

1. Definitions

1.1 In this agreement:

Studio Proposal means the Studio's proposal for the website solution forming the Services incorporating these terms and conditions and together forming the Agreement;

Background IP means all Intellectual Property Rights in pre-existing Software code or other forms of IP owned and developed by the Studio (including, for the avoidance of doubt, in the non-bespoke elements of the CMS Solution used by the Studio in support of other Client Projects) together with any additional software code or other IP created by the Studio for the Project or in connection with the Project which further develops, enhances or refines the Background IP except for the Foreground IP;

Change Order means the change to the Scope of the Project agreed between the parties in accordance with clause 5.

Charges means the charges for the provision of the Services set out in the Studio Proposal;

CMS Solution means the Content Management System built by the Studio forming part of its Background IP;

Commencement Date means [the date of the Agreement OR insert date](#);

Completion means completion of the Services [last booked Sprint] in accordance with the Studio Proposal;

Confidential Information means information disclosed by or on behalf of the Studio to the Client and vice versa under or in connection with this Agreement which is marked as confidential, or which either party has indicated to the other is confidential, or which would be regarded as confidential by a reasonable business person, including all know-how, trade secrets, financial, commercial, technical, tactical or strategic information of any kind;

Continuous Delivery means after Completion and Sign-Off, the ongoing refinement, bug-fixing and software and maintenance and support package delivered to the Client, where applicable, under a separate Service Level Agreement upon Completion;

Development Handover has the meaning given to it in the Studio Proposal;

Project Deliverables means the Solution and the Documentation;

Client Contact means the designated Personnel of either party (if any individually assigned) appointed to manage the Project;

Documentation means the Studio Proposal, Technical Specification and all relevant design and development information, configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation covering key functionality;

Due Date means the date for payment of any of the Charges as set out in the Studio Proposal;

Foreground IP means all Intellectual Property Rights in the bespoke elements of the Solution created by the Studio for the Client but excluding any rights in Background IP, Third Party IP and Open Source Software;

Good Industry Practice means in relation to any undertaking and any circumstances, the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or an internationally recognised company engaged in the same type of activity under the same or

similar circumstances;

Information Architecture means the manner in which the data is stored on the website as more particularly described in the Technical Specification the meaning given in the Studio Proposal

Insolvency Event means, in relation to a party, that party suffering or being subject to any of the following events:

- (a) the party, being a company, is deemed unable to pay its debts or any steps are taken for the purposes of making an administration order against it, or for the appointment of an administrator over it or for the winding-up or dissolution of it (otherwise than in the course of a solvent reorganisation or restructuring);
- (b) the party has a receiver, manager or trustee appointed over, or any encumbrancer takes possession of, the whole or any part of its business or assets;
- (c) the party has taken any steps with a view to proposing or entering into any composition, compromise, voluntary arrangement, scheme of arrangement or any analogous procedure involving the party and its creditors or any class of them;
- (d) the party suspends or ceases to carry on business or any material part of its business or materially alters the nature of its business as conducted at the date of this Agreement; or
- (e) an event occurs which is analogous to any of the foregoing events anywhere in the world;

Intellectual Property Rights or **IPR** means patents, rights to inventions, copyright and related rights, moral rights, trade-marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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 means any claim made against the Client for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply of the Services or the use of the Solution;

Iteration/Sprint means an iteration of the development cycle called a "sprint" having a fixed duration of usually one week or two weeks as set out in the Studio Proposal;

Open Source Software means any Software comprised in the Solution which is not owned or controlled by the Studio but which is freely available for redistribution (such as WordPress which is an online website development tool written in PHP scripting language);

Personnel means all directors, officers, employees, agents, consultants and subcontractors of a party;

Project means the Client's project for the development of the Solution;

Project Development Methodology means the rapid application development methodology adopted by the parties for the development of the Solution;

Project Exclusions and Assumptions means the Project exclusions and assumptions set out in the Studio Proposal;

