



Five Rivers Working Agreement Terms & conditions

January 2018





SPROUT TERMS AND CONDITIONS (THESE "TERMS AND CONDITIONS")

1. DEFINITIONS

In this Agreement:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

this "Agreement"

these Terms and Conditions together with the relevant Project Dossier and any other documents identified in the relevant Project Dossier;

"Business Day"

any day other than (a) a Saturday, (b) a Sunday, or (c) a day when the clearing banks are not physically open for business in the City of London, England;

"Client" the client whose details are set out in the Project Dossier or the client to whom SPROUT provides the Services;

"Confidential Information"

any information in any form or medium obtained by or on behalf of one Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would reasonably consider to be confidential whether disclosed or obtained before, on or after the date of this Agreement together with any reproductions of such information or any part of this information;

"Content"

any content or data, which is supplied by the Client and/or its employees, agents or other contractors to SPROUT for inclusion by SPROUT in a Product or the Deliverables;

"Deliverables"

any deliverables, materials, works of authorship, software (source code and object code), outputs, tools (including research tools, modelling tools (including in Excel), diagnostic tools and measuring tools), methodologies, methods, processes, research, recommendations, evaluations, results, reports, spreadsheets, documents, descriptions, specifications, techniques, notes, records, descriptions, systems, ideas, concepts, discoveries, information, text, data, lists, know-how, creations, diagrams, flowcharts, designs, posters, leaflets, sketches, models, exhibition stands, showroom builds, drawings, photographs, images, plans, specifications and proposals, on whatever media, provided or used or to be provided or used by SPROUT (or any subcontractor) in the course of performing the Services;

"Fee" or "Fees"

the fee or fees payable by the Client to SPROUT for SPROUT's supply of the Services and/or Products as stipulated in the relevant Project Dossier;

"Intellectual Property Rights"

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

“Liability”

has the meaning given to it in Clause 10.11.1;

“Location”

the site at which SPROUT shall provide the Services, being wherever SPROUT and the Client agree in the Project Dossier or otherwise, or as otherwise reasonably decided by SPROUT;

“Negligence”

has the meaning given to it in Clause 10.11.2;

“SPROUT” SPROUT Brand Partners Limited, a company registered in England under number 08988406 and having its registered office at 36 Endless Street, Salisbury, Wiltshire SP1 3UH;

“Order”

the request by the Client to SPROUT for the provision of particular Products;

“Party”

either SPROUT or the Client;

“Payment”

has the meaning given to it in Clause 4.13;

“Products”

the agreed form packaging for the Client’s product/s which is provided or to be provided by SPROUT to the Client in the form set out more specifically in the corresponding Project Dossier;

“Project”

the details of a particular brief from the Client for SPROUT for the provision of Services;

“Project Dossier”

a file held and created by SPROUT containing the Project Specification, Quotation and/or other specific information and documentation relating to the particular services, deliverables and/or products supplied or to be supplied by SPROUT to the Client and readily identifiable via the relevant job number assigned by SPROUT;

“Project Specification”

the document which sets out the main provisions of the scope of work for the services and/or products provided or to be provided by SPROUT to the Client;

“Quotation”

the written quotation or price matrix (if any) from SPROUT to the Client detailing the services and/or products that SPROUT is willing in principle to supply to the Client for a particular order and/or project;

“Rates”

SPROUT’s time and materials rates for providing services, being initially at either the rates set out in the Project Dossier or (if not set out there) at SPROUT’s standard time and materials rates from time to time;

“Services” any services provided or to be provided by SPROUT to the Client (and which may include SPROUT’s provision or use of Deliverables, and consultancy, advisory, analysis and exhibition design, build and construction), as may be more particularly described in or pursuant to the Project Dossier;

1.2 references to “Clauses” are to clauses of these Terms and Conditions;

1.3 the headings are inserted for convenience only and shall not affect the interpretation or construction of this Agreement;

1.4 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm or partnership;

1.5 references to “written” or in “writing” (except in respect of sending a notice in accordance with Clause 14) includes in electronic form;

1.6 references to “includes” or “including” or like words or expressions shall mean without limitation; and

1.7 references to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

2. AGREEMENT

2.1 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by the Client. These Terms and Conditions apply to the supply of all Products, Services and Deliverables.

2.2 Save as expressly provided herein, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated herein except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each Party acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.

2.3 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter hereof and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.

2.4 In the event of any conflict between the provisions of any of the documents within this Agreement, then the Project Dossier shall prevail over these Terms and Conditions.

2.5 If the Client provides SPROUT with a purchase order or project brief for the supply of Products, Services and/or Deliverables, the purchase order and/or project brief shall be purely for the Client’s administrative purposes only and shall not form part of this Agreement.

2.6 This Agreement shall be legally formed and the Parties shall be legally bound:

2.6.1 for the provision of Services, when SPROUT receives either a copy of the Project Specification and/or Quotation signed by the Client or written confirmation from the Client signifying acceptance of the Project Specification and/or the Quotation; and

2.6.2 for the supply of Products, when SPROUT confirms acceptance of an Order in writing (including electronically through such medium as permitted or made available by SPROUT).

2.7 Except as expressly provided otherwise in this Agreement, no change to this Agreement shall be binding unless it is agreed in writing by each Party.

2.8 Each agreement regarding a Project Dossier constitutes a separate agreement. There may be more than one agreement between the Parties in force at the same time as this Agreement.

