

Consultancy, Marketing, Design and Development

Terms and Conditions

KALEIDOKO LIMITED, a company registered in England and Wales with registered number 10869378, whose registered office is at 20-22 Wenlock Road, London N1 7GU, United Kingdom (“Kaleidoko”);

These Terms and Conditions contain the terms and conditions upon which we provide our services. We will ask you to agree to one or more Statements of Work incorporating these Terms and Conditions before we begin working with you.

1 Definitions

1.1 Except to the extent expressly provided otherwise, in this Agreement:

“**Acceptance Criteria**” means compliance with the warranties set out in Clause [6.4];

“**Affiliate**” means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

“**Agreement**” means the agreement between the parties consisting of:

- (a) these Terms and Conditions;
- (b) any Statements of Work agreed between the parties;
- (c) the Schedules to these Terms and Conditions insofar as applied by a Statement of Work; and
- (d) any amendments to the Agreement from time to time;

“**Assigned Deliverables**” means those Deliverables in their complete delivered final form (excluding Third-Party Materials, Provider Materials, Client Materials and Preparatory Materials) the rights in which are to be assigned (rather than licensed) by Kaleidoko to the Client under Clause [9], as specified in the Statement of Work;

“**Business Day**” means any weekday other than a bank or public holiday in England;

“**Business Hours**” means the hours of 09:00 to 17:30 GMT/BST on a Business Day;

“**Charges**” means the following amounts:

- (a) the amounts specified in the Statement of Work;
- (b) such amounts as may be agreed in writing by the parties from time to time; and
- (c) amounts calculated by multiplying Kaleidoko’s standard time-based charging rates (as notified by Kaleidoko to the Client before the date of this Agreement) by the time spent by Kaleidoko’s personnel performing the Services (rounded up by Kaleidoko to the nearest quarter hour);

“**Client**” means the customer of Kaleidoko, whether firm or person for whom the Services are requested by, and specified as such in the Statement of Work;

“**Client Confidential Information**” means:

- (a) any information disclosed by, or on behalf of, the Client to Kaleidoko during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as “confidential” or should have been understood by Kaleidoko (acting reasonably) to be confidential; and
- (b) the terms of this Agreement;

“**Client Indemnity Event**” has the meaning given to it in Clause [18.3];

“**Client Materials**” means all works and materials supplied by or on behalf of the Client to Kaleidoko for incorporation into the Deliverables or for some other use in connection with the Services;

“**Confidential Information**” means Kaleidoko Confidential Information and the Client Confidential Information;

“**Control**” means the legal power to control (directly or indirectly) the management of an entity (and “**Controlled**” should be construed accordingly);

“**Deliverables**” means those Consultancy Deliverables, Marketing Deliverables, Creative Deliverables, Development Deliverables (as defined in the Schedules) and specified in the Statement of Work that Kaleidoko has agreed to deliver to the Client under this Agreement;

“**Effective Date**” means the date of execution of this Agreement as specified in the Statement of Work;

“Expenses” means the reasonable incidental expenses including (but not limited to) travel, accommodation, subsistence and any associated expenses that are reasonably necessary for, and incurred by Kaleidoko exclusively in connection with, the performance of Kaleidoko’s obligations under this Agreement;

“Final Proof” means the final Deliverable for the Client to review and approve and is to be used solely for the purpose of verifying that the proposed changes in response to the Initial Proof have been correctly implemented in accordance with the Acceptance Criteria;

“Force Majeure Event” means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, cancellations and/or industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“Initial Proof” means the initial draft document, proposals, proofs, plans, designs, Preparatory Materials or other form of the Deliverable for the Client to review and approve in accordance with the Acceptance Criteria;

“Intellectual Property Rights” means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these “intellectual property rights” include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

“Licensed Deliverables” means the Deliverables in their complete delivered final form excluding the Assigned Deliverables, the Provider Materials, the Third-Party Materials, the Client Materials and the Preparatory Materials;

