



## OAKA STUDIO CONSULTANCY AGREEMENT 040923

### Agreed terms

#### 1. INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in this Agreement (unless the context requires otherwise).

Agreement: means the terms and conditions in this Consultancy Agreement along with the Statement of Work(s), any quotes and any other documents agreed between the Parties in writing.

Authorised Representative: means the person nominated by each Party in accordance with this Agreement.

Applicable Data Protection Laws:

- a) To the extent the UK data protection legislation applies, all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 ("DPA 2018") (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which Oaka Studio is subject, which relates to the protection of personal data.

Background Materials: means all Intellectual Property Rights, know-how, information, methodologies, techniques, tools, schemata, diagrams, ways of doing business, trade secrets, instructions manuals and procedures (including, but not limited, to software, documentation, and data of whatever nature and in whatever media) owned, developed or controlled by Oaka Studio which may have been created outside the scope, or independently of, the Services and/or this Agreement, and including all updates, modifications, derivatives or future developments thereof.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business System: the information technology and communication systems, including networks, hardware, software and interfaces owned by, or licensed to, the Client or its agents or contractors.

Client: the Client as identified in the Statement of Work

Client Personal Data: any personal data which Oaka Studio processes in connection with this Agreement, in the capacity of a processor on behalf of the Client.

Commencement Date: the date of this Agreement unless otherwise set out in the Statement of Work.



Commissioner: the Information Commissioner (see section 114, DPA 2018).

Confidential Information: all confidential information (however recorded or preserved) disclosed by a Party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services (together, its "Representatives") to the other Party and that Party's Representatives in connection with this Agreement which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Deemed Employment: an engagement to which section 61M(1)(d) of the Income Tax (Earnings and Pensions) Act 2003 applies.

Deliverable: means all Documents, products and materials developed by Oaka Studio or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

Document: means, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Engagement: the engagement of Oaka Studio by the Client on the terms of this Agreement.

EU GDPR: the General Data Protection Regulation ((EU) 2016/679).

Fees: the fees payable to Oaka Studio, as described in the Statement of Work or as otherwise agreed in writing as may be varied from time to time pursuant to the terms of this Agreement.

Force Majeure: has the meaning given in Clause 11.

Good Industry Practice: the standards of a skilled and experienced provider of services similar or identical to the applicable services, having regard to factors such as the nature and size of the parties, the type of service, the service levels, the term, the pricing structure and any other relevant factors.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

IPR Claim: a claim arising from the infringement of Intellectual Property Rights belonging to third parties.

Normal Business Hours: 9am to 5.30pm on a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Oaka Studio: Team LB Consulting Limited (trading as Oaka Studio Studio) incorporated and registered in England and Wales with company number 14419742 whose registered office is at Chargrove House, Shurdington Road, Cheltenham, Gloucestershire, United Kingdom GL51 4GA.

Off-payroll Working rules: the rules in Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003.

Purpose: the purposes for which the Client Personal Data is processed, as set out in the Statement of Work.

Relief Events: the following events:

- (a). any failure by the Client to comply with its obligations under this Agreement;
- (b). any error or malfunction in the Business Systems or any other software, hardware or systems for which Oaka Studio is not responsible or any failure by the Client, or their agents or contractors (including any existing service provider) to obtain sufficient support and maintenance, as required, for any software, hardware or systems for which Oaka Studio is not responsible; or
- (c). any failure by the Client, its agents or contractors (including any existing service provider) to provide any information, co-operation or instructions to Oaka Studio which is reasonably required by Oaka Studio for the proper performance of its obligations under this Agreement.
- (d). any of the causes or events set out in Clause 7.6.

Retail Price Index: the Retail Prices Index (all Items, excluding mortgages) as published by the Office for National Statistics from time to time, or failing such publication, such other index as the Parties may agree (such agreement not to be unreasonably withheld or delayed), acting reasonably, most closely resembles such index.

Statement of Work: means the statement of work which sets out the Services and which incorporates the terms and conditions of this Agreement.

