

3 HEADS LTD
TERMS AND CONDITIONS

These are the Terms and Conditions ("**Terms**") of 3 Heads Ltd, a company registered in England and Wales under number 11117812. Our registered office is at 17 Kingsway, St John's Terrace, Bedford, England, MK42 9BJ. Our VAT number is GB309999540. In these Terms, we refer to 3 Heads Ltd as "**3 Heads**", "**we**", "**us**" and "**our**".

Your attention is drawn in particular to Clause 7.1, the indemnity in Clause 11.10 and the limitations of liability set out in Clause 13 below.

1. Interpretation

1.1 Definitions:

3 Heads Background IPR: all Intellectual Property Rights belonging or licensed to 3 Heads which is or has been developed independently of the Contract.

Additional Charges: has the meaning given in Clause 7.1.

Brief: the video brief included in the Statement of Work.

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

Charges: the fees (including Third Party Costs) payable by the Client for the supply of the Services by 3 Heads, comprising the fees and charges set out in the Statement of Work, the Additional Charges, and any other fees or charges incurred pursuant to these Terms or otherwise agreed in writing by the Parties in respect of the Services.

Client (or "you"): the organisation or individual who has entered into these Terms.

Client Background IPR: all Intellectual Property Rights subsisting in the Client Materials.

Client Materials: all materials, equipment and tools, drawings, specifications and data supplied by or on behalf of the Client to 3 Heads in connection with the Services (including the Input Materials).

Client Representative: has the meaning given in Clause 6.1(b).

Contract: the contract between the Client and 3 Heads for the supply of the Services in accordance with these Terms and the Statement of Works.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

Deadline: any date specified in a Production Schedule or a Statement of Works, or otherwise agreed between the Parties;

Deliverables: the deliverables set out in the Statement of Work. For the avoidance of doubt, where the Deliverables include a Video, they specifically exclude the Edit Files and the Rushes.

Developed IPR: all Intellectual Property Rights subsisting in the Deliverables which are not 3 Heads Background IPR, Client Background IPR or Third Party IPR.

Edit Files: the project files created by 3 Heads from the Rushes but before the final production of the Video, which may show, or from which may be deduced, 3 Heads' confidential editing techniques and the methodologies used to create the Video.

Input Materials: all materials, equipment and tools, drawings, specifications and data that the Statement of Work specifies must be supplied by or on behalf of the Client to 3 Heads.

Intellectual Property Rights: copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights 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.

Parties: together, 3 Heads and the Client.

Personnel: a Party's officers, directors, agents, subcontractors, consultants and employees.

Production Schedule: the agreed dates, times and locations for the preparation, production and post-production of the Video during the Term, as attached to the Statement of Work.

Rushes: the raw unedited film footage shot by or on behalf of 3 Heads for the Client.

Services: the services, including without limitation any Deliverables, to be provided by 3 Heads pursuant to the Contract, as described in the Statement of Work.

Shoot Date: a date nominated for filming a Video, as specified by 3 Heads or agreed between the Parties from time to time.

Statement of Work: the statement of work provided by 3 Heads to the Client which includes the Brief, the Production Schedule and the Charges.

Third Party Materials: materials or media which are purchased or licensed from one or more third parties by or on behalf of 3 Heads for use in connection with the Services and/or the Deliverables, including images, photographs, music and copywriting.

Third Party IPR: all Intellectual Property Rights subsisting in Third Party Materials.

Third Party Costs: any third party charges incurred by 3 Heads in the provision of the Services, including the costs of procuring Third Party Materials. Third Party Costs include without limitation website hosting and back-up charges, talent (such as actors and models), postage and delivery charges, printing, travel and accommodation, proof-reading and translation.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Use Case: any specific use or application(s) the Deliverables detailed in the Statement of Work.

Video: the video to be produced by 3 Heads as provided for in the Statement of Work including all Rushes.

1.2 Interpretation:

(a) A reference to legislation or a legislative provision:

(i) is a reference to it as amended, extended or re-enacted from time to time; and

- (ii) shall include all subordinate legislation made from time to time under that legislation or legislative provision.
 - (b) 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.
 - (c) A reference to **writing** or **written** includes email.
- 1.3 All obligations of the Client Representative in these Terms shall be construed as an obligation on the Client to procure that it or the Client Representative fulfils such obligation.
- 1.4 These Terms are intended to supplement the Statement of Work, but to the extent there is any direct conflict or inconsistency between these Terms and the Statement of Work, the provisions of the Statement of Work shall prevail and take priority.