“Materials” means the goods, works, services and/or materials comprised in the Deliverables including Provider Materials and Third-Party Materials (but excluding Client Materials), whether purchased, obtained or licensed before or after the signing of this Agreement, for the purpose of providing Services to the Client under the Agreement and specified in the Statement of Work; or which the parties agree in writing shall be incorporated into the Deliverables;

“Minimum Term” means, in respect of this Agreement, the period of twelve (12) months beginning on the Effective Date, or the period of time as specified in the Statement of Work;

“Order” means the order placed by the Client confirming the engagement through counter-signing Kaleidoko’s Statement of Work as part of the Agreement or any request/s by the Client for Kaleidoko to provide Services in accordance with Clause [3.2];

“Permitted Purpose” means the provision of Deliverables and/or Services under this Agreement;

“Personal Data” has the meaning given to it in the Data Protection Act 1998;

“Preparatory Materials” means the original preparatory development materials that have been captured, developed, written, drawn, prepared, processed and/or produced in verbal, hard copy or electronic form by Kaleidoko during the creation and/or production of the Deliverables (excluding Client Materials, Provider Materials, Third-Party Materials, Assigned Deliverables and Licensed Deliverables) and may be used in connection with the Services (whether captured, developed, written, drawn, prepared, processed and/or produced before or after the signing of this Agreement), including (but not limited to) any sketches, concepts, source files, photographic originals, negatives, transparencies, video footage, audio recordings, copywriting, research, interviews, presentations, functional specifications, notations, flow charts, processes, software, data, source code and object code (whether in human readable or machine readable form) or any material of an anomalous nature, the rights in which are assigned to Kaleidoko in accordance with Clause [9.4];

“Proposal” means the initial written value proposition prepared by Kaleidoko which contains its proposals for providing Services to the Client that only becomes an Order when combined with counter-signing Kaleidoko’s Statement of Work as part of the Agreement in accordance with Clause [10.2];

“Provider” means Kaleidoko, including any personnel, employees, officers, consultants or sub-contractors, the details of which are specified in the Statement of Work;

“Provider Confidential Information” means:

- (a) any information disclosed by or on behalf of Kaleidoko to the Client during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked or described as “confidential” or should have been understood by the Client (acting reasonably) to be confidential; and
- (b) the terms of this Agreement;

“Provider Indemnity Event” has the meaning given to it in Clause [18.1];

“Provider Materials” means all works developed, written or prepared by Kaleidoko outside of the Deliverables (excluding Preparatory Materials) that form the foundation on which Kaleidoko serves all of its clients (whether in verbal, hard copy or electronic form), and may be used in connection with the Services (whether developed, written or prepared before or after the signing of this Agreement) including (but not limited to) records, reports, studies, papers, diagrams, charts, artworks, drawings, graphics, illustrations, photos, audio, videos, presentations, objects, items, concepts, data, models, algorithms, specifications, software, processes, templates, systems, innovations, inventions, ideas, discoveries, manuals, instructions, working papers and other documents, the rights in which are to be licensed (rather than assigned) by Kaleidoko to the Client in accordance with Clause [9.3];

“Purchase Order” means any commercial document or purchase order (“PO”) sent from the Client to Kaleidoko agreeing Charges for Services and/or Deliverables that shall constitute an Order in accordance with Clause [3.2];

“Schedule” means any schedule attached to the main body of this Agreement;

“Services” means those Consultancy Services, Marketing Services, Creative Services and Development Services (as defined in the Schedules) and/or White Label Services that Kaleidoko has supplied, or will supply, to the Client under the Agreement and specified in the Statement of Work;

“Statement of Work” means the statements of work signed by each of the parties specifying the scope of the Services, the Deliverables, the Charges and other matters relating to the Agreement;

“Term” means the term of this Agreement, commencing in accordance with Clause [2.1] and ending in accordance with Clause [2.4];

“Third-Party Materials” means the goods, works, services and/or materials comprised in the Deliverables at the option of Kaleidoko (excluding Provider Materials, Preparatory Materials and Client Materials) as being provided by a third party, the Intellectual Property Rights in which are owned in whole or part by a third party, and which are specified in the Statement of Work; or which the parties agree in writing shall be incorporated into the Deliverables; and

“White Label Services” means services provided by Kaleidoko to a Client who rebrands these services as their own for the benefit of their client.

