

THESE TERMS OF BUSINESS (the “**Terms**”) are issued by BMB LONDON LLP (“**BMB**”), with company number 0C359581 and registered office at 2nd Floor, The Crane Building, 22 Lavington Street, London, England, SE1 0NZ and apply to the provision of Services (defined below) by BMB to the Client (defined below).

1. **Definitions and Interpretation**

“**Additional Services**” means any additional services that the Client requests BMB to provide, which are not set out in the original SOW.

“**Additional Terms for Digital Services**” means BMB’s additional terms and conditions as apply to the provision of Digital Services and which are incorporated into this Agreement by reference.

“**Agency Materials**” means all proposals, artwork, proofs, copy, photographs and all other materials created by BMB in the course of providing the Services.

“**Agreement**” means these Terms together with the relevant SOW(s) and, if applicable, the Additional Terms for Digital Services.

“**Claims**” means any and all losses, liabilities, costs (including legal costs and VAT), charges, expenses, actions, procedures, claims, demands and damages (including the amount of damages awarded by a court of competent jurisdiction).

“**Client**” means the company, organization or individual identified in the SOW as the client to whom the Services will be provided.

“**Client Materials**” means any materials provided by the Client to BMB in connection with the Services.

“**Confidential Information**” means information in any form whatsoever relating to the business, finances, clients, customers, suppliers, employees, services, products, and commercial interests of the disclosing party (including the terms and conditions of this Agreement).

“**Creation Date**” means the commencement date for an individual SOW, as stated in the SOW.

“**Data Importer**” has the meaning set out in clause 13.

“**Data Protection Legislation**” means the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), and with effect from 25 May

2018, the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679).

“**Deliverables**” means the creative or technical deliverables produced by BMB for the Client under a SOW in the performance of the Services which the Client approves for publication, broadcast or distribution.

“**Digital Services**” means software or website development and/or any other services of a technical nature.

“**Effective Date**” means the Creation Date specified in the first SOW entered into by BMB and the Client.

“**Expenses**” means any out of pocket expenses reasonably incurred by BMB in performing the Services.

“**Expiration Date**” means the expiration date for an individual SOW, as stated in the SOW.

“**Fees**” means the fees to be paid by the Client to BMB for the Services, as set out in the relevant SOW.

“**Force Majeure Event**” means an act of war or terrorism, a riot, civil disorder, or rebellion, a fire, flood, earthquake or similar act of God or a strike, lockout or similar labor dispute that is beyond either party’s control.

“**Intellectual Property Rights**” means all patents, rights to inventions, copyright and related rights, moral rights, database rights, semiconductor topography rights, supplementary protection certificates, petty patents, utility models, plant variety rights, rights in designs, trade marks, service marks, trade names, domain names, rights in goodwill, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)), and other similar or equivalent rights or forms of protection (whether registered or unregistered) and all applications (or rights to apply) for, and for renewals and extensions of, such rights as may now or in the future exist anywhere in the world.

“**Model Processor Transfer Clauses**” means the standard contractual clauses for the transfer of Personal Data to processors established in third countries approved by EC Commission Decision 2010/87/EU of 5 February 2010.

“**Per Additional Territory Fee**” means the additional fee payable by the Client to extend the licence granted to it by BMB for particular Deliverables to usage in

territories outside of the Territory, as specified in a SOW.

“Production” means the creation of an advertisement, commercial, promotion or campaign or of Software or a Website.

“Production Budget” means an estimate by BMB of the maximum cost of a Production.

“Security Breach” means any actual or suspected security breach, accidental or unauthorised access or unlawful processing, misappropriation loss of, damage to or destruction of or other compromise of the security, confidentiality, or integrity of Client Personal Data processed by BMB or a sub-processor.

“Security Measures” means appropriate technical and organisational security measures to protect Client Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access.

“Services” means the services and Deliverables to be provided by BMB to the Client as detailed in the relevant SOW.

“SOW” means a scope of work or similar document specifying the Services to be provided by BMB to the Client and the Fees to be paid by the Client to BMB.