Services: the services as described in the Statement of Work or as otherwise agreed in writing as may be varied from time to time pursuant to the terms of this Agreement.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

1.2 Clause and paragraph headings shall not affect the interpretation of this Agreement.



- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to writing or written includes e-mail.
- 1.9 Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10 References to Clauses are to the Clauses of this Agreement.
- 1.11 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.12 In the event of any conflict or inconsistency between the Clauses of this Agreement and the Statement of Work, (including any changes or variations to each of the Clauses and the Statement of Work), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:
  - (a) the Statement of Work;
  - (b) the Clauses.

## 2. TERM OF ENGAGEMENT

- 2.1 The Client shall engage Oaka Studio to provide the Services on the terms of this Agreement and the Statement of Work.
- 2.2 The Engagement shall commence on the Commencement Date and shall continue unless and until terminated:
  - (a) as provided by the terms of this Agreement; or
  - (b) either Party giving to the other Party not less than thirty (30) days' prior written notice.

### 3. DUTIES AND OBLIGATIONS

#### 3.1 During the Engagement Oaka Studio shall:

- (a) unless otherwise set out in the Statement of Work, provide the Services during Normal Business Hours;
- (b) provide the Services, including the Deliverables, with due care, skill and ability and in accordance with Good Industry Practice; and
- (c) use its commercially reasonable endeavours to complete any Services and/or Deliverables within any timescales set out in the Statement of Work but any such dates shall be estimates only.

#### 3.2 Unless they have been specifically authorised to do so by the Client in writing:

- (a) Oaka Studio shall not have any authority to incur any expenditure in the name of or for the account of the Client; and
- (b) Oaka Studio shall not hold itself out as having authority to bind the Client.

#### 3.3 Oaka Studio shall comply with the Client's health and safety procedures in force at any of the Client's premises at which the Services are provided, subject to such procedures being notified to Oaka Studio no less than one (1) week prior to Oaka Studio's attendance at the Client's premises.

#### 3.4 Oaka Studio may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services.

#### 3.5 Oaka Studio shall without undue delay give to the Client all such reasonably requested information and documentation as it may reasonably require from time to time in order for the Client to determine whether the Engagement is or will be within the Off-payroll Working rules and is or will be Deemed Employment.

#### 3.6 In the event that Oaka Studio assists the Client in managing its associations with its customers, it shall use its reasonable endeavours in assisting with such claims but makes no guarantee that Microsoft will make any payments in connection with such claim which Microsoft will in its absolute discretion decide whether or not to validate.

#### 3.7 The Parties shall reasonably co-operate with each other in all matters relating to the Services and shall each appoint an Authorised Representative, as the contact throughout the Services.

#### 3.8 During the Engagement, the Client shall:

- (a) provide Oaka Studio with access to their Partner Centre profile. Such access shall be at the Client's own risk; and
  - (b) be responsible for all communication and correspondence with their customers.
- 4. FEES
- 4.1 The Client shall pay Oaka Studio the Fees set out in the Statement of Work at. Oaka Studio shall invoice the Fees in accordance with the payment intervals stated in the Statement of Work.
- 4.2 The Client shall pay each undisputed invoice for the Fees and Expenses (as defined below) in full and cleared funds (without deduction or set-off) within fourteen (14) days of the date of such invoice unless otherwise agreed in writing by Oaka Studio. In the event the Client pays by direct debit, the details of such direct debit payments shall be set out in the invoice. The Client shall pay each undisputed invoice for the Fees in full and cleared funds (without deduction or set-off). Expenses shall be invoiced separately.
- 4.3 The Fees exclude:
  - (a) actual, reasonable travel costs and expenses including airfares, hotels and meals incurred by Oaka Studio or its subcontractors in performance of the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Client for the Services ("Expenses"). Oaka Studio shall obtain the Client's prior written approval before incurring any such expense, material or service exceeding a total cost of fifteen hundred pounds (£1,500) in the aggregate per day and shall be payable by the Client in accordance with Clause 4.2;
  - (b) VAT or other relevant sales tax, which Oaka Studio shall add to its invoices at the appropriate rate.
- 4.4 All payments by the Client hereunder shall be in United Kingdom pound sterling unless otherwise agreed by Oaka Studio in writing and shall be paid to Oaka Studio's bank account as advised by Oaka Studio to the Client in writing.
- 4.5 Should the Client be required by any law or regulation to make any deduction on account of tax including but not limited to withholding tax or otherwise on any sum payable under the Agreement the Fees payable shall be increased by the amount of such tax to ensure that Oaka Studio receives a sum equal to the amount to be paid as set out in the Statement of Work.
- 4.6 Without prejudice to any other remedy that Oaka Studio may have, if payment of the Fees or any part thereof is overdue then unless the Client has notified Oaka Studio in writing that such payment is in dispute within ten (10) days of the receipt of the corresponding invoice Oaka Studio may, without prejudice to any other rights or remedies, charge the Client interest on the overdue amount at the rate of four percent (4%) per annum above the base lending rate of the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue



amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.

- 4.7 The Client shall not be able to dispute any amounts which have been paid by the Client after a period of three (3) months has elapsed from the date of invoice.
- 4.8 Oaka Studio shall not be obliged to provide any of the Services while any duly issued invoice(s) remain unpaid, but should Oaka Studio choose to continue to do so, this shall not in any way be construed as a waiver of Oaka Studio's rights or remedies.
- 4.9 Oaka Studio reserves the right, on giving the Client thirty (30) days' notice (i) to increase any costs in line with any third party costs; and (ii) to increase the Fees on an annual basis with effect from each anniversary of the Commencement Date. If the Client does not agree with the increase set out in Clause 4.9(ii), then they may terminate this Agreement upon thirty (30) days written notice and before such price increase takes effect. If Oaka Studio does not receive written notice within thirty (30) days, the Client is deemed to have agreed to the amendment to the Fees.
- 4.10 In the event that the Client is in breach of its payment obligations under the Agreement then Oaka Studio shall provide written notice of such breach, specifying in detail the nature of the breach and providing fourteen (14) days' notice to remedy such breach if capable of remedy. If the Client fails to remedy such breach Oaka Studio shall be entitled to terminate the Services without prejudice to any pre-existing rights and obligations of either Party. Oaka Studio shall have no liability or responsibility should the Services fail to comply with the Statement of Work as a direct result of the Client (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Agreement.
- 4.11 In the event Oaka Studio instructs a collection agency to recover any overdue Fees, the Client shall be liable for any costs associated with such collection, including, but not limited to, legal costs, attorney's fees, courts costs, and collection agency fees.

## 5. CONFIDENTIAL INFORMATION

- 5.1 Each Party agrees and undertakes that it will treat all Confidential Information disclosed to it by the other Party in connection with the Services as strictly confidential and shall use it solely for the purpose intended by the Services and shall not, without the prior consent of the other Party, publish or otherwise disclose to any third party any such Confidential Information except for the purposes intended by the Statement of Work.
- 5.2 To the extent necessary to implement the provisions of any Services, each Party may disclose Confidential Information to its Representatives, in each case under the same conditions of confidentiality as set out in Clause 5.1.
- 5.3 The obligations of confidentiality set out in this Clause 5 shall not apply to any information or matter which: (i) is in the public domain other than as a result of a breach of this Agreement; (ii) was in the

possession of the receiving Party prior to the date of receipt from the disclosing Party or was rightfully acquired by the receiving Party from sources other than the disclosing Party; (iii) is required to be disclosed by law, or by a competent court, tribunal, securities exchange or regulatory or governmental body having jurisdiction over it wherever situated; or (iv) was independently developed by the receiving Party without use of or reference to the Confidential Information.