2. **Contract formation and term**

- 2.1 The Contract will commence on the date when you have accepted both:
 - (a) a Statement of Work; and
 - (b) these Terms,and shall continue until it expires or is terminated in accordance with its terms.

3. **Services and commencement**

- 3.1 **Services.** 3 Heads shall use reasonable endeavours to supply the Services to the Client in accordance with the Contract.
- 3.2 **Creative Control.** The Client:
 - (a) has final editorial and creative control over the Deliverables; but
 - (b) notwithstanding the forgoing, acknowledges 3 Heads' professional expertise in respect of the Services and agrees to give full consideration to 3 Heads' recommendations, views and input.
- 3.3 **Commencement.** If the payment schedule set out in the Statement of Works requires any advance payments or deposit, 3 Heads shall not be required to commence (or continue, as the case may be) performance of the Services until the Client has made such payment. Unless otherwise agreed in writing, and subject to these Terms, 3 Heads shall use reasonable endeavours to start providing the Services within 10 Working Days of receiving such payment.
- 3.4 **Marketing Materials.** Any samples, drawings, descriptive matter or advertising issued by 3 Heads, and any descriptions or illustrations contained in 3 Heads' catalogues or brochures in relation to the Services (collectively, "**Marketing Materials**"), are issued or published for the sole purpose of giving an approximate idea of the Services described in them. Such Marketing Materials do not form part of the Contract or have any contractual force.

4. **Video production and acceptance**

- 4.1 This Clause 4 shall apply to the extent that the Deliverables include one or more Videos.

- 4.2 3 Heads shall use reasonable endeavours to deliver a working copy of any proposed Video (a “**Proposed Video**”) to the Client Representative by the Deadline.
- 4.3 The Client Representative shall by the Deadline either:
- (a) approve the Proposed Video; or
 - (b) reject the Proposed Video, giving appropriate reasons for the rejection and feedback in accordance with Clause 4.7 (“**Feedback**”).
- 4.4 After receiving the Client’s initial Feedback:
- (a) 3 Heads shall produce a revised version of the Proposed Video, using reasonable endeavours to incorporate the Client’s Feedback; and
 - (b) the process described in Clause 4.3 shall be repeated one further time.
- 4.5 If the Client Representative fails to accept a third version of the Proposed Video (i.e. following 2 rounds of Feedback and amendments):
- (a) the Parties may agree that additional Charges will apply to any further revision(s) of the Proposed Video; or
 - (b) 3 Heads may, at its sole discretion, terminate the Contract immediately upon written notice.
- 4.6 If the Client Representative fails to give notice of acceptance or rejection of a Proposed Video by the relevant Deadline, the Client shall be deemed to have accepted the Proposed Video on the Deadline.
- 4.7 The Client Representative shall ensure that all Feedback is:
- (a) given in sufficient information and detail for 3 Heads to understand the Client’s requirements and priorities (which must be consistent with the Statement of Work);
 - (b) in good faith and delivered constructively; and
 - (c) iterative, and in particular that subsequent feedback does not include new comments, changes or request that could have been included in a previous round of feedback.

5. 3 Heads’ obligations

- 5.1 3 Heads shall:
- (a) perform the Services and provide the Deliverables with reasonable care and skill;
 - (b) use reasonable endeavours to meet any Deadlines. However, the Client acknowledges and agrees that Deadlines may be affected by factors and events beyond 3 Heads’ control and that this Clause is subject to Clause 7.5;
 - (c) observe all reasonable health and safety rules and regulations and security requirements that apply at any of the Client’s premises and have been communicated to 3 Heads, provided that 3 Heads shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract;
 - (d) take reasonable care of all Client Materials in its possession and make them available for collection by the Client on reasonable notice and request, always provided that 3 Heads may destroy the Client Materials if the Client fails to collect the Client Materials within a reasonable period after termination of the Contract; and

- (e) maintain throughout the term of the Contract:
 - (i) a policy of public liability insurance with £10 million pounds cover per claim, or series of related claims; and
 - (ii) professional indemnity insurance with £10 million pounds cover per claim or series of related claims.

