content"** means any image, text, video, audio file, tweet, status update, or any other Materials which are distributed, shared or otherwise published on a Social Media Site;
  - (c) **"Moderation Services"** means the moderation services to be provided by BBI as set out in the Scope of Work;

- (d) **"Social Media Policy"** means, to the extent relevant, any social media governance policy of the Client a copy of which has been provided to BBI;
- (e) **"Social Media Services"** means the services to be provided by BBI in respect of social media which are agreed in a Scope of Work;
- (f) **"Social Media Site"** means the social media websites in respect of which BBI has agreed to provide Social Media Services in a Scope of Work or otherwise agreed in writing relating to the Accounts;
- (g) **"Terms and Conditions of Social Media Sites"** means the terms and conditions of the Social Media Sites as published and as amended from time to time on such Social Media Sites; and
- (h) **"UGC"** means user-generated content of any kind which is posted, shared, commented on, or otherwise submitted by a user on Social Media Sites in relation to the Accounts.

### 3 Social media services

- 3.1 BBI shall provide the Social Media Services.
- 3.2 BBI will use reasonable endeavours to ensure that in providing the Social Media Services, it understands the Terms and Conditions of Social Media Sites and that it keeps the Client informed of any material risk of which it becomes aware that the Deliverables which are to be delivered as part of the Social Media Services may not comply with the Terms and Conditions of Social Media Sites.
- 3.3 BBI shall not be liable for any Losses incurred by the Client and the Client shall indemnify BBI against any Losses incurred by BBI arising from or as a result of BBI using any Deliverable as part of the Social Media Services on the Client's instruction having informed the Client of any material risk in doing so in accordance with clause 3.2.
- 3.4 BBI will use reasonable endeavours to ensure that in providing the Social Media Services, it
  - (a) keeps administrative passwords for Social Media Sites safe and secure from unauthorised access, which shall include changing passwords regularly, ensuring that any personnel who leave BBI do not have administrative access rights to the Social Media Sites, and keeping the Client informed of any changes to the administrative passwords for the Social Media Sites; and
  - (b) ensures that any Deliverables posted by BBI on Social Media Sites will be reasonably transparent to users as being marketing in accordance with Advertising Regulation by using hashtag disclosures such as #ad or #spon where reasonably necessary.
- 3.5 Where BBI is required to identify and appoint Brand Ambassadors as part of the Social Media Services, BBI will use reasonable endeavours to enter into such written terms as shall have been approved in advance by the Client with such Brand Ambassadors (or their agents as required) containing obligations that Brand Ambassadors will :
  - (a) not post any Content on Social Media Sites without the prior written approval of the Client;
  - (b) comply with Advertising Regulations and will ensure that all Content posted on Social Media Sites is lawful and does not infringe the rights of any third party;
  - (c) not feature or refer to third party individuals without their prior consent;
  - (d) only engage in activity for or on behalf of the Client in a manner which is transparent and which makes it clear to users that the Brand Ambassador has a commercial relationship with the Client;
  - (e) not make any statements or otherwise post Content which is reasonably likely to be seen to be derogatory of the Client or their products, services or brands, or which is likely to offend or shock; and
  - (f) use reasonable efforts to ensure that they will not be photographed, filmed or recorded using any competing products or services to the products or services which are part of the Accounts.
- 3.6 The Client hereby acknowledges that:
  - (a) BBI shall not be in breach of this Contract if it is unable to use a Brand Ambassador requested by the Client, and shall not be in breach of this Contract if the Brand Ambassador will not enter into written terms as set out above; and
  - (b) BBI shall not be liable for any act or omission of any Brand Ambassador including any

breach of its written terms with BBI as set out above

### 4 Moderation services

- 4.1 The Client and BBI will agree moderation guidelines as to how the Social Media Sites should be moderated, including guidance for BBI on:
- (a) offensive UGC;
  - (b) UGC which is critical, derogatory of third parties or which could give rise to adverse publicity;
  - (c) UGC which is unlawful or appears to be contrary to any law;
  - (d) use of Content where the Intellectual Property Rights in such Content are known to belong to a third party (or where it is reasonably obvious that the Intellectual Property Rights will belong to a third party); and
  - (e) how often the UGC should be moderated (and whether pre moderated, post moderated or merely reactive).
- 4.2 The Client shall provide BBI with sufficient access to any computer systems and/or software programs used by or belonging to the Client which BBI may require in order to provide the Moderation Services. The failure to provide such access shall relieve BBI from its obligations to provide those aspects of the Moderation Services which are affected during such period that BBI cannot access such systems or software.