## 6. DATA PROTECTION

- 6.1 For the purposes of this Clause 6, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the Applicable Data Protection Laws.
- 6.2 Both Parties will comply with all applicable requirements of Applicable Data Protection Laws. This Clause 6 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under Applicable Data Protection Laws.
- 6.3 The Parties have determined that, for the purposes of Applicable Data Protection Laws, Oaka Studio shall process the personal data set out in the Statement of Work, as a processor on behalf of the Client.
- 6.4 Without prejudice to the generality of Clause 6.3, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Client Personal Data to Oaka Studio for the duration and purposes of this Agreement.
- 6.5 In relation to the Client Personal Data, the Statement of Work sets out the scope, nature and purpose of processing by Oaka Studio, the duration of the processing and the types of personal data and categories of data subject.
- 6.6 Without prejudice to the generality of Clause 6.3 Oaka Studio shall, in relation to Client Personal Data:
- (a) process that Client Personal Data only on the documented instructions of the Client, which shall be to process that Client Personal Data for the purposes set out in the Statement of Work, unless Oaka Studio is required by Applicable Data Protection Laws to otherwise process that Client Personal Data. Where Oaka Studio is relying on Applicable Data Protection Laws as the basis for processing Client Personal Data, Oaka Studio shall notify the Client of this before performing the processing required by the Applicable Data Protection Laws unless those Applicable Data Protection Laws prohibit Oaka Studio from so notifying the Client on important grounds of public interest. Oaka Studio shall inform the Client if, in the opinion of Oaka Studio, the instructions of the Client infringe Applicable Data Protection Laws;
  - (b) implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Client Personal Data and against accidental loss or destruction of, or damage to, Client Personal Data, which the Client has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss,

destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

- (c) ensure that any personnel engaged and authorised by Oaka Studio to process Client Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
- (d) assist the Client insofar as this is possible (taking into account the nature of the processing and the information available to Oaka Studio), and at the Client's cost and written request, in responding to any request from a data subject and in ensuring the Client's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the Client without undue delay on becoming aware of a personal data breach involving the Client Personal Data;
- (f) at the written direction of the Client, delete or return Client Personal Data and copies thereof to the Client on termination of the Agreement unless Oaka Studio is required by Applicable Law to continue to process that Client Personal Data. For the purposes of this Clause 6.6(f) Client Personal Data shall be considered deleted where it is put beyond further use by Oaka Studio; and
- (g) maintain records to demonstrate its compliance with this Clause 6 and allow for reasonable audits by the Client or the Client's designated auditor, for this purpose, on reasonable written notice.

6.7 The Client hereby provides its prior, general authorisation for Oaka Studio to:

- (a) appoint processors to process the Client Personal Data, provided that Oaka Studio:
  - (i) shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on Oaka Studio in this Clause 6;
  - (ii) shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of Oaka Studio; and
  - (iii) shall inform the Client of any intended changes concerning the addition or replacement of the processors, thereby giving the Client the opportunity to object to such changes provided that if the Client objects to the changes and cannot demonstrate, to Oaka Studio's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Client shall indemnify Oaka Studio for any Losses, damages, costs (including legal fees) and expenses suffered by Oaka Studio in accommodating the objection;