“Territory” means the means the United Kingdom, unless expressly specified otherwise in the applicable SOW. Publication and marketing on globally accessible mediums such as the internet shall not mean that the Territory is deemed to be worldwide.

“Third-Party Materials” means any materials owned by or licensed by a third-party.

“Usage Rights” has the meaning set out in clause 9.a.

“Usage Term” means the period during which the Client may exercise the licence granted to it under a particular SOW.

2. Agreed Terms.

- a. From time to time, the parties may enter into a new SOW for the provision by BMB of Services to the Client.
- b. This Agreement shall apply to the provision by BMB of the Services to the Client, irrespective of whether the Client signs the relevant SOW.

- c. In the event of any conflict between these Terms and the terms set out in a SOW, the terms set out in the SOW shall take precedence.

3. Services.

- a. BMB shall use its reasonable commercial efforts to perform the Services in accordance with the terms of this Agreement, subject always to the Client’s payment of the Fees and compliance with its obligations under this Agreement.
- b. BMB shall perform the Services with all reasonable skill and care and shall use its reasonable endeavours to comply with the reasonable instructions and requests of the Client.
- c. BMB shall not be required to perform any Services until it has received a signed SOW from the Client and, if the SOW specifies that BMB is to receive payment of any Fees in advance of commencing the Services, BMB shall not be required to commence the Services until it has received such advance payment.
- d. If the Client requires BMB to provide any Digital Services, then BMB’s Additional Terms for Digital Services shall apply.
- e. If the Client requires BMB to provide any Additional Services, it shall notify BMB in writing providing details of its requirements. BMB shall respond with a written scope of work and fee estimate for such Additional Services for the Client’s written approval. BMB shall not be required to perform any Additional Services for the Client until such time as the Client has approved in writing (which may include email) the agreed scope of work and fees for such Additional Services.
- f. BMB shall not be liable to the Client for any delay or failure to perform the Services which results from the Client’s failure to perform any of its obligations under this Agreement.

4. Client obligations.

- a. The Client shall:
 - i. respond to any request from BMB on any matter requiring approval from the Client within the timeframe specified in the relevant SOW (or, if no timeframe is specified, within five (5) business days of a request for approval);

- ii. not unreasonably withhold its approval; and
- iii. provide detailed reasons for withholding if it reasonably withholds its approval,

and if the Client fails to comply with these provisions, approval shall be deemed to have been given and BMB shall be entitled to act on it.

- b. BMB shall be entitled to accept any authorisation or approval from any Client contact as legitimate and binding on the Client, unless the Client notifies BMB in writing that only certain named contacts have authority.
- c. If the Client wishes BMB to make any changes to any Services in progress, the Client must put a request in writing. BMB will use its reasonable endeavours to accommodate such changes, where reasonable, but the Client accepts that:
 - i. such change may not be possible under the terms of any contract entered into by BMB with media, suppliers or any other third party; and
 - ii. the Client shall reimburse BMB any charges or expenses incurred prior to and/or as a result of, such change, including additional Fees for any additional BMB time or resources required to effect the change.
- d. The Client shall provide BMB with all the Client Materials specified in the SOW by any deadline specified in the SOW, and shall provide BMB with all necessary information, materials and assistance as BMB may reasonably require to perform the Services.

5. Fees and Expenses.

- a. In consideration for the Services specified in the SOW, the Client shall pay BMB the amount of Fees as specified in the relevant SOW.
- b. In addition to the Fees, the Client shall pay BMB any Expenses incurred by BMB in the provision of the Services.
- c. Where the Services include a broadcast, cinema, digital or print Production, the Client shall pay BMB the Expenses associated with such Production as follows:
 - i. 50% (fifty percent) of the Production Budget prior to the commencement of the Production; and

- ii. the remainder of the Production Budget (including any increases agreed between the parties in writing) within fourteen (14) days of completion of the Production.

- d. If the Client requests that BMB makes a payment on its behalf for a purchase of goods or services from a third party the Client shall advance to BMB the payment amount, before BMB is required to pay the third party.