2 Term

- 2.1 This Agreement shall come into force upon the Effective Date.
- 2.2 This Agreement shall continue in force until the acceptance of the Deliverables in accordance with Clause [7], subject to termination in accordance with Clause [21].
- 2.3 This Agreement shall apply to all agreements concluded between Kaleidoko and the Client to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 This Agreement may only be varied by express written agreement between Kaleidoko and the Client, including (but not limited to) a refined definition in the Statement of Work.

3 Contractual Agreement

- 3.1 The Order constitutes the confirmation by the Client to purchase the Services in accordance with this Agreement. The Client shall ensure that the terms of this Agreement are complete and accurate.
- 3.2 The Order shall only be deemed to be accepted when Kaleidoko receives a counter-signed Statement of Work, or when Kaleidoko has started to provide the Services having received either an approval of a Proposal from the Client in written or electronic form, including but not limited to, a Purchase Order from the Client or any other request/s by the Client for Kaleidoko to provide Services that shall ordinarily incur Charges, whichever happens first, at which point this Agreement shall come into existence.
- 3.3 All Terms and Conditions stated within this document are deemed acceptable to the Client upon receipt of a confirmed Order or instruction to proceed given by any means in accordance with Clause [3.2].
- 3.4 The Order constitutes the entire agreement between Kaleidoko to provide the Services to the Client and for the Client to purchase those Services, in accordance with this Agreement.
- 3.5 The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Kaleidoko which is not set out in this Agreement. Any samples, drawings, descriptive matter, or advertising issued by Kaleidoko and any descriptions or illustrations contained in Kaleidoko's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of this Agreement or any other contract or agreement between Kaleidoko and the Client for the supply of Services.
- 3.6 A Proposal for the supply of Services given by Kaleidoko shall not constitute an offer. A Proposal shall only be valid for a period of 14 Business Days from its date of issue and subject to the provisions under Clause [10].
- 3.7 For any White Label Services the Client understands and agrees that Kaleidoko have no contractual relationship and therefore no liability in respect of the ultimate client with whom the Client agrees to perform the White Label Services for.
- 3.8 Where there is any conflict between the Proposal and the Statement of Work, the Statement of Work shall take priority over the Proposal. Where such a conflict arises, Kaleidoko is under no obligation under this Agreement to satisfy all conditions set forth in the Proposal as part of Deliverables.

4 Services

- 4.1 Kaleidoko shall provide the Services to the Client in accordance with this Agreement.
- 4.2 Kaleidoko shall provide the Services with reasonable skill and care.
- 4.3 Kaleidoko shall devote such of its personnel's time and expertise to the performance of the Services as may be necessary for their satisfactory and timely completion.
- 4.4 Kaleidoko shall keep the Client informed about the progress of the Services and, in particular, shall promptly provide information about such progress following receipt of a written request from the Client to do so.
- 4.5 Kaleidoko shall comply with all reasonable requests and directions of the Client in relation to the Services.
- 4.6 Kaleidoko shall comply with all reasonable internal policies and procedures operated by the Client, communicated by the Client to Kaleidoko and affecting the provision of the Services.
- 4.7 Kaleidoko shall have the right to make any changes to the Services which are necessary to comply with any applicable law.
- 4.8 Kaleidoko shall be free to provide its Services to third parties whether during or following the provision of the Services to the Client.