2.9 SPROUT shall use its reasonable endeavours to perform its obligations within any timescales set out in this Agreement, but time for performance shall not be of the essence and SPROUT shall not have any Liability for any delays or failure to accurately perform its obligations:

2.9.1 if it has used those endeavours; or

2.9.2 if caused by any failure or delay on the part of the Client or the Client’s agents, staff, officers, employees, contractors or customers or by any breach by the Client of this Agreement or any other contract between the Parties. Any timeframe for delivery in a previous contract or order shall not be an indication of the timeframe for delivery in this Agreement. If there is any slippage in time, SPROUT shall use its reasonable endeavours to reschedule delayed tasks to a mutually convenient time.

3. PRODUCTS - GENERAL

3.1 SPROUT may at any time before delivery without Liability inform the Client that it is cancelling or rejecting all or any part of the Order and terminating all or part of this Agreement if the relevant Products (including any materials/components which form the basis for the Products) are not in stock or need to be restricted by SPROUT (in its absolute discretion) due to a shortage of supply or Event of Force Majeure. If there is any cancellation or termination due to a shortage or supply restriction, the Client may place a subsequent Order (which if accepted will be a separate Agreement).

3.2 The Client shall ensure that the Order contains full details of the Product to be supplied (as specified in the Project Specification), the quantity of the Product ordered, the identity of the Client and its nominated place for delivery. Any price or delivery requirement other than in accordance with this Agreement is of no effect.

3.3 It is the Client's responsibility to ensure that all information supplied by it is complete and accurate. The Client shall ensure that the Order meets its particular requirements.

3.4 Unless otherwise expressly agreed between the Parties in writing, no Agreement shall be a sale by sample.

3.5 Subject to the rest of this Clause 3, SPROUT warrants that:

3.5.1 as at delivery and for 12 months from the date of delivery of the Product by SPROUT to the Client (or the Client's nominated place for delivery), the Product shall be free from material defects in design, workmanship and materials and conform to SPROUT's specification for the Product as set out more specifically in the Project Dossier; and

3.5.2 it shall deliver the Products undamaged and in the quantities agreed in the Order.

3.6 SPROUT is not responsible for any services or products not expressly stipulated in this Agreement that SPROUT will provide.

3.7 SPROUT shall at its option replace or repair or provide a refund for Products that are lost or damaged in transit to the place of delivery. SPROUT shall not have any Liability for loss of or damage to Products in transit or on delivery to the point of delivery unless the Client informs SPROUT within three Business Days, and in any event notifies SPROUT in writing within five Business Days:

3.7.1 after the expected date of delivery or receipt that it has not received the Products or the right quantity of them; or

3.7.2 after receipt that the Products are damaged; and also

3.7.3 unless the Client provides SPROUT with SPROUT's delivery note number and such other information and documentation as SPROUT reasonably requires at the same time as the notice.

3.8 Subject to Clause 3.9, SPROUT shall at its option replace or repair the delivered Products which are not in conformance with the warranty set out in Clause 3.5 (and the replacement may either be an exact match or something else providing compliance with that warranty).

3.9 SPROUT's Liability for defective or damaged Products is subject to:

3.9.1 the Client notifying SPROUT of any claim promptly upon discovery of the defect or damage and in any event within one month of discovery, specifying with reasonable detail the way in which it is alleged that the Products do not conform to this Agreement;

3.9.2 the Client having provided SPROUT with SPROUT's delivery note number and such other information and documentation as SPROUT reasonably requires at the same time as the notice in Clause 3.9.1;

3.9.3 the Client showing to SPROUT's reasonable satisfaction that the defect or damage is solely attributable to SPROUT's or its supplier's defective design, materials or workmanship in the Products and not: (a) wear or tear from normal use; (b) any servicing by anyone after delivery other than by anyone authorised by SPROUT; (c)

the Products having been misused or subjected to neglect, improper or inadequate care or carelessness (including being dropped), or abnormal usage conditions; (d) the Products having been involved in any accident or attempt at repair, alteration, change or modification or inspection within the Product itself except by or on behalf of SPROUT or as approved by SPROUT or in accordance with SPROUT's instructions; or (e) the Products having been used other than in accordance with good practice and SPROUT's instructions or recommendations;

3.9.4 the Client allowing SPROUT's representatives the opportunity to inspect, test, repair and replace the Products;

3.9.5 the Client having paid for the Products in full; and

3.9.6 upon SPROUT's request, the Client returning the defective or damaged Products carriage and insurance paid at the Client's risk to SPROUT's premises or such other location stipulated by SPROUT and carefully packed to avoid damage in transit. Unless and until SPROUT inspects, repairs or receives the Products, the Client shall hold the Products safely and securely in good condition.

3.10 The warranty contained in this Clause 3 is specifically limited to the Client. Except to the extent expressly agreed by SPROUT in writing, no warranty is made to any other person, whether subsequent buyer or user or customer, or to any bailee, licensee, assignee, employee, agent or otherwise.

3.11 If the Client makes an invalid claim under the warranty, SPROUT may charge the Client for its fees and costs of examining, testing, storing, repairing and replacing the Products and dealing with the claim and removing and delivering the Products.

4. PRODUCTS - DELIVERY, RISK AND TITLE

4.1 In consideration for the payment of the Fee and any other sums due from the Client under this Agreement, SPROUT shall supply to the Client the Products referred to in the Order.