Project Plan means the Studio plan agreed by the parties for the development and delivery of the Solution agreed by the parties and set out in the Studio Proposal;

Release means a collection of Features that provide an iterative benefit to the Client as part of the Solution;

Scope means the Project size and focus and features of the website build and/or Services as set out in the Studio Proposal;

Services means the services to be performed by the Studio for the development of the Solution as described in this Agreement;

Sign-Off means acknowledgement from the Client of completion of the Services and achievement of the Milestones. Sign Off acts as confirmation that Completion has taken place and any Continuous Delivery programme can start. Sign-off and Completion will be deemed to have taken place upon "Development Handover" as set out in the Studio Proposal;

Software means computer programs whether in source code or object code form;

Solution means the website solution to be developed by the Studio in accordance with the Studio Proposal, Overview and Project Deliverables;

Technical Architecture means the technical architecture described in the Studio Proposal. All systems will be custom built, leveraging best of breed software and libraries wherever possible to minimise cost and time requirements;

Technical Specification means the technical specification provided by the Studio detailing the operation of the Solution utilising the Technical Architecture;

Third Party IP means any third party Intellectual Property Rights in any Third Party Deliverables specified in the Studio Proposal as dependencies for the Project;

Project Timeline means any timeline set out in the Studio Proposal;

VAT means United Kingdom value added tax and any equivalent or similar tax imposed outside the United Kingdom;

Workshop means any workshop conducted with the Client to identify or re-evaluate the Project Scope which may or may not lead to a Change Order.

1.2 If there is a conflict between the terms contained in the main body of this Agreement and the terms of the Studio Proposal, the terms of the Studio Proposal shall prevail.

2. Studio Proposal, Agile Website Development, Services and Completion

2.1 The parties acknowledge and agree that:

2.1.1 the Studio will provide the Services and develop an agile digital Solution in close collaboration with the Client in accordance with the Studio Proposal; and

2.1.2 The Studio will develop the Solution according to the Project Deliverables and Project Timeline set out in the Studio Proposal and as the Scope may evolve during the Project provided that the parties agree a Change Order;

2.2 The Studio shall:

2.2.1 deliver the Services using appropriately qualified Personnel deploying the Project Development Methodology;

2.2.2 perform its obligations under this Agreement in accordance with Good Industry Practice;

2.2.3 develop the digital Solution as set out in the Studio Proposal/in a series of Sprints;

- 2.2.4 after any Workshop, produce the Documentation;
 - 2.2.5 at the end of each Sprint, deploy an iteration of the Solution (or the relevant part) into a location accessible to Client;
 - 2.2.6 provide for the Client to have reading access to the source code repository of the Software wherever applicable; and
 - 2.2.7 use proven Technical Infrastructure and provide the Technical Specification;
- 2.3 The Client shall:
- 2.3.1 cooperate and collaborate with the Studio and provide any input material quickly and efficiently;
 - 2.3.2 at the end of each Sprint/Project Phase, examine the work results and, where required or considered necessary by the Client, provide feedback as a basis for the following Sprint/Project Phase;
 - 2.3.3 on the date of the Development Handover to acknowledge Completion and Sign-Off without delay to enable the Solution to move on to Continuous Delivery;
 - 2.3.4 from Completion, assume all responsibility and liability for hosting and running costs of the Solution. This includes, without limitation, server infrastructure and third party services such as SSL providers, payment gateway providers and mailing companies;
 - 2.3.5 pay the Charges by the relevant Due Date.

3. Project planning and Scope

The parties shall agree a Project Plan and Scope involving a designated number of Sprints or Project Phases as set out in the Studio Proposal.