5 Client obligations

- 5.1 Kaleidoko's ability to perform its obligations under this Agreement is dependent on the Client fulfilling its obligations, as described in this Agreement and the Statement of Work. Kaleidoko shall not be liable for any costs, charges or losses sustained by the Client that arise from any Client's delay in fulfilling or failure to fulfil its obligations under this Agreement.
- 5.2 The Client is responsible for providing, and will promptly following receipt of a written request from Kaleidoko to do so, provide to Kaleidoko such:
- (a) assistance and co-operation;
 - (b) information and documentation, including access to background research to date;
 - (c) access to the premises and work-space on-site, including workshop space, telephones, computers and networks of the Client;
 - (d) all print-outs and hard copies of materials requested;
 - (e) workshop materials, including but not limited, to post it flip charts, post it notes, index cards, markers, pens;
 - (f) access to employees, partners and key stakeholders;
 - (g) support in scheduling if/as needed;
 - (h) feedback on work in accordance with the timeline agreed upon;
 - (i) a billing or finance contact to ensure timely payments; and
 - (j) legal, accountancy and taxation advice if/as needed,
- as is reasonably requested by Kaleidoko for the purpose of enabling Kaleidoko to perform its obligations under this Agreement.
- 5.3 The Client shall be responsible for procuring any third-party co-operation reasonably required by Kaleidoko to enable Kaleidoko to perform its obligations under this Agreement.
- 5.4 The Client shall have sole responsibility for ensuring the accuracy of all information provided to Kaleidoko and warrants and undertakes Kaleidoko that the Client's employees assisting in the execution of an Order have the necessary skills and authority.
- 5.5 As standard across the Services and unless otherwise notified, the Client shall be obliged as quickly as possible, exclusively responsible, and within the agreed deadline to implement changes, including (without limitation) on websites, social media, in IT systems or where it may otherwise be required by or recommended by Kaleidoko.
- 5.6 The Client shall be obliged to inform Kaleidoko immediately of changes of corporate guidelines, naming conventions, technical setup and any other material information regarding the business or technical infrastructure which may affect the Services delivered by Kaleidoko.

6 Deliverables

- 6.1 Kaleidoko shall deliver the Deliverables to the Client.
- 6.2 The Client must promptly, following receipt of a written request from Kaleidoko to do so, provide written feedback to Kaleidoko concerning Kaleidoko's proposals, proofs, plans, designs and/or Preparatory Materials relating to the Deliverables and made available to the Client with that written request.
- 6.3 Kaleidoko shall use reasonable endeavours to ensure that the Deliverables are delivered to the Client in accordance with the timetable set out in the Statement of Work. Kaleidoko will do everything possible to meet specific timelines, providing there is clear communication, prompt payment and regular feedback from the Client.
- 6.4 Kaleidoko warrants to the Client that:
- (a) the Deliverables (including the Initial Proof and the Final Proof) will conform with the requirements of the Statement of Work; as at the date of acceptance of the Deliverables;
 - (b) the Deliverables will be free from material defects; and
 - (c) the Deliverables, when used by the Client in accordance with this Agreement, will not infringe the Intellectual Property Rights of any person, nor breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- 6.5 The Deliverables will be retained for up to twelve (12) months only and will then be disposed of, deleted or erased. If at the end of twelve (12) months, Services have not been paid for, Kaleidoko reserves the right to dispose of all Preparatory Materials and Deliverables.

7 Acceptance

- 7.1 Kaleidoko will provide the Client with one (1) Initial Proof of the Deliverable.
- 7.2 Within ten (10) Business Days following the delivery of the Initial Proof to the Client, the Client shall:
- (a) test or review the Initial Proof to determine whether they comply with the Acceptance Criteria; and
 - (b) notify Kaleidoko in writing of the results of such test or review, providing full details of any non-compliance with the Acceptance Criteria.
- 7.3 If the Initial Proof does not comply with the Acceptance Criteria and the Client notifies Kaleidoko of the non-compliance in accordance with this Clause [7], Kaleidoko will have a further reasonable period agreed by the parties (of no less than five (5) Business Days and no more than twenty (20) Business Days) to remedy the non-compliance.
- 7.4 If the Initial Proof does not meet the Acceptance Criteria at the time of a second (or subsequent) round of acceptance tests or reviews under this Clause [7], then Kaleidoko shall be deemed to be in irremediable material breach of this Agreement.