4.2 SPROUT reserves the right to delay delivery or cancel an Order if the amount owing by the Client to SPROUT exceeds any credit limit for credit extended by SPROUT to the Client or if any payment due from the Client to SPROUT has not yet been made.

4.3 SPROUT may supply Products with modifications or improvements incorporated into them.

4.4 Partial delivery or performance shall be permitted. SPROUT may deliver and provide the Products in instalments. Unless the Parties otherwise agree in writing, SPROUT may invoice the Client for each instalment.

4.5 Delay, default or non-delivery of any instalment by SPROUT shall not entitle the Client to cancel or terminate, and shall not affect, the remainder of this Agreement.

4.6 SPROUT shall inform the Client or its nominated person for delivery of the estimated date on which the Products will be ready for delivery or collection.

4.7 The Client or its nominated person for delivery shall ensure that it is ready for safe receipt (or, as the case may be, collection) of the Products without undue delay.

4.8 The Client or its nominated person for delivery may be required to sign a delivery note and other documentation upon receipt of the Products. The signing of any such documentation by the Client or its nominated person for delivery shall be evidence that the Products have been delivered and in the quantities stipulated in the documentation. The Client or its nominated person for delivery shall inspect the Products for any obvious damage and make a note of any obvious damage when signing.

4.9 All risk in the Products shall pass to the Client upon delivery, provided that where delivery is delayed due to breach by the Client (or its nominated person for delivery) of its obligations under this Agreement risk shall pass at the date when delivery would have occurred but for that breach.

4.10 The Client shall keep the Products fully insured on SPROUT's behalf with a reputable insurance company to the reasonable satisfaction of SPROUT for their full price against all

risks of loss or damage from the time when the risk passes to the Client until title passes in accordance with Clause 4.13. On request, the Client shall produce the policy of insurance to SPROUT. If the Products are lost, damaged or destroyed, the Client shall hold the proceeds of insurance for and to the order of SPROUT pending Payment.

4.11 If delivery of the Products is delayed or obstructed through the Client's or its nominated person for delivery's default or breach of this Agreement or if the Client or its nominated person for delivery unreasonably declines or delays in accepting or taking delivery or receipt of the Products, then (subject to Clause 10) SPROUT shall not have any Liability as a result and SPROUT may (without prejudice to any other right or remedy available to it) do all or any of the following:

4.11.1 sell the Products for SPROUT's account;

4.11.2 cancel this Agreement as regards any Products that remain to be delivered or performed;

4.11.3 charge a reasonable storage fee for the Products; and

4.11.4 require the Client to indemnify SPROUT for any and all losses, liabilities, claims, proceedings, judgments, damages, demands, actions, costs, charges, expenses, penalties and fines suffered or incurred by SPROUT as a result of the Client or its nominated person for delivery declining or delaying.

4.12 Where delivery is not to the UK, the Client shall be responsible for complying with all applicable laws, regulations and codes of practice governing the importation and use of the Products in the destination country and for paying any import and export duties or levies.

4.13 Notwithstanding delivery, title to and ownership of the Products shall not pass to the Client until SPROUT has received in full (in cleared funds) all sums due to it in respect of:

4.13.1 the Products; and

4.13.2 all other sums which are or which become due to SPROUT from the Client on any account;

("Payment").

4.14 Until Payment, the Client shall:

4.14.1 hold the Products on a fiduciary basis as SPROUT's bailee;

4.14.2 hold the Products in good, saleable condition;

4.14.3 keep an up-to-date list of the location of the Products owned by SPROUT and present this to SPROUT upon request;

4.14.4 not destroy, deface or obscure any identifying mark on or relating to the Products; and

4.14.5 store the Products separately from other goods or in any way so that they remain readily identifiable as Products owned by SPROUT.

4.15 the Client may resell the Products before Payment solely on the following conditions:

4.15.1 any sale shall be effected in the ordinary course of the Client's business at full market value;

4.15.2 any such sale shall be a sale of the Products owned by SPROUT on the Client's own behalf and the Client shall deal as principal when making such a sale;

4.15.3 the Client shall keep the proceeds of sale separate from any money or property of the Client or third parties; and

4.15.4 the Client shall still be responsible for paying to the full value of the Payment. If SPROUT requires, the Client shall authorise and direct such third party buyer to pay to SPROUT a like part of the sum due to the Client in respect of the Products sold

and assign to SPROUT such part of the debt owed to the Client by the third party.

4.16 SPROUT may at any time until title passes under this Clause 4 without notice recover possession of the Products which are the property of SPROUT. SPROUT may also require the Client at the Client's cost, within three days of SPROUT's request, to deliver up to SPROUT or make available to SPROUT for collection from a single accessible collection point as SPROUT requires all Products which are the property of SPROUT. The Client hereby grants to SPROUT for SPROUT and its agents, staff, officers, employees and contractors an irrevocable licence to enter for that purpose any premises then occupied by or in the ownership or possession of the Client or the Client's customer. The Client shall indemnify SPROUT against all claims, losses, damages, liabilities, costs and expenses so arising in exercising its rights under this Clause 4.16.

4.17 SPROUT may recover Payment for the Products notwithstanding that ownership of any of the Products has not passed from SPROUT.

4.18 On termination of this Agreement, howsoever arising, SPROUT's rights contained in this Clause 4 shall remain in effect.