6. Payment Terms.

- a. All Fees and Expenses shall be paid to BMB on or before the payment date(s) specified in the relevant SOW (and if no payment dates are specified, within thirty (30) days of the invoice date).
- b. Client will provide BMB with a purchase order for 100% of the Fees and Expenses in advance of the commencement of the provision of the Services. The Client agrees to promptly issue purchase orders for 100% of the Fees and Expenses in advance of the commencement of the provision of the Services, BMB shall not be obliged to commence the Services until a purchase order has been received. The absence of a purchase order, or delay by the Client in providing a purchase order shall not entitle the Client to withhold or delay payment of any invoice
- c. All payments to BMB shall be made in pounds sterling (unless a different currency is specified in the invoice), without any set-off or withholding, by electronic wire transfer to the BMB' bank account specified in the invoice. Any exchange rate liability and transfer costs will be borne by the Client. VAT shall be charged to the Client, where applicable.
- d. If the Client fails to pay any invoice by the payment due date, BMB shall be entitled to (i) suspend Services; and (ii) apply interest on the outstanding amount at the rate of 4% above the Bank of England base rate from time to time, calculated on a daily basis, from the date the amount falls due for payment until such time as it is paid in full. If BMB incurs any collection costs resulting from the Client's failure to pay, the Client shall be liable for such collection costs, including reasonable lawyers' fees.
- e. If the Client disputes any invoice, it shall notify BMB in writing within seven (7) days of receipt of the

invoice, providing details of the amount in dispute, and shall pay any undisputed amount in accordance with the payment terms.

7. Confidentiality.

- a. Each of BMB and the Client agrees to keep confidential and not to disclose any of the other party's Confidential Information to third parties, or to use any Confidential Information for any purposes other than the performance of its obligations under this Agreement, without the prior written consent of the disclosing party.
- b. The confidentiality obligation under clause 7.a. does not apply to information that:
 - i. is or later becomes available to the public through no breach of this Agreement by the recipient;
 - ii. is obtained by the recipient from a third party who had the legal right to disclose the information to the recipient; or
 - iii. is required to be disclosed by law, government regulation, or court order.

8. Use of Client Materials.

- a. The Client shall retain all rights (including Intellectual Property Rights) in and to the Client Materials. The Client hereby grants BMB a royalty-free licence (including the right to sub-license to sub-contractors) to use the Client Materials to perform the Services.
- b. BMB shall be allowed to publicise that the Client is a client of BMB and the Client hereby grants BMB a perpetual, royalty-free licence to use the Client's name, logo and any still photography and video images generated from the Services on BMB's website, social media channels, and otherwise to promote BMB's services, subject to BMB's compliance with any brand guidelines or other reasonable written instructions from the Client regarding such usage.
- c. On termination or expiry of this Agreement and, provided that the Client has fully paid all amounts payable to BMB under this Agreement, BMB shall return or destroy (at the Client's election) all Client Materials in BMB's possession, with the exception of

those which BMB is entitled to retain pursuant to clause 8b.

9. Intellectual Property Rights

- a. If the Services require BMB to incorporate any Third-Party Materials in the Deliverables, BMB shall procure the licence or the grant of such third party rights to the Client ("**Usage Rights**") as BMB deems appropriate for the Client's requirements.
- b. The Client warrants, represents and undertakes to comply fully with the terms of such Usage Rights as notified to it, and to only use the Third Party Materials strictly in accordance with the Usage Rights (including any restrictions as to permitted purpose, Usage Term and territory) and not to make any modifications or amendments to the Third-Party Materials without BMB's express prior written consent.
- c. The Client acknowledges and accepts that BMB or its licensors shall retain all rights (including Intellectual Property Rights) in and to the Agency Materials and Third-Party Materials and that the Client shall only have such rights to use the Agency Materials and Third Party Materials as are expressly granted to it under the relevant SOW.
- d. If the SOW does not provide for the grant or assignment of any rights to the Client, the default position shall be that the Client shall have a licence to use the Agency Materials and any Third Party Materials incorporated in the Deliverables for the term of the SOW in the Territory.
- e. If the Client is granted a licence under the SOW or clause (d) above, and the Client wishes to use or exploit the Deliverables in one or more additional territories outside the Territory:
 - i. the Client shall notify BMB in writing, specifying the additional territories and the Client shall pay BMB the additional Per Additional Territory Fee set out in the SOW (or if no such fee is specified, a fee equivalent to 15% (fifteen percent) of the original Fees for each additional territory); and
 - ii. the licence granted by BMB to the Client in respect of the Territory shall be extended to cover the additional territories described in sub-clause (e)(i) above and the Usage Term of such licence for the additional territories shall be the same duration as the original licence unless

otherwise agreed between the parties in writing.