4 Approvals and Authority

- 4.1 The Client is authorised to approve the Studio's work and/or expenditure the persons named in the Studio Proposal ("Authorised Persons") shall be deemed to have the requisite authority to bind the Client.
- 4.2 Approval shall mean approval signified by:
 - 4.2.1 Any letter or purchase order on the Client's notepaper bearing the signature of an Authorised Person;
 - 4.2.2 Oral approval given by an Authorised Person provided this is in circumstances where time does not permit written approval and the said oral approval is confirmed within one Working Day by way either of a contact report from the Studio to the Client or a letter or purchase order in accordance with the preceding sub-Clause;
 - 4.2.3 E-mail emanating from the personal or business e-mail address of an Authorised Person.

5. Change Management

- 5.1 Minor changes to the Scope or methodology for the execution of the Services may be agreed between the parties by exchange of email. Where more significant changes are likely to be involved the following provisions of this clause 5 shall apply.

- 5.2 A party may propose more significant changes to the Scope or execution of the Services but no proposed changes shall come into effect until a Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
- 5.2.1 the Services;
 - 5.2.2 the Client's existing charges;
 - 5.2.3 the timetable of the Services; and
 - 5.2.4 any of the terms of this Agreement.
- 5.3 If the Studio wishes to make a change to the Services it shall provide a draft Change Order to the Client.
- 5.4 If the Client wishes to make a change to the Services:
- 5.4.1 it shall notify the Studio and provide as much detail as the Studio reasonably requires of the proposed changes, including the timing of the proposed changes; and
 - 5.4.2 the Studio shall, as soon as reasonably practicable after receiving the information at clause 5.3.1, provide a draft Change Order to the Client.
- 5.5 If the parties:
- 5.5.1 agree to a Change Order, they shall sign it and that Change Order shall amend this Agreement; or
 - 5.5.2 are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 18.
- 5.6 The Studio may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Client pursuant to clause 5.3 on a time and materials basis at the Studio's rates specified in the Studio Proposal.

6. Charges

- 6.1 The Studio shall submit invoices for its Services in accordance with the Studio Proposal and the Client shall pay the Charges within (30) days of the date of invoice (Due Date) or any such earlier or later date specified in the Studio Proposal.
- 6.2 The Charges and other sums payable under this Agreement are exclusive of VAT and shall be paid free and clear of all deductions and withholdings whatsoever.

7. Confidentiality

- 7.1 Each party agrees that it may use the other party's Confidential Information only in the performance of its rights and obligations under this Agreement and it shall not disclose the other party's Confidential Information except in accordance with this clause 7 during the Project or for a period of 5 years after completion of the Project.
- 7.2 Each party may disclose the other party's Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know the other party's Confidential Information in order to perform the disclosing party's rights and obligations under this Agreement provided that the disclosing party shall ensure that each of its employees, officers, advisers, agents or representatives to whom confidential information is disclosed is aware of its confidential nature and complies with this clause 7 as if it were a party.

- 7.3 Each party may disclose any Confidential Information required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.

8. Data protection

- 8.1 In this Agreement, 'personal data', 'data', 'data subject' and 'processing' have the meanings given to them in the Data Protection Act 1998 unless otherwise stated.
- 8.2 Each party agrees that, in the performance of their respective obligations under this Agreement, it shall comply with the provisions of the Data Protection Act 1998 to the extent it applies to each of them.
- 8.3 In so far as the Studio processes any personal data (including name, postal address, email address, mobile/telephone details, and other contact or personal details) relating to individuals which is acquired or collected by the Studio in connection with this Agreement, the Studio shall:
- 8.3.1 process the personal data on behalf of the Client (or, if so directed by the Client, an Affiliate or Affiliates of the Client), only for the purposes of performing this Agreement and only in accordance with instructions contained in this Agreement or provided to the Studio by the Client from time to time;
 - 8.3.2 not otherwise modify, amend or alter the contents of the personal data or disclose or permit the disclosure of any of the personal data to any third party unless specifically authorised in writing by the Client;
 - 8.3.3 at all times comply with the provisions of the Seventh Data Protection Principle set out in the Data Protection Act 1998 and implement appropriate technical and organisational measures to protect the personal data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
 - 8.3.4 ensure that only those of the Studio personnel who need to have access to the personal data are granted access to such data and only for the purposes of the performance of this Agreement and ensure that all of the Studio's personnel required to access the personal data are informed of the confidential nature of the personal data and comply with the obligations set out in this clause 8;
 - 8.3.5 obtain prior written consent from the Client before transferring personal data to any subcontractor and, if such consent is given, include in all contracts with such subcontractor provisions in favour of the Client which are equivalent to those in this clause 8 and enforce these obligations at the Client's request;
 - 8.3.6 not publish, disclose or divulge any of the personal data to any third party (including the data subject) unless directed to do so in writing by the Client;
 - 8.3.7 notify the Client within 7 working days if it:
 - (a) becomes aware of any breach of this clause 8 by it or its subcontractors;
 - (b) receives a request from a data subject to have access to that person's personal data;
 - (c) receives a complaint or request relating directly or indirectly to the processing of any personal data in connection with this Agreement; and
 - (d) receives any other communication relating directly or indirectly to the processing of any personal data in connection with this Agreement;
 - 8.3.8 permit the Client or its external advisers (subject to reasonable and appropriate

