

FIRST BASE UNLIMITED – Client Standard Terms & Conditions

Whereas, a purchase order or confirmatory email (“PO”) has been placed by client (“Client”) to purchase the provision of Services and Deliverables, as applicable, as set out in the scope of work (“SoW”) from FIRST BASE UNLIMITED, company number 8312019, with its registered office at Unlimited House, 10 Great Pulteney Street, London W1F 9NB (“Agency”). The “Agreement” comprises the PO, these Client Standard Terms & Condition (“Conditions”) and if applicable, any terms, conditions, caveats and assumptions contained in the SoW referenced in the PO or Order Acknowledgement (as defined below). In the event of a conflict between terms, the order of precedence shall be (i) the SoW; (ii) these Conditions; (iii) the Order Acknowledgement; and then (iv) the PO, unless expressly agreed in writing otherwise.

1 APPOINTMENT & SCOPES OF WORK

The Agency, or its Affiliates, shall perform the Services and supply Deliverables to the Client in accordance with a SoW. Agency reserves the right to subcontract Services as it deems appropriate. A PO may be deemed accepted by the Agency (i) upon commencement of the Services, or (ii) in writing (“Order Acknowledgement”).

2 CLIENT’S OBLIGATIONS

2.1 The Client will promptly supply to the Agency (at no charge) any Client Materials reasonably required by the Agency or otherwise necessary to provide the Services and Deliverables and shall ensure that it has all rights and licences in place to enable use by the Agency of all Client Materials.

2.2 If the Client (or its appointed third party suppliers) does not fulfil its obligations under or in connection with this Agreement (including its payment obligations), then to the extent that such failure prevents the Agency from performing any Services and/or providing any Deliverables in accordance with this Agreement, the Agency will be relieved of its obligations to the Client, and the Agency shall not be liable for any Losses incurred by the Client as a result of any such failure.

3 SERVICE DELIVERY

3.1 The Agency shall use reasonable endeavours to meet any deadlines agreed to as part of a Scope of Work and apply such time, attention, and reasonable skill and care as may be necessary or appropriate for its proper

performance of the Services and provision of the Deliverables.

3.2 If at any time the Agency becomes aware that it may not be able to perform the Services or deliver any Deliverables by any date set out in the applicable SoW (or any other deadline agreed by the parties in writing), the Agency will promptly notify the Client and give details of the reasons for the delay.

3.3 The Agency shall not be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control, which shall include a pandemic (including but not limited to coronavirus (COVID-19)). In such circumstances the Agency shall be entitled to a reasonable extension of the time for performing such obligations.

4 AMENDMENTS AND CANCELLATIONS

Any material amendment to a SoW shall be subject to the agreement of both parties in writing and the Fees payable to the Agency in respect of the amended Services shall not decrease below the level of Fees that would have been payable had the Services not been amended, save with the prior written approval of the Agency. In the event of any such cancellation the Client will reimburse the Agency for all Fees up to the date of cancellation, together with any Third Party Costs or other expenses or costs incurred by the Agency or to which the Agency is committed as well as any charges or other expenses or costs imposed on the Agency by third parties arising from the cancellation.

5 FEES

5.1 The Fees, Expenses and Third Party Costs will be invoiced in accordance with the payment terms set out in the applicable SoW and shall be payable (subject to clause 5.8) within thirty (30) days of the date of the relevant invoice, or such other reasonable period as the parties may agree in the applicable SoW.

5.2 All sums stated in this Agreement or in any SoW, quotation or estimate exclude VAT and any other applicable sales tax (unless otherwise stated) which shall also be payable by the Client at the rate prevailing from time to time.

5.3 All Fees, Expenses and Third Party Costs shall be payable in GBP unless otherwise agreed in a SoW.

5.4 The terms of remuneration set out in this Agreement do not cover the performance of services which are outside of a SoW. If any such services are required the terms relating to their provision together with the applicable fees will be agreed in writing by the parties.

5.5 The Agency shall be entitled to charge the Client interest on overdue payment in accordance with The Late Payment of Commercial Debts (Interest) Act 1998.

5.6 Each party shall pay all monies which are payable by it to the other without any right of set off, abatement or withholding in respect of monies which are due to it or alleged to be due to it from the other party.