5. SERVICES - GENERAL

5.1 SPROUT warrants that:

5.1.1 it shall use its reasonable skill and care in providing any Services and in accordance with good industry practice (meaning the level of skill and care as would be provided by a skilled provider of similar services in SPROUT's industry);

5.1.2 its employees, agents and subcontractors have the necessary skill to provide any Services;

5.1.3 any Services will be provided in a professional, competent and workmanlike manner;

5.1.4 it has all necessary rights, permissions and consents to enter into, and perform its obligations under, this Agreement (including any Intellectual Property Rights in respect of the Deliverables);

5.1.5 it shall ensure that SPROUT's employees, contractors and agents co-operate with, and make themselves available at all reasonable times for discussion and meetings with, the Client and the Client's employees, other contractors and agents;

5.1.6 its advice, suggestions and recommendations shall be based on its own information, expertise, judgements, experience, knowledge and opinions, and shall be independent and unbiased;

5.1.7 it shall use its reasonable endeavours to ensure that while it and its employees, agents and subcontractors are on the Client's premises, they will conform to the Client's normal codes of staff and security practice as are advised to them in advance by the Client and where reasonably possible to cause minimal disturbance to the Client's representatives who are not involved with the receipt of the Services;

5.1.8 it shall fully, frequently and promptly update the Client as to progress with the Services and Deliverables generally, including reporting on any concerns, issues, queries or comments that need to be resolved or discussed; and

5.1.9 it shall comply with all applicable national government laws and regulations applicable to the provision of any Services.

5.2 SPROUT does not warrant that the Services or Deliverables will be uninterrupted, error-free, or secure from unauthorised access, or that they will meet the individual requirements of the Client. SPROUT is not responsible for any equipment, hardware, deliverables, software or services not expressly stipulated in this Agreement that SPROUT will provide. The Client is responsible for any equipment, hardware, deliverables, software and services that it is required to obtain from someone other than SPROUT. Except for any matter upon which SPROUT specifically agrees in writing with the Client to advise or do, SPROUT shall not be responsible or have any Liability for advising on, or failing to advise on, or doing, or failing to do, anything else (including on any laws, rules, regulations, bye-laws or codes of practice).

5.3 Subject to SPROUT performing the Services within any timeframe and at any Location agreed as being necessary for the performance of the Services, SPROUT may select its own working times and location provided that the nature of particular Services does not require the particular Services to be undertaken during particular working times or at any particular location. The Client may request any such working times and the Location as are reasonable in the circumstances and SPROUT shall undertake such Services during such working times or at such Location.

5.4 If SPROUT is delayed or hindered in providing any Services as a result of any failure or delay by the Client to perform any of its obligations under this Agreement or of any other agreement between the Parties, then SPROUT may charge the Client at the Rates for any time reasonably incurred as a result of the hindrance or breach (including the time it actually spends in providing the Services, and any wasted time for which SPROUT had anticipated that its personnel would spend in providing Services under this Agreement but become unable to do so at that time as a result of the Client's act or omission and which resources SPROUT cannot reasonably re-allocate).

5.5 Any advice, suggestion, recommendation, output or evaluation made by SPROUT shall be based on the information, Content and instructions provided by the Client and the information, expertise, judgement, experience, knowledge and opinion of the personnel at SPROUT who are providing the Services. SPROUT does not warrant that it will consider every possibility or option nor that any particular outcome will be achieved by the Client, but it shall provide the Services in accordance with the standards set out in Clause 5.1. Any advice, suggestion, recommendation, output or evaluation shall also be as at the time of providing it and not the future.

5.6 Where this Agreement expressly requires SPROUT to achieve an end result, if and to the extent that SPROUT does not do so and this is due to SPROUT's fault, SPROUT shall have the opportunity to take corrective action (at no additional Fee) within a reasonable time (and to the extent permitted by law, and subject to Clause 10.2, this shall be the Client's sole right and remedy in respect thereof).

5.7 Except where expressly provided for within this Agreement, SPROUT excludes all conditions, warranties, terms and obligations, whether implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Services and Deliverables.

5.8 If certain Deliverables are to be returned to SPROUT at the conclusion of a Project, the Client shall have provided SPROUT with advance written warning of the requirement for storage of those Deliverables prior to commencement of the Services. SPROUT reserves the right to charge the Client for the cost of any such storage requirement in advance of the commencement of the Services .

6. SERVICES - CLIENT'S OBLIGATIONS

6.1 The Client shall (and shall, where applicable, procure that its employees, agents, consultants and other contractors shall):

6.1.1 ensure that the Deliverables and Services are sufficient and suitable for its purposes and meet its requirements;

6.1.2 provide proper, adequate, safe, comfortable and suitable environmental and operating conditions if SPROUT undertakes any work at the Client's (or its agents', clients' or other contractors') premises;

6.1.3 inform SPROUT in writing within a reasonable time before the commencement of any Services of any regulations relevant to SPROUT's representatives when working at any premises under the control of the Client including site regulations;

6.1.4 ensure that the Client's employees, agents and other contractors fully co-operate with, and make themselves available at all reasonable times for discussion and meetings with, SPROUT and its employees, agents and contractors and to enable SPROUT to promptly perform its obligations under this Agreement;