confidentiality undertakings) to inspect and audit the Agency's data processing activities and comply with all reasonable requests or directions by the Client to enable the Client to verify and procure that the Agency is in full compliance with its obligations under this Agreement;

8.3.9 at no additional cost, provide such information to the Client as the Client may reasonably require, and within the timescales reasonably specified by the Client, to allow the Client to comply with the rights of data subjects, including data subject access rights, or with notices served by the Information Commissioner or any other law enforcement authority; and

8.3.10 only transfer personal data outside the European Economic Area to US based cloud service providers to comply with:

(a) the obligations on data controllers under the Eighth Data Protection Principle set out in of the Data Protection Act 1998 by providing an adequate level of protection to any personal data that is transferred; and

(b) any reasonable instructions notified to it by the Client.

9. Warranties and Limitations

- 9.1 The Studio warrants, represents and undertakes that, for the duration of this Agreement:
- 9.1.1 it has and will continue to have all necessary rights in and to the Intellectual Property Rights necessary to perform its obligations under this Agreement;
 - 9.1.2 it shall devote such time as shall be necessary for the provision of the Services; and
 - 9.1.3 it shall, and shall procure that the Studio's Personnel, discharge the obligations under this Agreement with all due skill, care and diligence.
- 9.2 Except as expressly stated in this Agreement, all other warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law.
- 9.3 The Client acknowledges that the Solution is provided on an "as is" basis to conform to the Studio Proposal in accordance with the Technical Specification with no warranties of its functional state or fitness for the Client's specific purpose. To support the Solution after Completion, the Client acknowledges that it will need to enter into a Continuous Delivery SLA with the Studio.
- 9.4 If there is an error in the Project as published or publication is delayed or does not occur as planned, the Studio will not be liable unless this is caused by its default or negligence.
- 9.5 The Client warrants that all information and contributing content and other material supplied to the Studio before and during the Project for the development of the Solution will be accurate, relevant and shall not infringe the rights of any third party or breach any applicable law.
- 9.6 The Client accepts full legal responsibility in respect of the Project approved by it for publication and will indemnify the Studio in respect of any loss or liability, costs (including legal costs) or damages incurred as a result of any use of the Project by the Client or any third party.
- 9.7 The Studio warrants that its Personnel working on the Project are and shall be competent and suitable in every reasonable respect, whether as to qualifications, experience or otherwise, to perform the Project requirements.