6. Client's obligations

6.1 The Client shall:

- (a) co-operate with 3 Heads in all matters relating to the Services, including by attending calls and/or meetings requested by 3 Heads on reasonable prior notice, and by making necessary Personnel available to assist 3 Heads as 3 Heads reasonably requires;
- (b) appoint a representative (the "**Client Representative**") who shall be authorised, on behalf of the Client, to provide input and feedback in respect of, and to accept or reject, any Deliverables, and whose view and comments shall be deemed to reflect the Client's key stakeholders;
- (c) provide for 3 Heads and 3 Heads' Personnel, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as reasonably required by 3 Heads;
- (d) ensure that the Client Materials do not contain any defamatory or unlawful material;
- (e) provide, in a timely manner, such information as 3 Heads may require, and ensure that it is accurate and complete in all material respects;
- (f) without prejudice to Clauses 4.3 and 4.5, provide Input Materials, sign-offs, approvals, information and feedback by the relevant Deadlines (or, where there is no Deadline, as reasonably requested by 3 Heads);
- (g) ensure that the Client Representative is available to provide hands-on assistance while any Video is being filmed; and
- (h) promptly notify 3 Heads of any changes that could impact the Services or the Deliverables.

7. Amendments, delay and additional Charges

7.1 3 Heads may charge the Client additional Charges:

- (a) for any work pursuant to Clause 4.5(a);
- (b) for any work that falls outside of, is additional to or was not contemplated by the Statement of Work;
- (c) for changes to any Deliverables that had been accepted by the Client or were deemed to be accepted pursuant to Clause 4.6;
- (d) for implementing any feedback to the extent such feedback did not comply with Clause 4.7; and
- (e) pursuant to Clauses 8.1(b), 8.1(d) and 8.2(a),

together, the "**Additional Charges**".

7.2 3 Heads shall use reasonable endeavours to notify the Client of any likely Additional Charges (and the amounts thereof) before they are incurred and may invoice the Client for Additional Charges at any time.

7.3 The Client acknowledges and agrees that:

- (a) the charges set out in the Statement of Work are an estimate, not a quote, and that such charges may occasionally vary (including, for example, due to market fluctuations or changes in Third Party Charges); and
- (b) if it declines to pay any Additional Charges, 3 Heads may not be able to deliver the Services and/or the Deliverables in accordance with the Client's instructions. If this is the case, the Parties agree to negotiate in good faith to amend the Services, the Deliverables and/or the Charges in a manner acceptable to both Parties.

7.4 Unless the Statement of Work provides otherwise:

- (a) the Client will provide the substantive content for the Deliverables (such as copy, photography, scripts and images), although 3 Heads will contribute to both (such as through headlines and by-lines) in the course of the creative process; and
- (b) if the Client requires any substantive contribution from 3 Heads into the Deliverables, such contribution(s) shall be payable by the Client as an Additional Charge.

7.5 If 3 Heads' performance of its obligations under the Contract is prevented or delayed by any act or omission of:

- (a) the Client, its agents or its Personnel; or
- (b) any third party (including third party suppliers and talent);

3 Heads shall:

- (c) be entitled to extend any Deadlines by the length of any such prevention or delay;
- (d) not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay;
- (e) be entitled to payment of the Charges despite any such prevention or delay; and
- (f) be entitled to recover any additional costs, charges or losses 3 Heads sustains or incurs that arise directly or indirectly from such prevention or delay.

8. Postponing or cancelling Shoot Dates

8.1 Postponement

- (a) Either Party may postpone a Shoot Date by giving the other Party at least 4 weeks' prior written notice. Upon the receipt of such notice, and subject to Clause 8.1(c):
 - (i) the Parties shall promptly discuss and agree revised scheduling for the Services (subject to availability), and then
 - (ii) 3 Heads shall produce a new Production Schedule reflecting such agreement which shall replace the previous Production Schedule.
- (b) Where a Party requests a postponement pursuant to Clause 8.1(a), that Party shall be liable to the other for:
 - (i) any increase in Third Party Costs occasioned by the postponement (such as increased venue hire or talent fees); and
 - (ii) any Third Party Costs to which the other Party was contractually obligated and which cannot be rolled over, set off or applied against the revised Production Schedule (although the Parties will both use reasonable endeavours to minimise any such sums),

and where the postponement was requested by the Client, the Client shall also be liable to 3 Heads for a pro-rated amount of the Charges reflecting any work that 3 Heads would reasonably need to repeat as a consequence of the postponement (such as venue preparation). The costs set out in this Clause 8.1(b) (including, if applicable, any portion of the Charges representing 3 Heads' work) shall be known as the "**Out-of-Pocket Expenses**".