6.1.5 promptly provide to SPROUT such Content, information and assistance (including anything identified in the Project Dossier to be provided to SPROUT) that will enable SPROUT to carry out fully, accurately, promptly and efficiently its obligations under this Agreement to the best of its ability;

6.1.6 take all care and assume all responsibility with using, sending and receiving any Content. The risk of and responsibility for using, securing, copying, preserving and taking back-ups of Content is with the Client;

6.1.7 promptly comply with all reasonable requests of SPROUT in connection with this Agreement;

6.1.8 ensure it has all necessary rights, permissions and consents to enter into, and perform its obligations under, this Agreement;

6.1.9 comply with all applicable laws, statutes, regulations and bye-laws in relation to the exercise of its rights and performance of its obligations under this Agreement;

6.1.10 acknowledge and accept that certain Deliverables, particularly the creation of exhibitions and/or showrooms, are intended as temporary structures only, are subject to wear and tear and not for permanent or long-term use; and

6.1.11 be responsible for ensuring that, and hereby warrants and undertakes to SPROUT that, the Content and the use and sending and receipt of it by the Client and SPROUT, and the use and processing of Content by SPROUT to perform the Services in accordance with this Agreement or by the Client, and the manner of the Client's and its and their agents' and employees' and contractors' and customers' use of the Services and Deliverables:

(a) conforms in all respects with all applicable laws, rules, regulations, bye-laws and codes of practice;

(b) does not infringe the privacy rights or Intellectual Property Rights of any third party;

(c) is not defamatory, malicious, abusive, obscene, indecent, discriminatory or harassing; and

(d) does not contain any material detrimental to SPROUT, including any viruses, trojan horses, trap doors, back doors, easter eggs, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

6.2 SPROUT shall be responsible only for providing the Services. The Client shall be responsible for any decision or implementation by the Client and its agents, employees and contractors relating to any advice, suggestion, recommendation, output, evaluation or course of action proposed in the provision of the Services.

6.3 It is the Client's responsibility to ensure that:

6.3.1 any decision or implementation made by the Client is made in the Client's best interests; and

6.3.2 the process of making such decision or implementation by the Client is made in compliance with the relevant risk and general business strategy of the Client and business environment in which the Client operates; and the Client bears sole responsibility and Liability for the consequences of any such decision or implementation.

6.4 The Client agrees, during the term of this Agreement and for a period of one year following its termination or its expiry, not to solicit or induce any employee, consultant, contractor or agent of SPROUT who was involved with providing Services to the Client to terminate their employment or engagement with SPROUT, or to provide any services to the Client (other than through SPROUT), without the prior written consent of SPROUT. For the avoidance of doubt, any general recruitment advertisement placed by or on behalf of the Client shall not be deemed to be solicitation for the purposes of this Clause 6.4. SPROUT shall not have any Liability for delay, breach, mis-performance or non-performance of this Agreement if caused by the Client's engagement or employment of any person engaged or employed by SPROUT.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 Subject to Clause 7.2, the Client acknowledges that, as between SPROUT and the Client, SPROUT and its licensors own all Intellectual Property Rights in the Products and Deliverables, whether or not any of the Products and/or Deliverables are created by SPROUT

at the specific request of the Client. The Client shall not have any rights over or to use the Products and/or Deliverables other than as expressly provided under this Agreement. To the extent that Intellectual Property Rights in the Products and/or Deliverables may not originally vest in SPROUT as contemplated under this Agreement, the Client hereby irrevocably assigns, transfers and conveys to SPROUT all Intellectual Property Rights, title and interest therein. The Client shall give SPROUT all reasonable assistance and execute all documents necessary to assist or enable SPROUT to perfect, preserve, register and record its rights in such Intellectual Property Rights.

7.2 SPROUT acknowledges that, as between SPROUT and the Client, the Client and its licensors own all Intellectual Property Rights in the Content. The Client shall be responsible:

7.2.1 for having all rights in the Content;

7.2.2 for ensuring that all the Client's employees, agents, contractors and customers have all rights to use and process the Content; and

7.2.3 for enabling SPROUT to have the right to use and process the Content; so that SPROUT can lawfully perform its obligations under this Agreement.

7.3 The Client hereby grants to SPROUT a royalty-free, worldwide, non-exclusive, assignable, sublicensable licence to use the Content for the purposes of performing this Agreement. Subject to anything else to the contrary in this Agreement, SPROUT shall not use the Content for any other purpose without the Client's express prior written consent.

7.4 SPROUT hereby grants to the Client a temporary non-exclusive licence to use the Products and/or Deliverables as are owned by SPROUT for the Client's own business purposes on the licence terms set out in the Project Dossier.

7.5 If either Party becomes aware of any improper or wrongful use of the Intellectual Property Rights owned or used by the other Party, that Party shall forthwith inform the other of such use. Each Party shall if requested assist the other Party (at the other Party's cost) in taking any steps in connection with the protection or defence of the Intellectual Property Rights owned or licensed by the other Party as the other Party may determine.

8. CONFIDENTIALITY

8.1 Each Party shall keep and procure to be kept secret and confidential the Confidential Information of the other Party and shall not use nor disclose the same save:

8.1.1 for the purposes of the proper performance of this Agreement; or

8.1.2 as otherwise permitted by this Agreement; or

8.1.3 with the prior written consent of the other Party.