10. Intellectual Property Rights

- 10.1 The Studio hereby assigns to the Client all Foreground IP in the Solution subject to the following provisions of this clause 10.
- 10.2 The Studio retains all rights to the Background IP and, subject to payment of all applicable Charges, grants (and shall procure the grant of) a royalty-free, irrevocable, non-transferable, non-exclusive licence to use the Studio's Background IP solely for the purpose of and to the extent necessary for the receipt and use of the Services and the Solution by the Client. For the avoidance of doubt, the CMS Solution forming part of the Solution developed for the Client constitutes Background IP retained by the Studio.
- 10.3 Wherever the Solution provided by the Studio includes Third Party IP, the Client shall be responsible for procuring any and all necessary licences and permissions at its own cost for the use of said Third Party IP compromised in the Solution in accordance with the Third Party Deliverables and dependencies set out in the Studio Proposal.
- 10.4 The Client agrees and acknowledges that the Solution may include Open Source Software which the Studio is only entitled to redistribute to the Client in accordance with applicable terms of use (which the Client agrees to comply with wherever relevant).
- 10.5 The Studio shall not, without the Client's prior written consent, use the Client's Intellectual Property Rights for any other purpose or for the benefit of any person other than the Client.
- 10.6 Save in accordance with clause 17, neither party shall have any right to use any of the other party's names, logos or trade marks on any of its products or services without the other party's prior written consent.

11. IPR indemnity

- 11.1 Subject to the limit of its available insurance cover, the Studio shall at all times, during and after the Term, on written demand indemnify the Client, and keep the Client indemnified, against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or arising from an IPR Claim.
- 11.2 If an IPR Claim is made, or the Studio anticipates that an IPR Claim might be made, the Studio may, at its own expense and sole option, either:
 - 11.2.1 procure for the Client the right to continue using the relevant item which is subject to the IPR Claim; or
 - 11.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
 - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (b) there is no additional cost to the Client; and
 - (c) the terms and conditions of this Agreement shall apply to the replaced or modified item,
 - or
 - 11.2.3 terminate this Agreement and reimburse the Client for the Charges paid prior to the date of termination.
- 11.3 The provisions of above clauses 11.1 and 11.2 (inclusive) shall not apply in respect of any IPR Claim caused by:
 - 11.3.1 any use by or on behalf of the Client of the relevant item in combination with any

item not supplied pursuant to this Agreement; or

11.3.2 the use by the Client of the relevant item in a manner not reasonably anticipated by this Agreement.

12 Limitation of liability

- 12.1 The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 12.
- 12.2 Subject to clauses 12.4 and 12.5, the Studio's total liability shall not exceed a sum greater than the total Charges payable to the Studio hereunder..
- 12.3 The Client shall be liable for any loss, damage or claim suffered by the Studio whatsoever and howsoever arising from a breach by the Client of this Agreement and in particular clauses 9.5, 9.6 and 10.3.
- 12.4 Subject to clauses 12.3 and 12.6, neither party shall be liable for loss of actual or anticipated income or profits, loss of contracts or for any special, 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..
- 12.5 Except as expressly stated in this Agreement, and subject to clause 12.6, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 12.6 Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:
- 12.6.1 death or personal injury caused by negligence;
 - 12.6.2 fraud or fraudulent misrepresentation; and
 - 12.6.3 any other losses which cannot be excluded or limited by applicable law.

13. Insurance

- 13.1 The Studio shall take out and maintain adequate insurance with a reputable insurer to cover its liabilities arising under or in connection with this Agreement.
- 13.2 The Studio shall on the reasonable request of the Client, but not more than once in any 12 month period, provide reasonable evidence that the insurance is in force.

14. Term and termination

- 14.1 This Agreement shall start on the Commencement Date and shall continue until it is either terminated in accordance with its provisions or the Services are completed on the date of Development Handover as specified in the Studio Proposal (Term).
- 14.2 Termination for Cause
- Either party may terminate the Agreement (without prejudice to its other rights and remedies) by giving written notice to the other party (Defaulting Party) if:
- 14.2.1 the Defaulting Party fails to pay any amount due by the Due Date and remains in default for 3 business days after being notified in writing to make such payment;

14.2.2 the Defaulting Party commits a material breach of any other term of this Agreement which, if not irremediable, is not remedied to the reasonable satisfaction of the injured party within 14 business days of notice to remedy the breach; or

14.2.3 the Defaulting Party is subject to an Insolvency Event.