- f. BMB shall not be responsible for obtaining Intellectual Property Rights' clearances outside of the United Kingdom for the Deliverables unless this is expressly provided for under an SOW (and this will incur additional fees and expenses).

10. Representations and Warranties.

- a. Each party represents and warrants that it has the right, power and authority to enter into this Agreement and to perform its obligations fully and without restriction.
- b. The Client represents and warrants that:
 - i. the information and Client Materials that it provides to BMB will be complete and accurate and will comply with all applicable laws and regulations;
 - ii. it has the right to grant the licences granted to BMB under clause 8 above and that BMB's use of the Client Materials will not infringe the rights (including Intellectual Property Rights) of any third party;
 - iii. without prejudice to sub-clause (c) below, it accepts full legal responsibility for any Deliverables approved by it for publication, broadcast or distribution and BMB shall not be liable for any error in the Deliverables published, broadcast or distributed by the Client in the provision of the Services unless this is due to the sole default or negligence of BMB; and
 - iv. it will comply with its obligations under clause 13.
- c. BMB represents and warrants that it has the right to grant the rights granted to the Client under this Agreement and that the Client's use of the Agency Materials in accordance with this Agreement and for the purposes envisaged by the Scope of Work will not, insofar as BMB is aware, infringe the copyright of any third party in the United Kingdom (other than as contained in any legal or other advice provided to BMB and communicated to the Client).

11. Liability and Indemnification.

- a. The Client agrees to indemnify BMB in respect of any Claims arising from (i) BMB's or a third party's

use of the Client Materials; or (ii) Client's breach of any of its warranties under this Agreement.

- b. BMB agrees to indemnify the Client in respect of any third party Claims brought against the Client arising from BMB's breach of its warranty under clause 10.c. above.
- c. Indemnification pursuant to clause 11(a) or (b) is subject to the Indemnified Party:
 - i. notifying the Indemnifying Party in writing without delay of the existence of the relevant Claim;
 - ii. refraining from making any admissions of liability in connection with such Claim; and
 - iii. allowing the Indemnifying Party to have sole authority to defend and settle the claim subject to applicable law.
- d. Neither party shall be liable to the other for any loss of profit, opportunity, reputation, or goodwill howsoever arising, or for any indirect or consequential losses of whatsoever nature, even if the loss was reasonably foreseeable and even if that party had been advised of the possibility of such loss.
- e. All warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise are hereby excluded to the fullest extent permitted by law, including any condition of satisfactory quality or fitness for a particular purpose.
- f. Except where clause 11a applies, each party's total liability to the other in contract, tort (including negligence or breach of statutory duty), or otherwise arising by reason of or in connection with this Agreement shall not exceed the amount of Fees actually received by BMB under the particular SOW under which the liability arose.
- g. Nothing in this Agreement shall restrict either party's liability for death or personal injury caused by the negligence of that party; for fraud or fraudulent misrepresentation, or for any other Claims which may not lawfully be excluded.

- 12. **Non-Solicitation:** Each party covenants that during the Term and for one (1) year after it is terminated or expires, neither it nor its employees, directors or officers shall, directly or indirectly, solicit, entice away,

divert, or hire or engage (or assist anyone else in doing any of the foregoing) any of the other party's employees, or anyone who was an employee of the other party during the Term and involved in the provision of the Services, without other party's prior written consent.