5.7 The actual cost to the Agency of Third Party Costs in respect of materials or services purchased overseas for the Deliverables may be more or less than the cost anticipated at the date when the Agency ordered the relevant materials or services (or obtained the Client’s approval for such Third Party Costs) as a result of fluctuations in the rate of currency exchange. If so, the Agency will charge the Client at the rate of currency exchange in operation on the date the Agency pays for the relevant Third Party Costs, which shall be deemed to be the closing mid-point rate in London for that day as subsequently quoted in the next published edition of The Financial Times.

5.8 In the event that any Third Party Costs require payment in advance or sooner than the payment terms set out in clause 5.1, the Agency will notify the Client as soon as reasonably practicable in advance and the Client shall pay such costs within the period set out in the relevant invoice.

6 CONFIDENTIALITY

6.1 Each of the parties acknowledges that, whether by virtue of and in the course of this Agreement or otherwise, it may receive or otherwise become aware of information relating to the other party, its clients, customers, businesses, business plans or affairs, which information is proprietary and confidential to the other party (“Confidential Information”). Confidential Information shall include any document marked “Confidential”, or any information which the recipient has been informed is confidential or which it ought

reasonably to expect the other party would regard as confidential.

6.2 Confidential Information shall exclude information which:

- (a) at the time of receipt by the recipient is in the public domain;
- (b) subsequently comes into the public domain through no fault of the recipient, its officers, employees or agents;
- (c) is lawfully received by the recipient from a third party on an unrestricted basis;
- (d) is independently developed by the recipient; and/or
- (e) is already known to the recipient before receipt hereunder.

6.3 Each of the parties undertake to maintain the confidentiality of the other party's Confidential Information at all times and to use no less adequate measures than it uses in respect of its own confidential information to keep the other party's Confidential Information reasonably secure. Neither party shall at any time without the prior written approval of the other party, use, disclose, exploit, copy or modify any of the other party's Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the exercise of its rights and/or the performance of its obligations in connection with this Agreement.

6.4 Each of the parties undertakes to disclose the other party's Confidential Information only to those of its associates, advisors, representatives or Affiliates to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement.

6.5 The Client acknowledges and agrees that any identifiable and original idea or concept presented by the Agency in relation to any promotion or advertising campaign developed by the Agency shall be acknowledged as being available only for such promotion or campaign and shall not be used for any other purposes whatsoever without the Agency's express prior written approval. Even where no promotion or campaign is agreed, the ideas and concepts presented to the Client shall remain strictly confidential and shall not be used in any way, including communication to any third party, without the Agency's prior written approval.

6.6 The Agency shall have the right to publicly announce the key terms of the Agreement and may use non-Confidential

Information as part of its marketing literature without the consent of the Client.

6.7 Neither party shall be in breach of this clause 6 if it discloses the other party's Confidential Information in circumstances where such disclosure is required by law, regulation or order of a competent authority or regulatory body, provided that the other party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

7 LIABILITY

7.1 Without prejudice to clause 7.2 the Agency's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed one hundred percent (100%) of the Fees relating to the SoW under which such liability arises.

7.2 Nothing in this Agreement shall exclude or in any way limit either party's liability for fraud, death or personal injury caused by its negligence or any other liability to the extent such liability may not be excluded or limited as a matter of law.

7.3 Without prejudice to clause 7.2, neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any Consequential Loss.

7.4 Without prejudice to clause 7.2, any and all claims, actions or other similar disputes brought by the Client against the Agency arising out of or in connection with this Agreement must be brought within twelve (12) months of the date of completion of the Services.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 The Agency acknowledges that ownership of Client Materials and ownership of all Intellectual Property Rights in any Client Materials (including any modifications or adaptations of such Client Materials produced in the course of providing the Services and Deliverables) shall remain vested in the Client or its licensors. The Client hereby grants to the Agency a non-exclusive licence during the Term to use the Client Materials solely for the purposes of providing the Services and Deliverables.

8.2 Subject to the remaining provisions of this clause 8 and subject to the Agency receiving payment of all Fees attributable to the Agency Materials the Agency hereby assigns

(and in the case of copyright, by way of a present assignment of future copyright) all of the Intellectual Property Rights in the Agency Materials which are capable of being assigned together with the right to sue for past infringement of the Intellectual Property Rights in the Agency Materials.