- (c) The Client may exercise its rights under Clause 8.1(a) once only, and no postponement may delay any Shoot Date by more than 3 calendar months.
- (d) If the Client requests the postponement of a Shoot Date but provides less than 4 weeks' notice, the Client will be required to pay 3 Heads the Out-of-Pocket Expenses together with an additional compensatory sum of £1,000.

8.2 Cancellation

- (a) The Client may cancel a Shoot Date by giving 3 Heads written notice subject to the terms of this Clause 8.2(a). If the Client provides such written notice:
 - (i) at least 4 weeks in advance of the relevant Shoot Date, the Client shall pay 3 Heads:
 - (A) any applicable Out-of-Pocket Expenses; and
 - (B) an additional compensatory sum comprising either 25% of the total agreed Charges or £1,000, whichever is the greater;
 - (ii) less than 4 weeks in advance of the Shoot Date, the Client shall pay 3 Heads:
 - (A) any applicable Out-of-Pocket Expenses; and
 - (B) an additional compensatory sum comprising either 50% of the total agreed Charges or £2,000, whichever is the greater; and
 - (iii) less than 7 days in advance of the Shoot Date, the Client shall pay 3 Heads:
 - (A) any applicable Out-of-Pocket Expenses; and
 - (B) an additional compensatory sum comprising either 100% of the total agreed Charges or £3,500, whichever is the greater.

8.3 The Parties confirm that the charges set out in Clauses 8.1(d) and 8.2(a) comprise a genuine pre-estimate of 3 Heads' loss in the event of such a cancellation or postponement (as applicable) and are reasonable and proportionate to protect 3 Heads' legitimate interest in upholding nominated Shoot Dates.

8.4 This Clause 8 applies only to Services and Deliverables for which the Client has paid a one-off fee. It does not apply to Clients who have agreed to pay regular monthly fees to 3 Heads.

9. Publicity and acknowledgements

9.1 Credit. The Client:

- (a) hereby authorises 3 Heads to insert, or procure the insertion of, a credit as the producer of the Video on the end credits of the Video, with 3 Heads' name and website address printed on all hard copies of the Video and included alongside all online versions of the Video (the "**Credit**");
- (b) shall not remove or obscure, or cause the removal or obscurity of, the Credit;

- (c) shall notify all third parties to whom it sends the Video that they must comply with the requirements of Clause 9.1(b) above; and
- (d) shall use its reasonable efforts to remedy any breach of Clause 9.1(b) by itself or any third party recipient of the Video.

9.2 Each Party may publicise the relationship between the Parties and the nature of the Services and Deliverables, save that the other Party must give its prior written approval to each publication, whether online or offline (such approval not to be unreasonably withheld or delayed).

10. Data protection

10.1 Both Parties will comply with their obligations set out in Schedule 1 to these Terms.

11. Intellectual property

11.1 All Developed IPR shall vest in and belong to the Client automatically upon its creation. To the extent that title to the Developed IPR does not vest in the Client automatically, 3 Heads hereby assigns by way of present and future assignment with full title guarantee to the Client all Developed IPR.

11.2 The Parties acknowledge and agree that:

- (a) the Edit Files reflect 3 Heads' know-how, methodologies and trade secrets; and
- (b) the Edit Files (project files) and Rushes are expressly excluded from the assignment in Clause 11.1.

3 Heads agrees that it will not make any commercial exploitation of the Rushes or the Edit Files save for its own promotional use, including on 3 Heads' or its subcontractors' website, as part of its or their client pitches, show reels and portfolios of works (together, "**Promotional Purposes**").

11.3 3 Heads and its licensors shall retain ownership of all 3 Heads Background IPR. 3 Heads shall also own all Intellectual Property Rights created by 3 Heads in the provisions of the Services to the extent that such Intellectual Property Rights do not comprise the Developed IPR.

11.4 3 Heads hereby grants the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual licence to use the 3 Heads Background IPR to the extent necessary to receive the Services and use the Deliverables for the Use Case.