13. Data Protection:

- a. The terms "**Personal Data**", "**special categories of data**", "**process/processing**", "**controller**", "**processor**", "**data subject**" and "**supervisory authority**" shall have the meanings given to them in the Data Protection Legislation.
- b. Each Party undertakes to comply with the Data Protection Legislation in relation to any processing by that Party of Personal Data under the Agreement.
- c. The parties agree that the Services may require BMB to process certain personal data on behalf of the Client ("**Client Personal Data**"). Client shall be the controller and BMB shall be the processor of Client Personal Data processed by BMB under the Agreement.
- d. BMB shall only process Client Personal Data in accordance with the written instructions provided by the Client (and shall promptly notify the Client if it believes any instructions are not in accordance with the Data Protection Legislation), only for the purposes of performing its obligations under the Agreement and only to the extent necessary to perform such obligations. The details of the processing activities to be carried out by BMB on behalf of the Client are set out in the relevant SOW.
- e. Client warrants that it has all necessary rights to transfer Client Personal Data to BMB for processing in accordance with this Agreement and that, where consent of the data subject is required for BMB to process the Client Personal Data, it has and will obtain such consent from data subjects and will provide BMB with reasonable evidence of the consent upon request.
- f. BMB shall be entitled to disclose Client Personal Data to:
 - i. its employees, freelance contractors and sub-processors (for example, hosting providers, social media platforms or production companies) who are engaged in the provision of

the Services for which the processing is required;

ii. to members of its group of companies; and

iii. to its professional advisors (for example, lawyers or accountants).

- g. For all other disclosures to third parties, BMB shall obtain the Client's written permission (which may be contained in a SOW or email).
- h. BMB shall put in place written terms with all third-party recipient(s) of the Client Personal Data which are equivalent to the terms of this Addendum.
- i. BMB shall be entitled to transfer Client Personal Data outside the European Economic Area to any of the parties identified under Sub-clause (d) above, or allow such parties to access to the Client Personal Data, provided that it complies with Sub-clause (e) above.
- j. For all transfers of Client Personal Data outside the European Economic Area to other third-parties, BMB shall obtain the Client's written permission (which may be contained in a SOW or email).
- k. Where BMB has obtained the Client's prior written permission to the transfer in accordance with Sub-clause (e) above, BMB shall:
 - i. notify the Client in writing of each person or third party to whom it intends to transfer the personal data ("**Data Importer**") and of the location(s) in which the processing will take place; and
 - ii. only make the transfer where it has put in place the Model Processor Transfer clauses with the Data Importer (or such other legitimate basis for transfer as permitted under the Data Protection Legislation).
- l. Where the Client is located outside the European Economic Area, the Parties shall execute the Model Processor Transfer clauses (unless the Parties agree on another legitimate basis for transfer as permitted under the Data Protection Legislation).
- m. BMB will keep a record of all processing activities carried out on behalf of the Client using Client Personal Data.
- n. BMB shall:

- i. cooperate in good faith with the Client, the data subject, and the supervisory authority concerning all enquiries regarding the processing of Client Personal Data within the timeframes set out in the Data Protection Legislation;
 - ii. promptly notify the Client of any complaint or request received directly by BMB from a data subject (for information on, access to, correction, amendment, deletion, erasure, portability, or restriction of processing of that individual's personal data) and shall respond to such complaint or request within the timeframes set out in the Data Protection Legislation; and
 - iii. provide the Client with co-operation and assistance in relation to any complaint or request received by BMB from a data subject and in relation to any data protection impact assessment or regulatory consultation that the Client is legally required to make in respect of Client Personal Data.
- o. BMB shall:
- i. have in place and maintain Security Measures which, having regard to the state of the art and cost of their implementation, shall provide a level of security appropriate to the risk represented by the processing and the nature of Client Personal Data to be protected;
 - ii. ensure that all BMB's employees who have access to Client Personal Data have committed to keep the Client Personal Data confidential under written terms of confidentiality and have undertaken training relating to handling personal data.
- p. If BMB becomes aware of any actual or suspected Security Breach, BMB shall without undue delay:
- i. notify the Client of the Security Breach and provide such information as it has;
 - ii. provide reasonable assistance to the Client in carrying out its obligations to inform the supervisory authority and the affected data subjects; and
 - iii. not disclose the fact of the actual or suspected Security Breach of any Client Personal Data or any details thereof with any third party

(except its professional advisors) without the prior written consent of the Client.