8.3 The Client acknowledges that all Intellectual Property Rights in the Agency Proprietary Materials or direct improvements thereto which are used, improved or modified by the Agency under or during the term of this Agreement are the product of the Agency technical expertise possessed and developed by the Agency prior to or during the performance of this Agreement and are the sole and exclusive property of and vest in the Agency. Subject to the Agency receiving payment of all Fees attributable to the Agency Proprietary Materials licensed under this clause, the Agency hereby grants to the Client a licence to use such Agency Proprietary Materials and improvements thereto as are included in the Deliverables, in the Territory, solely for the purpose and the time period required to enjoy the rights in the Deliverables as envisaged under this Agreement.

8.4 Prior to delivery of the Deliverables, the Agency shall obtain such licences or consents in respect of Third Party Materials as shall be necessary in order that the Client can use such Third Party Materials for the purposes set out in the SoW. The Agency shall notify the Client of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Materials.

8.5 The Agency agrees, at the Client's request and expense, to take all such actions and execute all such documents as are necessary (in the Client's reasonable opinion) to enable the Client to obtain, defend or enforce its rights in the Deliverables, and shall not do or fail to do any act which would or might prejudice the Client's rights under this clause 8.

8.6 To the extent permitted by law, and subject to the Agency receiving payment of all Fees attributable to the Agency Materials, the Agency shall ensure that all Moral Rights in the Agency Material included in the Deliverables are waived (or where not lawfully possible to waive Moral Rights, the Agency agrees not to assert any Moral Rights in respect of the Agency Materials). Subject to the Agency receiving payment of all Fees attributable to the Agency Materials, the Agency shall use its

reasonable endeavours to ensure that all Moral Rights in Third Party Materials are waived (or where not lawfully possible to waive Moral Rights, to procure that Moral Rights are not asserted in respect of Third Party Materials), but if the Agency cannot obtain such waiver of (or agreement not to assert) such Moral Rights in respect of any Third Party Materials, the Agency will notify the Client and shall obtain the Client's approval prior to incorporating such Third Party Materials into the Deliverables.

8.7 Notwithstanding any of the above and save as otherwise expressly provided for in a SoW, the Agency shall:

(a) be able to use any Deliverables which have been broadcast, published, distributed or otherwise made available to the public, and the Client's name and logo for the purposes of promoting its work and its business including on the Agency's website, in credentials pitches and in its showreel. Any other use by the Agency shall be subject to the Client's prior approval; and

(b) retain all know how obtained in connection with the Services and Deliverables.

8.8 If the Agency is asked to take part in a competitive pitch or other similar process for the Client, then notwithstanding any of the previous provisions of this clause 8, the Agency shall retain ownership of all Intellectual Property Rights in any Materials forming part of the pitch process.

8.9 For the avoidance of doubt, the Agency shall not be liable under or in connection with this Agreement for any modifications, adaptations or amendments to any Deliverables made by the Client or by a third party on the Client's behalf, nor in the event that any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to the acts or omissions of the Client and/or its Associates.

8.10 The terms of and obligations imposed by this clause 8 shall survive the termination of this Agreement for any reason.

9 TERMINATION

9.1 Either party may terminate this Agreement without cause by giving not less than three (3) months' written notice to the other party.

9.2 Either party may terminate this Agreement or any SoW immediately upon written notice to the other party:

(a) in the event of any material breach of this Agreement by the other party which breach is

not remediable or, if remediable, is not remedied within twenty (20) days after the service by the party not in default of a written notice on the defaulting party, specifying the nature of the breach and requiring such breach to be remedied;

(b) if the other party suspends, or threatens to suspend payment of its debts or is unable to pay its debts as they fall due, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(c) if 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 or enters into any compromise or arrangement with its creditors (other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other party with other companies);

(d) if a petition is filed, or a notice is given, or a resolution is passed or an order is made for or in connection with the winding up of that other party (other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other party with other companies); or

(e) if an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party.

10 CONSEQUENCES OF TERMINATION

10.1 Upon termination of this Agreement the Client shall pay the Agency all Fees, Expenses and Third Party Costs due to the Agency (in accordance with clause 5 where relevant) including during the notice period.

10.2 If prior to termination of the Agreement, the Agency has (at the request of the Client) prepared detailed plans or proposals for future Deliverables in respect of which the Agency has not been paid, the Agency shall be entitled to receive remuneration from the Client based on the Agency's time spent preparing such plans or proposals and the Rate Card. Any handover work during the Termination Notice shall be at Client's reasonable cost at the agreed Rate Card.

10.3 Provisions of this Agreement which are either expressed to survive its termination or which from their nature or context are contemplated to survive termination shall remain in full force and effect notwithstanding termination of this Agreement.