- (b) only transfer Client Personal Data outside of the UK as required for the Purpose, provided that Oaka Studio shall ensure that all such transfers are affected in accordance with Applicable Data Protection Laws. For these purposes, the Client shall promptly comply with any reasonable request of Oaka Studio, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
- 6.8 To the extent that Oaka Studio cannot comply with a change to the Client's instructions when processing Personal Data without incurring material additional costs, Oaka Studio shall:
  - (i) immediately inform the Client, giving full details of the problem;
  - (ii) cease all processing of the affected data (other than securely storing those data) until revised instructions are received; and
  - (iii) any changes in the Client's instructions that affect the pricing structure or commercial relationship between the Parties should go through an appropriate Change Request (as set out in Clause 14).
- 7. INTELLECTUAL PROPERTY
- 7.1 Oaka Studio and its respective licensors shall retain exclusive ownership of (i) all of its Background Materials; and (ii) ideas, concepts, techniques and know-how discovered, created or developed by Oaka Studio during the performance of the Services ("General IP", together with the Background Materials shall mean "Oaka Studio Intellectual Property"). Oaka Studio grants to the Client a non-exclusive, irrevocable, worldwide royalty free and non-transferable license to use Oaka Studio Intellectual Property. The Client may not, at any time including after termination of this Agreement, share any Oaka Studio Intellectual Property with any third party without Oaka Studio's prior written consent. Oaka Studio may treat the Client's breach of this Clause 7.1 as a breach of the Agreement.
- 7.2 The Client grants to Oaka Studio a non-exclusive, irrevocable, worldwide royalty free and non-transferable license to use the Client's Intellectual Property to the extent necessary to perform the Services. The Client shall pay and indemnify Oaka Studio, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by Oaka Studio, arising by reason of claims that (1) Oaka Studio's possession of or use of the Client's Intellectual Property Rights in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) the Client or any of its Clients, modify, alter, replace combine with any other data, code, documents or other software, which alters Oaka Studio's Intellectual Property and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 7.3 Oaka Studio shall pay and indemnify the Client up to the limits set out in Clause 8.3, from and against all actions, claims, liabilities, demands, proceedings, costs suffered or incurred by the Client, arising by

reason of claims that (1) the Client's possession of or use of Oaka Studio's Intellectual Property in connection with the provision of the Services infringes the Intellectual Property Rights of a third party; (2) Oaka Studio, modifies, alters, replaces combines with any other data, code, documents or other software, which alters the Client's Intellectual Property Rights and such alterations infringe the Intellectual Property Rights of a third party. This indemnity applies whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.

7.4 If either Party ("Indemnifying Party") is required to indemnify the other Party ("Indemnified Party") under this Clause 7, the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any IPR Claim against it in respect of which it wishes to rely on the indemnity at Clause 7.2 or Clause 7.3 (as applicable);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPR Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPR Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

7.5 If an IPR Claim is brought or in the reasonable opinion of Oaka Studio is likely to be made or brought, Oaka Studio may at its own expense ensure that the Client is still able to use the Deliverables by either:

- (a) modifying any and all of the provisions of the Deliverables without reducing the performance and functionality for any or all of the provision of the Deliverables, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted services and such modified or substituted services shall be acceptable to the Client, such acceptance not to be unreasonably withheld; or
- (b) procuring a license or permission to use the Deliverables on terms which are acceptable to the Client, such acceptance not to be unreasonably withheld.

7.6 Except to the extent that Oaka Studio should reasonably have known or advised the Client the foregoing provisions of Clause 7.5, Oaka Studio shall have no obligation or liability for any IPR Claim to the extent such IPR Claim arises from:

- (a) any use by or on behalf of the Client of the combination with any item not supplied or recommended by Oaka Studio where such use of the Deliverables directly gives rise to the claim, demand or action; or
- (b) any modification carried out on behalf of the Client to any item supplied by Oaka Studio under this Agreement if such modification is not authorised by Oaka Studio in writing where such modification directly gives rise to a claim, demands or action.

## 8. LIABILITY

8.1 This Clause 8 sets out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents and subcontractors) in respect of:

- (a) any breach of this Agreement; and
- (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

8.2 Nothing in this Agreement excludes or limits either Party's liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any other liability which cannot lawfully be excluded or limited.

8.3 Oaka Studio's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), any indemnity restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to one hundred and twenty five percent (125%) of the price paid for the Services during the twelve (12) months preceding the date on which the claim arose.

8.4 Except as expressly stated in Clause 8.2:

- (a) neither Party shall have any liability for any losses or damages which may be suffered by the other Party (or any person claiming under or through that Party), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
  - (i) special damage even if the other Party was aware of the circumstances in which such special damage could arise;
  - (ii) loss of profits;

- (iii) loss of anticipated savings;
- (iv) loss of business opportunity;
- (v) wasted expenditure;
- (vi) loss of goodwill;
- (vii) loss of reputation;
- (viii) loss or corruption of data.

