

DATED

2019

TERMS AND CONDITIONS

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**SCHEDULE**

This agreement is dated 2019

## Parties

- (1) **WE SHOULD CREATE LIMITED** incorporated and registered in England and Wales with company number 11339011 whose registered office is at Unit 12, Royal Stuart Workshops, Adelaide Place, Cardiff, CF10 5BR (**WSC**)
- (2) **Customer**

## BACKGROUND

- (A) WSC is in the business of providing digital content to companies to grow brand awareness and social channels.
- (B) The Customer wishes to obtain and WSC wishes to provide the services on the terms set out in this agreement.

## Agreed terms

### 1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

#### 1.1. Definitions.

1. **Applicable Laws:** all applicable laws, statutes, regulations and codes from time to time in force.
2. **Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
3. **Business Hours:** the period from 9.00 am to 5.30 pm on any Business Day.
4. **Charges:** the sums payable for the Services, as set out in Schedule 1.
5. **Content:** branded photographs and images.
6. **Content Cost:** the financial cost of content calculated based on complexity, number of camera operators, editing times and other variables associated with photography or capturing film.
7. **Content Plan:** the creation of Content by WSC on a monthly basis.
8. **control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.
9. **Customer's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used

directly or indirectly in the supply of the Services including any such items specified in the Project Brief or Content Planning Meeting.

10. **Customer Materials:** all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to WSC in connection with the Services.
  11. **Data Protection Legislation:** all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).
  12. **Deliverables:** approved Content provided by WSC to the Customer.
  13. **Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, 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.
  14. **Services:** the Content creation service provided by WSC.
  15. **WSC's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by WSC to the Customer and used directly or indirectly in the supply of the Services including any such items specified in Concept descriptions or at Content Planning Meetings but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Customer.
  16. **VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.
- 1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
  - 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - 1.4. The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

- 1.5. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8. This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.10. A reference to a statute or statutory provision shall include all subordinate legislation made at the date of this agreement under that statute or statutory provision.
- 1.11. A reference to **writing** or **written** includes email.
- 1.12. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13. A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.14. References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. Commencement and duration

- 2.1. Upon purchase and signup to a Content Plan, these terms and conditions shall commence and shall terminate once the Customer or WSC have cancelled their Content Plan.

2.2. WSC shall provide the Services to the Customer in accordance with this agreement from the date at which the Customer signs up to a Content Plan.

### **3. WSC's responsibilities**

3.1. WSC shall use reasonable endeavours to complete the Services, and deliver the Deliverables to the Customer, in accordance with this agreement in all material respects.

3.2. WSC shall use reasonable endeavours to meet any performance dates but any such dates shall be estimates only and time for performance by WSC shall not be of the essence of this agreement.

3.3. WSC's manager for the services is Alexander Banks who shall have authority to contractually bind WSC on all matters relating to the Services.

3.4. WSC is able to terminate a Content Plan subscription at any time without notice required. The Customer must be refunded if a payment has already been made.

### **4. Customer's obligations**

4.1. The Customer shall:

- (a) co-operate with WSC in all matters relating to the Services;
- (b) appoint a manager for the Services, that person shall have the authority to contractually bind the Customer on matters relating to the Services;
- (c) provide, for WSC, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by WSC;
- (d) allow WSC full artistic license and final decisions of photoshoots and the deliverables;
- (e) provide to WSC in a timely manner all products by the end of the month preceding the delivery date;
- (f) inform WSC of all health and safety and security requirements that apply at any of the Customer's premises;
- (g) ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements; and
- (h) obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable WSC to provide the Services, including in relation to the installation of WSC's Equipment, the use of all

Customer Materials and the use of the Customer's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment, in all cases before the date on which the Services are to start.

- 4.2. If WSC's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, WSC shall be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

## **5. Non-solicitation**

The Customer shall not, without the prior written consent of WSC, at any time from the date of this agreement to the termination or expiry of this agreement, solicit or entice away from WSC or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of WSC in the provision of the Services.

## **6. Changes and revisions**

- 6.1. Once a month of Content Creation is complete and Specific Content is delivered to the Customer, the Customer has up to 5 working days to communicate any issues or queries with WSC. Once reviewed and if deemed valid, WSC shall make a decision on whether to reshoot or discount the next month of Content Creation. WSC shall not be able to offer any refunds.

## **7. Budget and payment**

- 7.1. After the Customer has reached 12 successful payments, WSC may automatically increase the Content Creation fee in line with the percentage increase in the Retail Prices Index.
- 7.2. After the Customer has reached 3 successful payments, WSC may change the monthly Content Creation fee only after providing 30 days notice to the Customer. Notice must be made through email, in person or by direct mail.
- 7.3. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay WSC any sum due on the due date:
  - (a) WSC may suspend all or part of the Services until payment has been made in full.
- 7.4. All quoted sums payable to WSC under this agreement:



- (a) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **8. Intellectual property rights**

### **8.1. In relation to the Deliverables:**

- (a) WSC and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- (b) WSC grants the Customer a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and use the Deliverables for the purpose of using the Services and the Deliverables in its business;
- (c) the Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 8.1(b) to any customer or third party; and
- (d) unless otherwise stated in a written email upon starting this agreement, WSC are permitted to use any Content that has been created under this agreement for their own promotional benefits. WSC shall wait until 30 days has passed between Content has been delivered, before they use this Content for their promotional benefit, unless the consent is otherwise obtained from the Customer.

### **8.2. In relation to the Customer Materials, the Customer:**

- (a) and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) grants WSC a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.