8.2 Where one Party discloses Confidential Information of the other Party to its employee, consultant, subcontractor, supplier, customer, agent, professional adviser or insurer, it shall do so on a need-to-know basis and subject to obligations equivalent to those set out in this Clause 8. Each Party shall use all reasonable endeavours to ensure that any such employee, consultant, subcontractor, supplier, customer, agent, professional adviser or insurer complies with such obligations.

8.3 Each Party shall at all times:

8.3.1 adopt, retain and keep updated adequate procedures and physical security measures which protect the Confidential Information of the other Party from inadvertent disclosure or release to unauthorised persons; and

8.3.2 hold the Confidential Information of the other Party in strict confidence and in any event with no lesser standard of confidentiality than that which it applies to its own confidential information.

8.4 The obligations of confidentiality in this Clause 8 shall not extend to any matter which either Party can show:

8.4.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or

8.4.2 was in its written records prior to receipt; or

8.4.3 was independently developed by it; or

8.4.4 was independently disclosed to it by a third party entitled to disclose the same.

8.5 If either Party is required to disclose the Confidential Information of the other Party under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction, then the Party so required may disclose the Confidential Information to the extent required but shall, prior to any disclosure where practicable, give the other Party as much warning thereof as practicable and inform in writing and consult with the other Party and, at the other Party's request and cost, fully co-operate with and assist that other Party in opposing any such disclosure.

8.6 Neither Party shall make any announcement of any kind in respect of the subject matter of this Agreement except with the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) or as is required by law. The Parties shall act in a cooperative way in approving any announcement following the other Party's request for consent.

8.7 Subject to Clause 8.6, SPROUT may (for its marketing purposes including in any website, promotional material, pitch document or on social media) identify the Client as its client and the type of Services provided by SPROUT to the Client, provided that in doing so SPROUT shall not (without the Client's prior written consent) reveal any Confidential Information of the Client.

8.8 The obligations of this Clause 8 shall continue after termination or expiry of this Agreement for whatever reason.

9. DATA PROTECTION

9.1 In performing this Agreement, each Party shall:

9.1.1 comply with all applicable data protection legislation; and

9.1.2 procure that its employees, agents, consultants and contractors comply with all applicable data protection legislation.

9.2 The Parties agree and acknowledge that SPROUT may check on the creditworthiness of the Client from time to time.

10. LIMITATION OF LIABILITY

10.1 This Clause 10 prevails over all other Clauses and sets forth the entire Liability of each Party, and the sole and exclusive remedies of the other Party, in respect of:

10.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or of any goods or services in connection with this Agreement; or

10.1.2 otherwise in relation to this Agreement or entering into this Agreement.

10.2 Neither Party excludes or limits its Liability for:

10.2.1 its fraud; or

10.2.2 death or personal injury caused by its Negligence; or

10.2.3 any infringement of the other Party's or the other Party's licensor's Intellectual Property Rights or Confidential Information; or

10.2.4 any other Liability which cannot be excluded or limited by applicable law.

10.3 Subject to Clause 10.2, neither Party accepts Liability, and each Party hereby excludes Liability, for Negligence; other than any Liability arising pursuant to the terms of this Agreement.

10.4 Subject to Clauses 10.2 and 10.8, neither Party shall have Liability in respect of any:

10.4.1 indirect or consequential losses, damages, costs or expenses;

10.4.2 loss of actual or anticipated profits;

10.4.3 loss of contracts;

10.4.4 loss of use of money;

10.4.5 loss of anticipated savings;

10.4.6 loss of revenue;

10.4.7 loss of goodwill;

10.4.8 loss of reputation;

10.4.9 ex gratia payments;

10.4.10 loss of business;

10.4.11 loss of operation time;

10.4.12 loss of opportunity; or

10.4.13 loss of, damage to or corruption of, data;

whether or not such losses were reasonably foreseeable or the Party in default or its agents had been advised of the possibility of the other incurring such losses. For the avoidance of doubt, Clauses 10.4.2 to 10.4.13 apply whether such losses are direct, indirect, consequential or otherwise.

10.5 Subject to Clauses 10.2, the total aggregate Liability of each Party shall be limited to the greater of: (a) £300,000; or (b) 110% of the total sums paid and total other sums payable, in aggregate, by the Client to SPROUT under this Agreement, under this Agreement.

10.6 The limitation of Liability under Clause 10.5 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.

10.7 The Client acknowledges and accepts that SPROUT only provides Services and/or Products to it on the express condition that SPROUT will not be responsible for nor shall it have any Liability directly or indirectly for:

10.7.1 inaccuracies or errors in or omissions from any Content provided by the Client or its employees, agents, contractors or customers; or

10.7.2 any act or omission of the Client or its employees, agents, contractors or customers or any third party.

10.8 The Client shall not limit its Liability for failure to pay the Fees and expenses.

10.9 Subject to Clause 10.2, SPROUT shall have no Liability to the Client in respect of any losses suffered as a result of damage caused to any Products and/or Deliverables by virtue of malicious or exceptional misuse of the Products/Deliverables, including use or exposure of the Products and/or Deliverables to elements outside of the Client's usual course of business, as well as damage caused by general wear and tear to those Products unprotected from public use or as specifically excluded in the Project Dossier.

10.10 Except where expressly provided for within this Agreement, SPROUT excludes all conditions, warranties, terms and representations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Services or Products.