8.5 Any indemnity set out in this Agreement shall not apply unless the Party claiming indemnification notifies (in writing) the other promptly of any matters in respect of which the indemnity may apply and of which the notifying Party has knowledge and gives the other Party full opportunity to control the response to and the defence of such claim; including without limitation, the right to accept or reject settlement offers and to participate in any litigation provided that in no event shall the indemnitor be liable for any settlement or compromise made without its consent, such consent not to be unreasonably withheld or delayed.

## 9. TERMINATION

9.1 Notwithstanding the provisions of clause 2.2 and any other rights the Parties have accrued under this Agreement, a Party may terminate the Engagement with immediate effect by giving written notice to the other Party if at any time:

- (a) the other Party commits a material breach of any material term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified to do so;
- (b) the other Party breaches any of the terms of Clauses 5, 6 or 15;
- (c) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) is determined by HM Revenue & Customs to have Deemed Employment through the Engagement.

9.2 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.

## 10. OBLIGATIONS ON TERMINATION

10.1 On termination of this Agreement for any reason:

- (a) Oaka Studio shall immediately cease provision of the Services;
- (b) the Client shall pay any and all invoices and sums due and payable up to and including the date of termination;
- (c) each Party shall use reasonable endeavours to return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other Party; and
- (d) the Client shall ensure that Oaka Studio's inbox and Partner Centre profiles utilised during the Engagement are closed.

## 11. FORCE MAJEURE

11.1 Oaka Studio shall have no liability to the Client under this Agreement and the Client shall have no obligation to pay the Fees if Oaka Studio is prevented from, or delayed in, performing its obligations under this Agreement, or from carrying on its business, by an event of Force Majeure except to the extent that Oaka Studio could reasonably have avoided such circumstances by fulfilling its obligations in accordance with the terms of this Agreement or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice) including strikes, computer viruses and malware, pandemics, epidemics, lock-outs or other industrial disputes (excluding any industrial disputes involving the workforce of Oaka Studio), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a "Force Majeure Event"), provided that:

- (a) the Client is notified of such an event and its expected duration; and
- (b) Oaka Studio uses all reasonable endeavours to mitigate, overcome or minimise the effects of the event of Force Majeure concerned,

and that if the period of delay or non-performance continues for four (4) weeks or more, the Party not affected may terminate this Agreement by giving fourteen (14) days' written notice to the other Party.

## 12. STAFF TRANSFER AND NON-SOLICITATION

12.1 It is not intended that any staff be transferred from Oaka Studio to the Client or from the Client to Oaka Studio pursuant to this Agreement or that any 'relevant transfer' occur for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

12.2 Neither Party shall solicit the staff or contractors of the other Party who have been employed or engaged in the Services or the performance of this Agreement during the lifetime of this Agreement and for a period of nine (9) months thereafter. For the purposes of this Clause 12 'solicit' means the

soliciting of such person with a view to engaging such person as an employee, director, sub-contractor or independent contractor.

12.3 In the event that the Client is in breach of Clause 12.2 above then the Client shall pay to Oaka Studio by way of liquidated damages an amount equal to fifty percent (50%) of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to Oaka Studio's ability to seek injunctive relief.

12.4 Oaka Studio hereby acknowledge and agree that the formula specified in Clause 12.3 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

### 13. RELIEF EVENTS

Subject to Clause 8.2, and notwithstanding any other provision of this Agreement, Oaka Studio shall have no liability for failure to perform the Services or its other obligations under this Agreement if it is prevented, hindered or delayed in doing so as a result of any Relief Event.

### 14. CHANGE REQUESTS

14.1 Either Party may request changes to any Services (in each case, a "Change Request"). Any Change Request shall be made in writing and sent to the applicable Authorised Representative and shall set out the change in sufficient detail so as to enable the other Party to make a proper assessment of such change.

14.2 Where the Parties propose a Change Request Oaka Studio shall provide a written estimate of the likely time required to implement the change, any necessary variations to the charges as a result of the change, the likely effect of the change on the Services; and any other impact of the change on the terms of this Agreement. The Client shall notify Oaka Studio whether it accepts or reasonably rejects the Change Request within five (5) Business Days of its receipt of the written estimate.