## Public relations services

### 1 Additional clauses

- 1.1 The following clauses set out in Part 3 of this Services Schedule shall be incorporated into the Conditions for the duration of the applicable Scope of Work if the Client is providing the Public Relations Services (as set out in the Scope of Work):  
**(to be added at end of clause 18: Liability)**
- 1.2 From time to time BBI may give the Client target or estimated numbers relating to anticipated exposure of the Deliverables to audiences. Any such calculations are estimates only and BBI shall not be liable in the event that such target or estimated numbers are not achieved.
- 1.3 The Client acknowledges that it is in the nature of public relations consultancy services that BBI and Client do not control whether and how Deliverables are published in the media. BBI shall not be liable in the event that third parties do not publish or distribute the Deliverables as anticipated or agreed with the Client.

## Simple software/website/app development services

### 1 Additional clauses

The following clauses set out in Part 4 of this Services Schedule shall be incorporated into the Conditions for the duration of the applicable Scope of Work if the Client is providing the Simple Software / Website / App Development Services (as set out in the Scope of Work):

### 2 Definitions

- 2.1 The following definitions shall be added to the Conditions:
- (a) **"App"** means the application software to be developed as is further described in the Scope of Work and Specification;
  - (b) **"Foreground Software"** means the Software created by BBI or commissioned by BBI to be created by a third party in connection with a Project (including any Software adapted, modified, or derived from the Client Materials) together with the GUI which is incorporated into the Deliverables during the Term but not including any BBI Proprietary Materials;



- (c) **"GUI"** means the graphical user interface of any Software application or asset consisting of any textual, graphical and design elements, including the positions of such elements on a Website but excluding the functionality of any such Website and the software underlying such textual, graphical, and design elements;
- (d) **"Open Source Software"** means any Software which is developed, tested, or improved through public collaboration and distributed with the idea that it must be shared with others, ensuring an open future collaboration;
- (e) **"Software"** means the software to be developed as is further described in the Scope of Work and Specification;
- (f) **"Specification"** means the functional specification for the Software, App and/or Website (as applicable) as is agreed between the parties in writing in accordance with clause 5 of this Part 4 of the Services Schedule;
- (g) **"Third Party Software"** means Software which is to be incorporated into the Deliverables, the Intellectual Property Rights in which are owned by or are licensed by a third party but excluding any Open Source Software; and
- (h) **"Website"** means the website to be developed (including graphical user interface) as is further described in the Scope of Work and Specification.

### 3 Intellectual property rights

- 3.1 Subject to BBI receiving payment of all Fees attributable to the Foreground Software BBI grants to the Client a licence to use the Foreground Software in the Territory for the Term of this Contract for the purposes set out in the Scope of Work.
- 3.2 The Client acknowledges that ownership of (including, without limitation, ownership of all Intellectual Property Rights in) any Third Party Software shall remain vested in BBI's licensors. Subject to BBI receiving payment of all Fees attributable to the Third Party Software licensed under this clause and to the rights of BBI's licensors, BBI hereby grants to Client a licence to use such Third Party Software for the purposes and period of time set out in the Scope of Work.