10.11 In this Agreement:

10.11.1 "Liability" means liability in or for breach of contract (including liability under any indemnity), tort (whether deliberate or not), Negligence, breach of statutory duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and for the purposes of this definition, all references to "this Agreement" shall be deemed to include any collateral contract); and

10.11.2 "Negligence" means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty).

11. FEES AND EXPENSES

11.1 In consideration for SPROUT providing the Products and/or the Services to the Client pursuant to this Agreement, the Client shall pay to SPROUT the Fees.

11.2 The Fees shall be as set out in the Project Dossier.

11.3 Where an advanced Fee is payable, delivery of the Products, performance of the Services and/or provision of Deliverables is conditional on SPROUT first receiving the advanced Fee in cleared funds in full from the Client.

11.4 Unless otherwise expressly stated within this Agreement, all Fees for the Services shall be chargeable on a time basis at the Rates for the time actually spent by SPROUT (and not for the time estimated to be provided). Unless otherwise stipulated in writing between the Parties, a "man day" shall be eight hours (including up to an hour for lunch); and SPROUT may round up to the nearest quarter of a man day. Time spent includes travel to and from SPROUT's place of business or home to any other site (including to the Client's premises).

11.5 SPROUT may charge the Client for its reasonable expenses incurred in the course of performing its obligations under this Agreement, including for the reasonable accommodation, travel (including air travel, taxis, own car use and vehicle rental), telephone, food, subsistence, out-of-pocket and other expenses incurred in the course of performing this Agreement outside of the relevant person's normal place of work. SPROUT shall maintain, and if reasonably requested by the Client make available to the Client, records of the expenses incurred.

11.6 Unless set out otherwise in this Agreement (including if the Project Dossier requires payment to be following certain milestones), SPROUT may issue invoices to the Client for the Fees and expenses monthly in arrears.

11.7 The Client shall pay SPROUT for all undisputed Fees and expenses:

11.7.1 for the advanced Fee upon receipt of the invoice for the advanced Fee and in any event in advance of delivery of the Products and/or receipt of the Services or Deliverables; and

11.7.2 for all other Fees, within 30 days after receipt of SPROUT's proper invoice for the Fees; and

11.7.3 for the expenses within 5 Business Days of the date of SPROUT's proper invoice.

11.8 If and to the extent there is a dispute as to the amount, the Client shall pay for all undisputed amounts.

11.9 SPROUT shall (where reasonably possible) provide vouchers and receipts for the expenses incurred, and such other information as the Client may reasonably require in order to ascertain the expenses due.

11.10 Where Services are provided on a time basis, SPROUT does not guarantee that any work intended to be completed within a particular period of time or within a particular maximum figure will be completed during that timeframe or within that budget; if the Client

would like SPROUT to spend any more time continuing to work towards producing a result where this Agreement contains a capped amount of time to be spent or a maximum amount within a range, any more time will be subject to the Parties first agreeing in writing to a new Agreement or to a change to this Agreement.

11.11 All sums due to SPROUT are exclusive of value added tax and other sales or import or export duties or taxes (if applicable) which the Client shall pay to SPROUT in addition at the same time as payment of the Fees and expenses.

11.12 The Client shall pay SPROUT by any payment method reasonably stipulated by SPROUT. No payment shall be considered paid until it is received by SPROUT in cleared funds in full.

11.13 Payment shall be in the currency in force in England from time to time or in such other currency as is stipulated for the Fees or Rates.

11.14 If the Client is late in paying any part of any undisputed monies due to SPROUT under this Agreement or any other agreement between the Parties, SPROUT may (without prejudice to any other right or remedy available to it whether under this Agreement or by any statute, regulation or bye-law) do either or both of the following:

11.14.1 charge interest and other charges on the amount due but unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly; and

11.14.2 suspend the performance of this Agreement and any other agreement between the Parties until payment in full has been made.

12. TERM AND TERMINATION

12.1 This Agreement shall commence when it becomes legally binding in accordance with Clause

2.6 and, unless terminated earlier pursuant to either Party exercising its right of termination under this Agreement, shall continue in force until the later of:

12.1.1 the Client has paid for all the Fees and expenses in full; and

12.1.2 SPROUT has delivered all the Products and/or finished providing the Services and Deliverables as are required by this Agreement.

12.2 Either Party may terminate this Agreement immediately by notice to the other Party if:

12.2.1 the other Party is in material breach of any of its obligations under this Agreement or any other agreement between the Parties which is incapable of remedy; or

12.2.2 the other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under this Agreement or any other agreement between the Parties after having been required in writing to remedy such breach within a period of no less than 30 days; or

12.2.3 the other Party is in persistent breach of any of its obligations under this Agreement or any other agreement between the Parties; or

12.2.4 the other Party gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.

12.3 For the purposes of Clause 12.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to time to the reasonable satisfaction of the other Party.

12.4 SPROUT may terminate this Agreement immediately by notice to the Client if the Client is at least five Business Days' late in paying any undisputed sums due under this Agreement or any other agreement between the Parties and SPROUT has then given to the Client at least a further five Business Days' notice requiring the Client to pay in full within such five Business Day (or, if SPROUT desires, longer) period failing which SPROUT may exercise its right to terminate under this Clause 12.4.

12.5 Termination or expiry of this Agreement shall be without prejudice to any accrued rights or remedies of either Party.