### **8.3. WSC:**

- (a) warrants that the receipt, use and onward supply of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) shall, subject to clause 12 (Limitation of liability), indemnify the Customer in full 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 by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement

or alleged infringement results from copying, arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables; and

- (c) shall not be in breach of the warranty at clause 8.3(a), and the Customer shall have no claim under the indemnity at clause 8.3(b), to the extent the infringement arises from:
  - (i) the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;
  - (ii) any modification of the Deliverables or Services, other than by or on behalf of WSC; and
  - (iii) compliance with the Customer's specifications or instructions.

#### 8.4. The Customer:

- (a) warrants that the receipt and use of the Customer Materials in the performance of this agreement by WSC, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) shall indemnify WSC in full 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 by WSC arising out of or in connection with any claim brought against WSC, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights, to the extent that the infringement or alleged infringement results from copying, arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

#### 8.5. If either party (the **Indemnifying Party**) is required to indemnify the other party (the **Indemnified Party**) under this clause 8, the Indemnified Party shall:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 8.3(b) or clause 8.4(b) (as applicable) (**IPRs Claim**);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs 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 IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by WSC of the Indemnified Party's costs so incurred; and

- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

## **9. Compliance with laws and policies**

9.1. In performing its obligations under this agreement, WSC shall comply with:

- (a) the Applicable Laws; and
- (b) any policies provided by the Customer (**Customer Policies**), provided that the Customer shall give WSC not less than one month's notice of any change to such policies.

## **10. Data protection**

10.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

10.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and WSC is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

10.3. Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to WSC for the duration and purposes of this agreement.

10.4. Without prejudice to the generality of clause 10.1, WSC shall, in relation to any Personal Data processed in connection with the performance by WSC of its obligations under this agreement:

- (a) process that Personal Data only on the written instructions of the Customer unless WSC is required by Applicable Laws to otherwise process that Personal Data. Where WSC is relying on the laws of a member of the European Union or European Union Law as the basis for processing Personal Data, WSC shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit WSC from so notifying the Customer;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result

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

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - (i) the Customer or WSC has provided appropriate safeguards in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) WSC complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) WSC complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10.

10.5. The Customer does not consent to WSC appointing any third party processor of Personal Data under this agreement.

## **11. Confidentiality**

- 11.1. Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 11.2.
- 11.2. Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## **12. Limitation of liability**

- 12.1. WSC has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover WSC has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 12.2. Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.3. This clause 12.3 sets out specific heads of excluded loss:
- (a) Subject to clause 12.2, the types of loss listed in clause 12.3(b) are wholly excluded by the parties
  - (b) The following types of loss are wholly excluded:
    - (i) Loss of profits

- (ii) Loss of sales or business.
- (iii) Loss of agreements or contracts.
- (iv) Loss of anticipated savings.
- (v) Loss of use or corruption of software, data or information.
- (vi) Loss of or damage to goodwill.
- (vii) Indirect or consequential loss.

12.4. WSC has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

12.5. Unless the Customer notifies WSC that it intends to make a claim in respect of an event within the notice period, WSC shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

### **13. Termination**

13.1. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so;
- (b) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (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 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) 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 for or enters into any compromise or arrangement with any of its creditors other than

(being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);
- (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) any 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 13.1(c) to clause 13.1(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.

13.2. Without affecting any other right or remedy available to it, WSC may terminate the Customers Content Plan account with immediate effect by giving written notice to the Customer:

- (a) if the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified to make such payment; or
- (b) If there is a change of control of the Customer; and
- (c) WSC is able to terminate a Content Plan subscription at any time without notice required. The Customer must be refunded if a payment has already been made.

## 14. Consequences of termination

14.1. On termination or expiry of this agreement and/or cancellation of a Content Plan account:

- (a) the Customer shall immediately pay to WSC all of WSC's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, WSC may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, return all of WSC's Equipment. If the Customer fails to do so, then WSC may enter the Customer's premises and take possession of WSC's Equipment. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;
- (c) WSC shall on request hold all of the Customers equipment and products. The Customer must arrange for collection of the products within 90 days of cancellation of an account; and
- (d) the following clauses shall continue in force: clause 1 (Interpretation), clause 5 (Non-solicitation), clause 8 (Intellectual property rights), clause 11 (Confidentiality), clause 12 (Limitation of liability), clause 14 (Consequences of termination), clause 18 (Waiver), clause 20 (Severance), clause 22 (Conflict), clause 27 (Governing law) and clause 28 (Jurisdiction).

14.2. Termination or expiry of this agreement 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.

## 15. Force Majeure

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

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;



- (f) collapse of buildings, fire, explosion or accident;
  - (g) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
  - (h) interruption or failure of utility service.
- 15.2. Provided it has complied with clause 15.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 15.3. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 15.4. The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
  - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 15.5. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than one month, the party not affected by the Force Majeure Event may terminate this agreement by giving one months' written notice to the Affected Party.

**16. Assignment and other dealings**

This agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

**17. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**18. Waiver**

- 18.1. A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 18.2. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**19. Rights and remedies**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**20. Severance**

- 20.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 20.2. If any provision or part-provision of this agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**21. Entire agreement**

- 21.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

**22. Conflict**

If there is an inconsistency between any of the provisions of this agreement and the provisions of the Schedules, the provisions of this agreement shall prevail.

**23. No partnership or agency**

23.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

23.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**24. Third party rights**

24.1. This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

24.2. The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

**25. Notices**

25.1. Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by such email addresses as from time to time advised by each party.

25.2. Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; and
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this agreement business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

**26. Counterparts**

26.1. 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.

26.2. No counterpart shall be effective until each party has executed and delivered at least one counterpart.

**27. Governing law**

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

**28. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.