14.3 Until such time as a Change Request has been agreed to by the Parties, the Parties shall continue to perform their respective obligations under the Statement of Work without taking into account the Change Request. Once duly agreed by both Parties, the Change Request shall be deemed incorporated into Agreement and the Statement of Work and Oaka Studio shall commence performance of the Change Request accordingly.

14.4 Neither Party shall be required to accept any Change Request made by the other Party and shall not be bound by the Change Request unless it has been agreed in writing as set out above.

14.5 Unless otherwise agreed in writing, Oaka Studio shall be entitled to charge the Client at Oaka Studio's then current Rates for investigating, reporting on and, if appropriate, implementing any Change Request requested by the Client.

15. ANTI-BRIBERY AND MODERN SLAVERY

15.1 The Parties shall:

- (a) comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption, including the Bribery Act 2010;
- (b) promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of this Agreement.

15.2 The Parties shall procure that any person associated with them, who is performing services in connection with this Agreement, adheres to terms equivalent to those imposed on them in this Clause 15 ("Relevant Terms"). The Parties shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the other for any breach by such persons of any of the Relevant Terms.

15.3 For the purpose of this Clause 15, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), section 6(5) and (6) of that Act and section 8 of that Act respectively.

15.4 In performing their obligations under this Agreement, the Parties shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force the Modern Slavery Act 2015; and
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

16. WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17. SEVERANCE

If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.



## 18. ASSIGNMENT

- 18.1 The Client shall not without the prior written consent of Oaka Studio (such consent not to be unreasonably withheld or delayed) assign, transfer, charge or deal in any other manner with either the benefit or the burden of this Agreement or any of its rights or obligations under it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Agreement.

## 19. STATUS

The relationship of Oaka Studio to the Client will be that of independent contractor and nothing in this Agreement shall render it an employee, worker, agent or partner of the Client and Oaka Studio shall not hold itself out as such.

## 20. NOTICES

- 20.1 Any notice or other communication required to be given to a Party under or in connection with this Agreement shall be in writing and shall be (a) delivered by hand or sent by pre-paid first class post or other next Business Day delivery service, at its registered office (if a company) or (in any other case) its principal place of business or (b) sent by email to the address for each Party set out in the Statement of Work or in the absence of this in the Statement of Work, as otherwise notified in writing.
- 20.2 Any notice or communication shall be deemed to have been received (a) if delivered by hand, on signature of a delivery receipt, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or (b) if delivered by email, at the time of transmission, or, if this time falls outside Normal Business Hours, when Normal Business Hours resume.
- 20.3 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 20.4 Each Party shall as soon as reasonably practicable notify the other of any change to their contact details.

## 21. ENTIRE AGREEMENT AND VARIATION

- 21.1 This Agreement (and the Statement of Work) constitute the entire agreement between the Parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 21.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.



- 21.4 No alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.

## 22. THIRD PARTY RIGHTS

Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## 23. DISPUTE RESOLUTION

- 23.1 If a dispute arises under this Agreement ("Dispute"), including any Dispute arising out of any amount due to a Party hereto, then before bringing any suit, action or proceeding in connection with such Dispute, a Party must first give written notice of the Dispute to the other Party describing the Dispute and requesting that it is resolved under this dispute resolution process ("Dispute Notice").

- 23.2 If the Parties are unable to resolve the Dispute within thirty (30) calendar days of delivery of the Dispute Notice, then each Party will promptly (but no later than five (5) Business Days thereafter):

- (a) appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of this Agreement ("Designated Representative"); and
- (b) notify the other Party in writing of the name and contact information of such Designated Representative.

- 23.3 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one Party to the other Party will be honoured.

- 23.4 If the Parties are unable to resolve the Dispute within thirty (30) calendar days after the appointment of both Designated Representatives, then either Party may proceed with any other available remedy.

## 24. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by, and construed exclusively in accordance with English law and each Party irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or matter arising out of or in connection with this Agreement or any Statement of Work.