11.5 The Client:

- (a) and its licensors own, and shall retain ownership of, all Client Background IPR;
- (b) hereby grants 3 Heads an irrevocable, fully paid-up, non-exclusive, royalty-free, worldwide, transferable licence to:
 - (i) copy, modify and use the Client Background IPR and the Developed IPR during the term of the Contract for any purpose in connection with the Contract and providing the Services; and
 - (ii) use the final Video(s) for 3 Heads' Promotional Purposes; and
- (c) warrants and undertakes that the receipt and use of the Client Background IPR by 3 Heads and its Personnel in accordance with these Terms does not, and shall not, infringe the rights, including any Intellectual Property Rights, of any third party.

- 11.6 To the extent that either Party proposes the use of Third Party IPR in any Deliverables:
- (a) 3 Heads shall:
 - (i) notify the Client in writing of the cost of obtaining a licence to use the Third Party IPR in the Deliverable for the Use Case; and
 - (ii) at the Client's request, provide the Client with reasonable assistance in obtaining such a licence (which shall be at the Client's sole expense); and
 - (b) the Client will, immediately upon obtaining such any licence or assignment, grant 3 Heads a licence (or a sub-licence, as the case may be) to use the Third Party IPR to the full extent required by 3 Heads in order to provide the Services.
- 11.7 The Client warrants and undertakes that the use of the Third Party IPR and the Client Materials by 3 Heads and its Personnel pursuant to these Terms does not, and shall not, infringe the rights, including any Intellectual Property Rights, of any third party.
- 11.8 The Client undertakes that it shall obtain all relevant release forms, consents, licences and waivers duly signed by any employees, agents and guests that appear in the Video, for their contribution to be included in the Video and exploited as envisaged under the Contract and shall be solely responsible for any costs involved in obtaining the same.
- 11.9 3 Heads Limited agrees to waive, or procure the waiver of, all moral rights (as defined in the Copyright, Designs and Patents Act 1988) subsisting in the Deliverables, save to the extent that the Deliverables contain Third Party Materials.
- 11.10 The Client shall hold 3 Heads harmless from, and on demand indemnify 3 Heads and keep 3 Heads indemnified in full from and against, all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by 3 Heads, and any sums agreed to in settlement, as a result of, or in connection with, any claim brought against 3 Heads, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, 3 Heads' (or its sub-contractors') receipt or use of the Client Materials in accordance with this Agreement and/or the Client's actual or alleged breach of Clause 11.7.

12. Charges and payment

- 12.1 In consideration for the provision of the Services, the Client shall pay 3 Heads the Charges in accordance with this Clause 12.
- 12.2 All amounts payable by the Client exclude amounts in respect of value added tax (**VAT**), which the Client shall additionally be liable to pay to 3 Heads at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 12.3 Subject to Clause 12.5, 3 Heads shall submit invoices for the Charges plus VAT if applicable to the Client in accordance with the payment schedule set out in the Statement of Work, or if no payment schedule is specified, monthly in arrears.
- 12.4 Subject to Clause 12.5 the Client shall pay each invoice due and submitted to it by 3 Heads, within 14 days of receipt, to a bank account nominated in writing by 3 Heads.
- 12.5 The Client acknowledges that some Third Party Charges may require payment in advance. 3 Heads may invoice the Client for such Third Party Charges in advance, and the Client shall make payment in accordance with the terms of the relevant invoice(s).

- 12.6 If the Client fails to make any payment due to 3 Heads under the Contract by the due date for payment, then, without limiting 3 Heads' remedies under Clause 14 (Termination):
- (a) the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
 - (b) 3 Heads may suspend all Services until payment has been made in full.

- 12.7 All amounts due under the Contract from the Client to 3 Heads shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

13. Limitation of liability

- 13.1 References to liability in this clause 13 include every kind of liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 13.2 Nothing in this clause 13 shall limit the Client's payment obligations under these Terms.

- 13.3 Nothing in the agreement shall limit the Client's liability under Clause 11.10 of these Terms.

- 13.4 Nothing in these Terms limits any liability which cannot legally be limited, including 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); or
 - (d) any other liability which cannot legally be limited.

- 13.5 Subject to Clause 13.2, Clause 13.3 and Clause 13.4, 3 Heads' total aggregate liability to the Client shall not exceed the total amount of the Charges paid by the Client pursuant to the Contract.

- 13.6 Subject to Clause 13.2, Clause 13.3 and Clause 13.4 3 Heads shall not be liable in any circumstances for any:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.