12.6 Termination or expiry of this Agreement will not affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

12.7 Upon termination of this Agreement or earlier termination pursuant to either Party exercising its right of termination under this Agreement for any reason, the owner of Confidential Information may at its option require the other Party to delete promptly all Confidential Information belonging to the Party requiring the action from any computer disks, tapes or other material in its possession or under its control or promptly deliver up or destroy materials and tangible items in its possession or under its control which contain any such Confidential Information. The owner of Confidential Information may require the other Party to provide a written declaration, signed by an officer or other authorised individual stating that there has been full compliance with this Clause 12.7.

12.8 Upon early termination pursuant to either Party exercising its right of termination under this Agreement for any reason:

12.8.1 SPROUT shall cease to perform this Agreement;

12.8.2 all outstanding Fees and expenses for Products, Services or Deliverables provided or in the process of being created for delivery shall become immediately payable, whether invoiced or not (except to the extent otherwise expressly stated in this Agreement); and

12.8.3 subject to SPROUT having been paid in full for all Fees and expenses, SPROUT shall deliver up to the Client all Deliverables capable of delivery made to date.

13. FORCE MAJEURE

13.1 Neither Party shall have any Liability for any breach, hindrance or delay in performance of its obligations under this Agreement which is caused by circumstances beyond its reasonable control including any act of God, actions or omissions of third parties not in the same group as the party seeking to rely on this Clause (including hackers, suppliers, couriers, governments, quasi-governmental, supra-national or local authorities), insurrection, riot, civil war, civil commotion, war, hostilities, threat of war, warlike operations, armed conflict, imposition of sanctions, embargo, seizure or forfeiture, breaking off of diplomatic relations or similar actions, national emergencies, terrorism, nuclear, chemical or biological contamination or sonic boom, piracy, arrests, restraints or detentions of any competent authority, blockade, strikes or combinations or lock-out of workmen, unusual traffic volumes, unusual travel restrictions, epidemic, fire, explosion, storm, flood, drought, adverse weather conditions (including cold, heat, wind, rain, snow, ice or fog), loss at sea, earthquake, volcano, ash cloud, natural disaster, accident, mechanical breakdown, third party software, collapse of building structures, failure of machinery (other than used by the relevant Party) or third party computers or third party hardware or vehicles, failure or problems with public utility supplies (including general: electrical, telecoms, water, gas, postal, courier, communications or Internet disruption or failure), shortage of or delay in or inability to obtain supplies, stocks, storage, materials, equipment or transportation ("Event of Force Majeure"), regardless of whether the circumstances in question could have been foreseen.

13.2 Each Party agrees to inform the other Party upon becoming aware of an Event of Force Majeure, giving details of the circumstances giving rise to the Event of Force Majeure.

13.3 The performance of each Party's obligations shall be suspended during the period

that the circumstances persist and the Party subject to the Event of Force Majeure shall be granted an extension of time for performance equal to the period of the delay.

13.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.

13.5 If performance of any obligations are delayed under this Clause 13, each Party shall nevertheless accept performance as and when the other shall be able to perform.

13.6 If the Event of Force Majeure continues without a break for more than three months, either Party may terminate this Agreement immediately by notice to the other Party, in which event neither Party shall have any Liability by reason of such termination.

13.7 If SPROUT has contracted to provide identical or similar services or materials to more than one client and is prevented from fully meeting its obligations to the Client by reason of an Event of Force Majeure, SPROUT may decide at its absolute discretion which contracts it will perform and to what extent.

14. NOTICES

14.1 Any notice required or authorised to be given under this Agreement shall be in writing and shall be despatched by recorded delivery post or by overnight commercially recognisable courier addressed to the relevant Party at its address stated in this Agreement or at such other address as is notified by the relevant Party to the other for this purpose from time to time or at the address of the relevant Party last known to the other Party.

14.2 Any notice so given by recorded delivery post or by overnight commercially recognisable courier shall be deemed to have been served two Business Days after the same shall have been despatched by recorded delivery post or by overnight commercially recognisable courier, and in proving such service it shall be sufficient to prove that the letter was properly addressed and despatched.

15. ASSIGNMENT

15.1 SPROUT may assign, transfer, novate or subcontract its rights, liabilities or obligations under this Agreement either in whole or in part to any other person, firm or company.

15.2 The Client shall not (or purport to) assign, sub-license, transfer, novate, charge or otherwise encumber, create any trust over or deal in any manner with this Agreement or any of its rights, liabilities or obligations under this Agreement without the prior written consent of SPROUT (such consent not to be unreasonably withheld or delayed).

16. GENERAL

16.1 Unless a Party expressly states in writing that it is waiving a particular power, right or remedy in a particular stated instance, no failure or delay or omission by that Party in exercising any power, right or remedy under this Agreement or at law shall operate as a waiver of such power, right or remedy; and no waiver in any particular instance shall extend to or affect any other or subsequent event or impair any powers, rights or remedies in respect of it or in any way modify or diminish that Party's other powers, rights or remedies under this Agreement or at law.

16.2 If any Clause or other provision in this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other Clause or provision or part of any Clause or provision, all of which shall remain in full force and effect.

16.3 Nothing in this Agreement shall create or be deemed to create a partnership, an agency or a relationship of employer and employee between the Parties.

16.4 A person who is not a Party to this Agreement has no rights under any law to enforce any term of this Agreement.

16.5 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 English law. Each Party irrevocably agrees that the English courts 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). All dealings, correspondence and contacts between the Parties shall be made or conducted in English.

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