- q. The Client is entitled, not more than once in every twelve (12) month period and on giving at least thirty (30) days' notice to BMB, to inspect or appoint representatives to conduct an audit relating to the processing of Client Personal Data by BMB to verify that BMB is complying with its obligations under this clause 13. The Parties shall mutually agree on the scope, timing and duration of the audit. The audit shall exclude any personnel records and any data, systems or facilities which are subject to confidentiality obligations to third parties or to other regulatory obligations which prohibit or restrict access or disclosure and the Client shall not be entitled to remove any data or take copies of any information from any BMB systems or facilities.

14. Term and Termination.

- a. This Agreement shall take effect on the Effective Date and shall remain in force until the parties have performed all of their obligations under the last of the SOWs in place, unless terminated earlier in accordance with this clause 14.
- b. Each SOW shall take effect on its Creation Date (unless otherwise specified) and shall remain in force until its Expiration Date (or until BMB has received all Fees and Expenses due to it under the SOW, whichever is the later.).
- c. Either party shall be entitled to terminate this Agreement immediately on written notice to the other if:
 - i. the other party is in breach of any of its obligations under this Agreement, which breach is not remedied within 30 (thirty) days of that party being given notice to remedy by the non-defaulting party;
 - ii. the other party becomes insolvent, ceases to carry on business or enters into bankruptcy, receivership or administration or if any similar event occurs.
- d. Termination of the Agreement shall not remove Client's obligation to pay for Services already performed by BMB or Expenses incurred by BMB, or for which BMB contractually committed to pay, prior to the date of termination.

- e. Upon termination, BMB shall, at the choice of the Client, return all Client Personal Data (at the Client's cost) or securely destroy all Client Personal Data and certify to the Client that it has done so, unless European Union or Member State legislation imposed upon BMB prevents it from returning or destroying all or part of the Client Personal Data (in which case BMB will not actively process such Client Personal Data after the termination date).
- f. The parties agree that clauses 5, 6, 7, 8, 9, 11, 12, 13, 14e, 15, and 16 shall survive termination or expiry of this Agreement.

15. Force Majeure.

- a. If either party is unable to fulfill its obligations as a result of a Force Majeure Event, such failure will not be treated as a breach of this Agreement, provided that performance is resumed upon the end of such Force Majeure Event.
- b. The Client shall pay BMB its Fees for the Services that BMB already performed, and any Expenses that BMB incurred or contractually committed to pay, prior to the commencement of the Force Majeure Event, together with a portion of the Fees as corresponds to the Services which BMB is able to continue to perform during a Force Majeure Event.

16. Miscellaneous.

- a. The relationship created by this Agreement shall be that of an independent contractor and, save as expressly set out in a SOW, BMB shall have no authority to bind or act as agent for the Client.
- b. Without prejudice to the parties' rights in law, in the event of any dispute between the parties, the individuals specified on the relevant SOW shall attempt to resolve the dispute in good faith. If the parties are unable to resolve the dispute within fourteen (14) days, then either party may bring an action in the courts, as provided for under sub-clause (h).
- c. This Agreement is personal to the Client and the Client may not assign, or in any way transfer, novate, or dispose of this Agreement or any rights or obligations under this Agreement without BMB' prior written consent.
- d. Any notice required under this Agreement must be given in writing and delivered to the address of the parties specified in the SOW, either by hand (in

which case the notice will be deemed received at that time), or by registered, pre-paid, first-class mail, or overnight courier (in which case the notice will be deemed received two (2) business days after dispatch).

- e. No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
- f. The Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all prior agreements, whether oral or written, between BMB and Client.
- g. Any modification or amendment made to this Agreement shall have no effect unless it is in writing and executed by both parties. A waiver of a breach of any of the terms of this Agreement shall not constitute a waiver of any other breach and shall not affect the other terms of this Agreement.
- h. This Agreement shall be governed by the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts in relation to any dispute arising from or in connection with this Agreement.
- i. The Agreement may be executed in counterparts and signatures may be exchanged by email or other digital transmission, each of which shall be deemed an original, but all of which shall constitute the same instrument.