### 4 Use of open source software

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

### 5 Development of the specification

- 5.1 Promptly following the execution of a Scope of Work, BBI shall, in collaboration with Client, commence the preparation of the Specification for the Software, Website or App as appropriate and BBI shall submit the completed Specification to the Client for approval [which shall not be unreasonably withheld or delayed].
- 5.2 Upon approval of the Specification by the Client, BBI shall then develop the Software and/or Website and/or App based upon the Specification.
- 5.3 When developing an App, BBI shall use reasonable endeavours to ensure that the App complies with any relevant platform operating system terms and conditions and to obtain the relevant permissions from the platform operators in order that the App may be published and used on such platform operating system

### 6 Approvals

- 6.1 Approval by Client of Deliverables consisting of Software or a Website or Apps shall occur in accordance with this clause 6.1 and the main body of the Conditions:
  - (a) promptly, and in any event within 3 Business Days of completion of stages of

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## Service schedule

Deliverables for each part of the Software and/or Website and/or App or such other period as agreed by the parties, the Client shall accept or reject such Software and/or Website and/or Apps by issuing BBI a notice to that effect ("**Acceptance/Rejection Notice**") which shall contain full details of the material deviation from the Specification. The Client shall only be entitled to issue a Rejection Notice upon the basis that (and by detailing the manner in which) each part of the Software and/or Website and/or App exhibits a fault which materially affects the functionality of the Software and/or Website and/or App to the extent that a user's ability to use the Software and/or Website and/or App is materially impaired;

- (b) the Client acknowledges that acceptance of each part of the Software and/or any Website and/or App shall be deemed to occur on the earliest of the following events:
  - (i) receipt by BBI of an Acceptance Notice; or
  - (ii) if the Client puts the Software or Website or App to any live operational use, other than for the purposes of testing.
  - (c) if the Client shall serve a valid Rejection Notice in accordance with clause 6.1(a), BBI shall correct and/or replace the defective Deliverables within the timeframe agreed by the parties in writing so that they perform in accordance with the relevant Specifications in all material respects and re-deliver the same to Client.

6.2 For the avoidance of doubt Client shall not be entitled to reject Software or a Website or App Deliverables by reason of any failure to provide any facility or function not specified in a Specification or on account of deviations from their Specifications which do not materially affect a user's ability to use the Software or Website or App ("**Minor Discrepancies**"). The Client and BBI shall co-operate with one another to try to rectify such Minor Discrepancies.

## 7 Liability for intellectual property infringement

In the event that any Deliverable comprising Software, Website or an App infringes the Intellectual Property Rights or any other right of a third party, BBI shall at its option: (i) procure for Client the right to continue to use the Deliverable in question, free of any liability for such infringement; or (ii) modify the Deliverables in question so that they become non-infringing while otherwise complying with the requirements of this Contract; or (iii) substitute the Deliverable(s) in question with functionally equivalent non-infringing Deliverable(s).

## 8 Warranties

BBI warrants that on the date of delivery to Client, to the extent that the Deliverables comprise Software, Website or Apps such Deliverables will comply in all material respects with their Specifications and/or this Contract.

## Below the line/experimental

### 1 Additional clauses

The following clauses set out in Part 5 of this Services Schedule shall be incorporated into the Conditions for the duration of the applicable Scope of Work if the Client is providing the Below the Line/Experimental Services (as set out in the Scope of Work):

### 2 Promotions

Unless otherwise agreed between the Client and BBI in writing, the Client shall be responsible for sourcing any promotional gift or prize being offered to the public or entrants to a promotion ("**Promotional Prize**"). As such, the Client shall be liable for, and hereby indemnifies BBI against any and all Losses incurred as a result of any such Promotional Prize, including any claim by a third party arising out of the use or enjoyment of such Promotional Prize.

### 3 Events

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## Service schedule

- 3.1 Where the Services include BBI organising and hosting events for the Client, BBI shall be responsible for organising and securing venues at which the events will be hosted.
- 3.2 Provided that BBI has notified the Client of all material terms entered into with such venue owners, the Client shall be liable for any breach of such venue hire terms and conditions by the Client or its Affiliates.
- 3.3 The Client shall be liable for and hereby indemnifies BBI against any and all Losses suffered as a result of any use of the Client's products or services at any event, provided that, where applicable, BBI has complied with any directions of the Client as to how such products or services are to be offered to the public.
- 3.4 Where the Client's products include food and/or drink, the Client shall ensure that appropriate allergy information is given to the public at any event involving sampling of the Client's products.