14.3 Termination by Either Party by giving 30 days written notice

Either party may provide notice to terminate this Agreement by providing 30 days advance written notice on the basis that where it is the Client that terminates before the end of the Sprint cycle or Project Phase it shall, in addition to all Services invoiced at that date, pay by way of liquidated damages a sum equivalent to the next Sprint cycle or Project Phase payment as compensation to the Studio for loss of opportunity in allocating Personnel and resources to the Project.

14.4 Consequences of Termination

14.4.1 Termination of this Agreement for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the parties.

14.4.2 Following termination, each party shall destroy or, at the request of the other party, return all information and materials belonging to the other party then in its custody or control, including all confidential information of the other party.

14.4.3 The provisions of any clauses whose survival is necessary for the interpretation or enforcement of this Agreement, shall survive the termination or expiry of this Agreement.

15. Entire agreement

15.1 Each party acknowledges that it has not entered into this Agreement or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement, except in the case of fraudulent misrepresentation. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

16. Notices

16.1 Notices under this Agreement shall be in writing and sent to a party's address as set out on the first page of this Agreement (or to the email address set out below). Notices may be given, and shall be deemed received:

16.1.1 by first-class post: [two] Business Days after posting;

16.1.2 by hand: on delivery;

16.1.3 by email to [address] in the case of [party] and [address] in the case of [party]: on receipt of a read return email.

16.2 This clause does not apply to notices given in legal proceedings.

17. Publicity and Reservation of Rights

17.1 For all reasonable purposes related to the promotion of its own business (including for the entry or participation in any industry awards schemes), and provided always that the Studio does not disclose any of the Client's Confidential Information, the Studio shall be entitled to refer to and publicise its work on the Project. Further, the Client agrees that the Studio shall retain the copyright in any material contained in any presentation

made in relation to the Project in competition with any other agency in the event that the Studio's presentation being unsuccessful.

18. Dispute resolution

- 18.1 If any dispute arises between the parties out of, or in connection with, this agreement, the matter shall be referred to senior representatives of each party who shall use their reasonable endeavours to resolve it.
- 18.2 If the dispute is not resolved within 14 days of the referral being made under clause 18.1, the parties may resolve the matter through mediation in accordance with the London Court of International Arbitration Mediation Rules.
- 18.3 Until the parties have completed the steps referred to in clauses 18.1 and 18.2, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief.

19. Force majeure

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from any event beyond the reasonable control of that party. The party affected by such an event shall promptly notify the other party in writing when such an event causes a delay or failure in performance and when it ceases to do so. If such an event continues for a continuous period of more than three months, the party not affected may terminate this Agreement by written notice to the other party.

20. Further assurance

Each party shall at the request of the other, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.

21. Variation

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

22. Assignment

- 22.1 The Client may not assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the Studio's prior written consent (such consent not to be unreasonably withheld or delayed).

23. Set off

Each party shall pay all sums that it owes to the other party under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

24. No partnership or agency

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the parties nor make any party the agent of another party.

25. Severance

If any provision of this Agreement (or part of any provision) (including for the avoidance of doubt the individual heads of damage set out in clause 12.4) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected. Further, wherever possible, the offending provision or part provision shall be replaced by such similar provision with similar effect that would be considered as legal, valid and enforceable and shall be reinstated in such form.

26. Waiver

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

27. Third party rights

Except as expressly provided for 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 of the provisions of this Agreement.

28. Non-solicitation

Neither party shall directly or indirectly solicit or entice away from the employment of the other party any person employed or engaged by the other party during the Term or for a period of 18 months after the expiry or termination of this Agreement. In the event that either party is in breach of this clause 28 the non-defaulting party may at its option elect to receive, and the defaulting party agrees to pay, compensation by way of liquidated damages in a sum equating to 12 months' salary or the equivalent payments made to the employee or contractor in that 12 month period.

29. Governing law

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

30. Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims), and the parties submit to the exclusive jurisdiction of the courts of England and Wales