- 13.7 3 Heads shall have no liability:

- (a) in respect of any actual or alleged defects, issues or errors in the Deliverables unless the Client notifies 3 Heads in writing of such alleged defect, issue or error within 30 days of the Client's receipt of such Deliverables; or
- (b) in respect of any other fact or circumstance unless the Client gives 3 Heads written notice that it intends to make a claim in respect of such fact or circumstance within 30 days of the date when the Client first became aware, or ought reasonably to have become aware, of such fact or circumstances. The notice must give reasonable detail of the relevant fact or circumstance and the nature of the claim.

13.8 All warranties, conditions and terms not expressly set out in these Terms, whether implied by statute, common law or otherwise (including, without limitation, warranties as to satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law.

14. Termination

14.1 The Contract shall automatically terminate on the date specified in the Statement of Work, or if no such date is specified, when 3 Heads sends the final Deliverables to the Client.

14.2 Without affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect by giving written notice to the other Party if:

- (a) the other Party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within 14 days after being notified in writing to do so;
- (b) the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), or having a receiver appointed to any of its assets or ceasing to carry on business;
- (c) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other Party's financial position deteriorates to such an extent that in the terminating Party's reasonable opinion the other Party's capability to fulfil its obligations under the Contract has been placed in jeopardy.

14.3 Without affecting any other right or remedy available to it, 3 Heads may terminate the Contract with immediate effect by giving written notice to the Client if:

- (a) the Client fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of control of the Client.

14.4 On termination of the Contract for whatever reason:

- (a) the Client shall immediately pay to 3 Heads all of 3 Heads' outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, and any Third Party Charges that 3 Heads is contractually obligated to pay, 3 Heads may submit an invoice, which shall be payable immediately on receipt;
- (b) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect; and

- (c) termination of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

15. Non-solicitation

- 15.1 The Client shall not during the term of the Contract, or for a further period of 6 months after the termination of the Contract, except with the prior written consent of 3 Heads, directly or indirectly solicit or entice away (or attempt to solicit or entice away) from 3 Heads' employment any member of 3 Heads' Personnel engaged in the provision of the Services at any time, other than by means of a national advertising campaign open to all comers and not specifically targeted at 3 Heads' Personnel.
- 15.2 If 3 Heads chooses to give consent pursuant to Clause 15.1 (which shall be at its sole discretion), any such consent shall be subject to any conditions that 3 Heads may specify in its sole discretion.
- 15.3 If the Client commits any breach of Clause 15.1, the Client shall pay to 3 Heads immediately on demand a sum equivalent to 100% of the then-current annual remuneration (including benefits) of the relevant member of Personnel. The Parties agree that such sum is a genuine pre-estimate of the damages suffered by 3 Heads as a result of the Client's breach.

16. General

- 16.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 4 weeks the party not affected may terminate the Agreement with immediate effect.
- 16.2 **Assignment and other dealings.**
 - (a) The Client shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without 3 Heads' prior written consent.
 - (b) 3 Heads may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract. For the avoidance of doubt, 3 Heads shall remain liable for the acts and omissions of any subcontractors that it engages in connection with these Terms.
- 16.3 **Confidentiality.**
 - (a) Subject to Clause 16.3(b), each Party undertakes that it shall not at any time disclose to any person any information provided by or on behalf of the other Party that is marked as "confidential", is notified to them as being confidential or that could reasonably be considered to be confidential.
 - (b) The confidentiality obligations in Clause 16.3(a) above shall not apply to:
 - (i) any disclosures that a Party is required to make by applicable law, a court of competent jurisdiction or any governmental or regulatory authority (but only to the minimum extent necessary); or

- (ii) information that has come into the public domain through no fault of the receiving Party; or
 - (iii) each Party's right to disclose the other Party's confidential information to its Personnel, representatives, or advisers, but only provided that any such disclosure is on a 'need to know' basis; the recipient is informed of the confidential nature of the information and instructed to keep it confidential; and the disclosing Party shall be liable to the other Party if its recipients fail to keep the information confidential.
- (c) Neither Party shall use any other Party's confidential information for any purpose other than to perform its obligations under the Contract.

16.4 Entire agreement.

- (a) The Contract 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.
- (b) Each Party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

16.5 Variation. 3 Heads may vary these Terms from time to time. Any variation will be notified to you by email and will come into effect on the date specified in that email.

16.6 No partnership or agency. Nothing in these Terms shall establish any partnership or joint venture between the Parties, constitute either Party the agent of the other Party, or authorise either Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

16.7 Waiver.

- (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A failure or delay by a party to exercise any right or remedy provided under the Contract 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 the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.8 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 16.8 shall not affect the validity and enforceability of the rest of the Contract.