## Online media planning and buying services

### 4 Additional clauses

The following clauses set out in Part 6 of this Services Schedule shall be incorporated into the Conditions for the duration of the applicable Scope of Work if the Client is providing the Online Media Planning and Buying Services (as set out in the Scope of Work):

### 5 General

Media charges will be based on the current published rates for advertising in all relevant online media. The media buying services supplied to the Client under Part 6 of this Services Schedule by BBI shall be subject to the terms and conditions of the agreement between BBI and the applicable third party media space owner, to the extent that such terms are less favourable than the terms of the Contract and provided that Client has approved such terms.

### 6 Approvals

- 6.1 BBI shall, after obtaining the Client's general approval of its campaign plans, submit to Client for its specific approval media schedules for time, space and other facilities.
- 6.2 The Client's approval of media schedules and estimates will be BBI's authority to make reservations and contracts for space, time and other facilities under the terms and conditions required by media or BBI.

### 7 Advertising levies

BBI shall add any applicable levies payable in respect of the funding of any UK self-regulatory system in respect of digital advertising to all relevant invoices submitted to the Client. The parties agree that the Client shall be solely liable for payment of such levy.

## Digital marketing services

### 1 Additional clauses

The following clauses set out in Part 7 of this Services Schedule shall be incorporated into the Conditions for the duration of the applicable Scope of Work if the Client is providing the Digital Marketing Services (as set out in the Scope of Work):

### 2 Keyword research

- 2.1 BBI will perform reasonable keyword research on behalf of the Client to determine the best possible key phrases pertaining to the Client's area of business.

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## Service schedule

- 2.2 The Client's website should be hosted on a server, based in the UK (or the country of search engine interest), with BBI being granted full ftp access to the web-server. BBI may recommend changing the host or server to protect the interests of the Client's website's ranking within the nominated search engines but no change shall be made unless agreed in writing by the Client.
- 2.3 Search Engine Optimisation Services do not include search engine registration unless otherwise agreed by the parties.
- 2.4 The Search Engine Optimisation Service is not guaranteed, but will be performed to the best of BBI's knowledge and ability.
- 2.5 Ranking results will be performed once or twice per month, as agreed by both parties. Results are based on listings on www.Google.co.uk, unless otherwise agreed by the parties in the applicable Scope of Work.

### 3 Performance milestones

- 3.1 The Client acknowledges that any agreed performance milestones for the Digital Marketing Services (which, in this instance are for the Client to meet certain monthly subscriber targets as set out in an agreed forecast) ("**Agreed Milestones**") are based on forecasts and estimates only and are subject to market conditions and events outside of BBI's control.
- 3.2 BBI shall use reasonable endeavours to meet the Agreed Milestones in accordance with the agreed forecast. However BBI reserves the right to revise the forecasts at the end of each three month calendar quarter ("**Quarter**") of the Term if BBI reasonably considers that market conditions or events outside of BBI's control will affect the likelihood of the Agreed Milestones being reached.
- 3.3 For the avoidance of doubt, BBI shall not be liable for BBI's failure to meet any Agreed Milestones due to any of the following (non-exhaustive) list of events:
  - (a) any event outside of BBI's control (including but not limited to, a Force Majeure Event or changes in market conditions);
  - (b) any failure by the Client to provide content, events or PR of an acceptable frequency and quality that BBI have agreed;
  - (c) any adjustments to the Client's budget following agreement of the Agreed Milestones which would be reasonably likely to affect BBI's ability to perform the Agreed Milestones.

## Data services

### 1 Additional clauses

The following clauses set out in Part 8 of this Services Schedule shall be incorporated into the Conditions for the duration of the applicable Scope of Work if the Client is providing the Data Services (as set out in the Scope of Work):

### 2 Definitions

- 2.1 The following definitions shall be added to the Conditions:
  - (a) "**Data**" means the Client's computer data (in machine-readable form);
  - (b) "**Input Data**" means the Data to be supplied to BBI by, or on behalf of, the Client as detailed in the applicable Scope of Work for use by BBI in the provision of the Services;
  - (c) "**Output Data**" means the output data resulting from the processing of the Input Data on the Client's system.