11 NOTICES

11.1 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 email to the address specified in the SoW.

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

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(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 or at the time recorded by the delivery service.

(c) if sent by email, at 9.00 am on the next Business Day after transmission.

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

12 DATA PROTECTION

12.1 Each party warrants to the other that it is and will continue to comply with the terms of any applicable Data Protection Legislation and any other relevant data protection laws, legislation and regulation. For the purposes of this clause, "personal data" and "processes" shall have the meanings given under Data Protection Legislation.

12.2 The Client warrants and undertakes that it has all necessary rights to provide personal data to the Agency and to require the Agency to process personal data on its behalf.

12.3 Where appropriate, the parties shall enter into a separate data processing agreement to govern any data processing envisaged under the SoW.

13 GENERAL

13.1 Neither party may assign, transfer or charge or otherwise dispose of this Agreement or any of its rights or obligations arising hereunder without the prior written approval of the other party.

13.2 Both parties acknowledge and agree that neither party tolerates bribery in any form in connection with the conduct of its business. Breach of this clause shall be deemed a material breach of this Agreement. Each party

shall comply with all applicable laws, statutes, regulations, codes and guidance relating to anti-bribery and anti-corruption, including the UK Bribery Act 2010, and promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by that party in connection with the performance of this Agreement.

13.3 Unless expressly provided in this Agreement, no term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

13.4 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.

13.5 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.

13.6 Except as expressly provided in this Agreement, each party shall pay its own costs incurred in connection with the negotiation, preparation, and execution of this Agreement and any documents referred to in it.

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

13.8 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 breach or default or a continuing waiver unless expressly confirmed in the waiver.

13.9 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.

13.10 Except as expressly provided in this Agreement, the rights and remedies provided

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

13.11 If any provision or part-provision of this Agreement 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 shall not affect the validity and enforceability of the rest of this Agreement.

13.12 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.

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

13.14 Each party shall, and shall use reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

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

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

14 DEFINITIONS

"Affiliates" means any company, partnership or other entity which at any time directly or indirectly controls, is controlled by or is under common control with either party including as a subsidiary, parent or holding company.

"Agency Materials" means those Materials specifically created by the Agency for the purposes of a SoW by officers, employees or freelancers (including any Materials adapted, modified or derived from the Client Materials).

"Agency Proprietary Materials" means software (including all programming code in

object and source code form), methodology, know-how and processes and Materials in relation to which the Intellectual Property Rights are owned by (or licensed to) the Agency and which are (i) in existence prior to the date on which it is intended to use them for a SoW, or (ii) created by or for the Agency outside of a SoW and which are intended to be reused across its business.

"Client Materials" means any data, client equipment, computer systems, software, documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Client which are provided to the Agency by the Client.

"Consequential Loss" means loss of profit or anticipated profit, income, revenue, anticipating savings, goodwill or data, or incidental, consequential or punitive damages or losses, in each case whether direct or indirect and whether or not foreseeable.

"Data Protection Legislation" means (i) prior to 25 May 2018, the Data Protection Act 1998; (ii) from 25 May 2018, the General Data Protection Regulation (EU 2016/679) ("GDPR") and any legislation which amends, re-enacts or replaces it in England and Wales; (iii) the Electronic Communications (EC Directive) Regulations 2003, together with any legislation which replaces it; (iv) at all times, any other data protection laws and regulations applicable in the England and Wales; and/or (v) in non-EU countries, any similar or equivalent laws, regulations or rules relating to information or data about individuals.

"Intellectual Property Rights" means copyright and related rights, trade marks and service marks, trade names and domain names, patents, rights to inventions, rights in get-up, rights to goodwill and to sue for passing off and unfair competition, rights in designs, rights in computer software, the "look and feel" of any websites, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

"Losses" means losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including

reasonable legal and other professional expenses), subject to clause 7.1 and 7.3.

“Materials” means any artwork, copy, models, designs, photographs, commercial, feature film, character, music, voice over, sound recording, performance, book, painting, logo, or any other material protected by Intellectual Property Rights, but not including any software.

“Moral Rights” means all rights described in Part I, Chapter IV of the Copyright Designs and Patents Act 1988 and any similar rights of authors anywhere in the world.

“Third Party Costs” means any third party costs required to perform the Services or supply the Deliverables.

“Third Party Materials” means those Materials owned or created by a third party to be used in the Services and/or Deliverables, but which excludes software which is owned or licensed by a third party.