16.9 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:

- (i) 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
- (ii) sent to:
 - (A) 3 Heads at roy.testa@3headsagency.com; or
 - (B) the Client at the email address of the Client Representative (or as notified to 3 Heads from time to time).
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) 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; or
 - (iii) 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 clause 16.9(b)(iii), 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.
- (c) This clause 16.9 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.10 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

16.11 **Governing law.** The Contract, 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.

16.12 **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 the Contract or its subject matter or formation.

SCHEDULE 1

DATA PROTECTION

1. For the purposes of this Schedule 1 the words and phrases “**Controller**”, “**Processor**”, “**Data Subject**”, “**Personal Data**”, “**Personal Data Breach**”, “**process/processing**” and “**appropriate technical and organisational measures**” shall have the meanings given in Data Protection Law. “**Client Personal Data**” shall mean any Personal Data by or on behalf of the Client pursuant to the Contract.
2. Both Parties will comply with all applicable requirements of the Data Protection Legislation. This paragraph 2 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
3. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and 3 Heads is the Processor in respect of any Client Personal Data processed in accordance with the Contract Agreement, except in respect of 3 Heads' use of the Client Personal Data for 3 Heads' business, operational or administrative purposes (other than the provision of the Services), in which case 3 Heads shall act as the Controller.
4. 3 Heads shall, when acting as a Processor in respect of the Client Personal Data:
 - a. process the Client Personal Data only in accordance with the Contract Agreement and/or the Client's written instructions from time to time, and shall not process the Client Personal Data for any purposes other than those expressly authorised in writing by the Client or the Contract, unless required to do so by applicable law. Where 3 Heads relies on applicable law as the basis for processing Client Personal Data, 3 Heads shall promptly notify the Client of this before performing such processing unless the applicable law prohibits 3 Heads from so notifying the Client;
 - b. take appropriate technical and organisational measures against the unauthorised or unlawful processing or destruction of or damage to the Client Personal Data to ensure a level of security appropriate to:
 - i. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - ii. the nature of the data to be protected;
 - c. ensure that all of its Personnel who have access to and/or process Client Personal Data are obliged to keep the Client Personal Data confidential;
 - d. not transfer any Client Personal Data outside of the UK or the EEA unless the following conditions are fulfilled:
 - i. the Client or 3 Heads has provided appropriate safeguards in relation to the transfer;
 - ii. the relevant Data Subjects have enforceable rights and effective legal remedies; and
 - iii. 3 Heads complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;

- e. provide the Client, at the Client's cost, with reasonable assistance in responding to any request from any individual whose Personal Data forms part of the Client Personal Data and in ensuring the Client's compliance with its obligations under Data Protection Legislation with respect to security, Personal Data Breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- f. notify the Client without undue delay on becoming aware of any security breach in respect of Client Personal Data;
- g. at the written direction of the Client, delete or return Client Personal Data and copies thereof to the Client on termination of this Agreement, except to the extent required by applicable law;
- h. maintain complete and accurate records and information to demonstrate its compliance with this Schedule 1 and shall make such records available to the Client to the extent necessary to demonstrate 3 Heads and/or the Client's compliance with Data Protection Legislation. Prior to making any such records and information available to the Client, 3 Heads may redact any commercially sensitive or confidential information contained therein to the extent it considers necessary;
- i. on reasonable notice, and upon reasonable terms (including, without limitation, the Client's execution of a non-disclosure agreement and agreeing to pay both Parties' costs of any such audit or inspection) permit the Client to audit and/or inspect the records specified in paragraph 4(h) above for compliance with Data Protection Legislation; and
- j. notify the Client immediately if, in 3 Heads' opinion, any of the Client's instructions infringes Data Protection Legislation.

5. The Client agrees that 3 Heads may:

- a. transfer Client Personal Data out of the UK and the EEA, provided that the conditions set out in paragraph 4(d) are satisfied; and
- b. appoint subcontractors as third-party processors of Client Personal Data under this Agreement. 3 Heads confirms that it has entered or (as the case may be) will enter with such third-party processors into written agreements substantially in conformance with 3 Heads' obligations under paragraph 4 of this Schedule 1. As between the Client and 3 Heads, 3 Heads shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this paragraph 5(b).