### 3 Processing of the input data and delivery of the output data

- 3.1 Client shall prepare and format the Input Data and shall at its own cost deliver it to BBI at BBI's premises in accordance with the applicable Scope of Work.
- 3.2 BBI shall not be liable for any loss or damage sustained by the Client as a result of the

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## Service schedule

Input Data being delivered late, or being illegible or otherwise not in accordance with the format agreed in the applicable Scope of Work.

- 3.3 Any re-formatting of the Input Data which may have to be carried out by BBI shall be carried out in accordance with the provisions of the applicable Scope of Work and BBI shall be entitled to charge an additional fee for such work as agreed with the Client.
- 3.4 The Client shall be responsible for keeping back-up copies of the Input Data and maintaining such records and data as the Client believes necessary to allow reconstruction of the Input Data should this be necessary.
- 3.5 Where the Client intends to encrypt the Input Data it shall obtain approval (not to be unreasonably withheld or delayed) for the use of such encryption from BBI prior to sending the Input Data to BBI.
- 3.6 Following receipt of the Input Data from the Client, BBI shall process it and deliver the Output Data to the Client in accordance with the applicable Scope of Work.

### 4 Loss of the input data or output data

- 4.1 If the Input Data or any part thereof shall be lost, destroyed or damaged whilst in BBI's possession prior to processing, then BBI shall forthwith notify the Client who shall promptly supply BBI with a copy of the records and data held by Client pursuant to paragraph 3.4 of this Part 8 of the Services Schedule, whereupon BBI shall use such copy for processing. The cost of replacement and the delivery of such copy shall be borne by BBI.
- 4.2 If the Output Data or any part thereof shall be lost, damaged or destroyed prior to its delivery to the Client, then BBI shall produce a further copy as soon as possible thereafter and in no event later than three (3) Business Days. The cost of producing such further copy shall be borne by BBI.

### 5 Rectification of errors

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

### 6 Effect of termination

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

## Hosting services

### 1 Additional clauses

The following clauses set out in Part 9 of this Services Schedule shall be incorporated into the Conditions for the duration of the applicable Scope of Work if the Client is providing the Hosting Services (as set out in the Scope of Work):

### 2 Definitions

- 2.1 The following definitions shall be added to the Conditions:
  - (a) "**Hosting Company**" means the third party hosting company or any replacement

from time to time selected by BBI;

(b) **"Hosting Charges"** means the changes payable by the Client for the Hosting Services.

### **3 Hosting services**

- 3.1 If BBI is to provide the Hosting Services, BBI will use the Hosting Company to supply a hosting account.
- 3.2 The Client agrees to comply with the any terms and conditions of use of the Hosting Company for the web hosting and email services provided through BBI.
- 3.3 The Client will indemnify BBI against any loss BBI suffers as a result of the Client's breach of the Hosting Company's terms and conditions of use.
- 3.4 BBI will not be responsible for any technical issues of the Hosting Company which cause the Client's website to be temporarily inaccessible.
- 3.5 BBI shall issue a monthly invoice in respect of the Hosting Charges, and the Client shall pay to BBI the Hosting Charges set out in BBI' invoice within 30 days of the date of BBI's invoice.
- 3.6 BBI reserves the right to withdraw the Hosting Services until such time as the Hosting Charges are paid in full, whereby the Hosting Services will be resumed.
- 3.7 BBI will not be liable for any loss of business arising to the Client as a result of any downtime caused by the Client's non-payment of the Hosting Charges.
- 3.8 BBI shall not be responsible for any errors to the Client's website due to any variations made by the Client. If the Client causes errors on the Client's website as a result of their variations to the control panel, BBI reserves the right to invoice the Client for any corrective action required.
- 3.9 BBI reserves the right to terminate the Hosting Services by giving 5 Business Days' written notice to the Client.

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## Service schedule

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## Service schedule