- 7.5 Once the proposed changes to the Initial Proof have been made, Kaleidoko will provide the Client with a Final Proof. Any request by the Client for substantial deviation from the Statement of Work will result in additional charges.
- 7.6 Within five (5) Business Days following the delivery of the Final Proof to the Client, the Client shall:
- (a) test or review the Final Proof to determine whether the requests following the Initial Proof have been addressed,
 - (b) confirm all changes requested comply with the Acceptance Criteria; and
 - (b) notify Kaleidoko in writing of the results of such test or review, providing full details of any non-compliance with the Acceptance Criteria.
- 7.7 No new changes to the Final Proof or the Deliverable may be requested unless the Client purchases another variation. The Client acknowledges that some changes may not be possible.
- 7.8 If the Client does not give to Kaleidoko a notice under Clauses [7.2] or [7.6], within the period referred to in Clauses [7.2] or [7.6], then the Deliverables shall be deemed to meet the Acceptance Criteria and Kaleidoko may refuse to make any further changes.
- 7.9 If the Client accepts or is deemed to accept the Deliverables under this Clause [7], then subject to Clause [19.1] the Client will have no right to make any claim under or otherwise rely upon Clause [6.4] unless the Client could not reasonably have been expected to have identified the breach of that provision during the testing or review process.

8 Client Materials

- 8.1 The Client must supply to Kaleidoko the Client Materials specified in the Statement of Work.
- 8.2 The Client will fulfil its obligations under Clause [8.1] in accordance with the timetable specified in the Statement of Work; or, if no timetable is set out, promptly following the receipt of a written request for the relevant Client Materials from Kaleidoko.
- 8.3 The Client hereby grants to Kaleidoko a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Client Materials for the purposes of performing the Services and creating the Deliverables, to the extent reasonably required for the performance of Kaleidoko's obligations and the exercise of Kaleidoko's rights under this Agreement, together with the right to sub-license these rights to the extent reasonably required for the performance of Kaleidoko's obligations and the exercise of Kaleidoko's rights under this Agreement.
- 8.4 The Client shall be responsible for insuring Client Materials delivered to Kaleidoko and Kaleidoko shall not be liable to any loss or damage thereto while the same is in its possession or control.
- 8.5 The Client shall be responsible for collecting Client Materials submitted to Kaleidoko for the purposes of the Services. Kaleidoko shall accept no responsibility for any such items which remain unclaimed by the Client more than twelve (12) months after they were last used in Deliverables.
- 8.6 The Client warrants to Kaleidoko that the Client Materials;
- (a) will not infringe the Intellectual Property Rights or other legal rights of any person,
 - (b) have ensured the relevant and necessary permission is obtained from the original copyright holder and/or material owner,
 - (c) will not breach the provisions of any law, statute or regulation, and
 - (d) will not give rise to a cause of action against any person,
- in each case in any jurisdiction and under any applicable law.
- 8.7 Where Kaleidoko reasonably suspects that there has been a breach of the provisions of this Clause [8.6], Kaleidoko may suspend any or all of the Services while it investigates the matter.
- 8.8 Any breach by the Client of Clause [8.6] will be deemed to be a material breach of the Agreement for the purposes of Clause [21].

9 Intellectual Property Rights

- 9.1 Kaleidoko hereby:
- (a) assigns to the Client all of its Intellectual Property Rights in the Assigned Deliverables, whether those Intellectual Property Rights exist on the Effective Date or come into existence during the Term, excluding the Intellectual Property Rights in the Client Materials, Provider Materials, Preparatory Materials and Third-Party Materials; this assignment is for the full term of the assigned rights, including all extensions, renewals, reversions and revivals, and includes the right to bring proceedings for past infringements of the assigned rights; and
 - (b) grants to the Client a non-exclusive, worldwide, perpetual and irrevocable licence to copy, store, distribute, publish, adapt, edit and otherwise use the Licensed Deliverables (excluding Client Materials, Provider Materials, Preparatory Materials and Third-Party Materials),
- as defined in the Schedules.
- 9.2 Kaleidoko shall ensure (as far as is reasonably possible) that the Third-Party Materials are:
- (a) licensed to the Client in accordance with the relevant licensor's standard licensing terms;
 - (b) licensed to the Client on reasonable terms notified by Kaleidoko to the Client;
 - (c) sub-licensed by Kaleidoko to the Client on reasonable terms notified in writing by Kaleidoko to the Client; and/or
 - (d) sub-licensed by Kaleidoko to the Client on the basis of a non-exclusive, worldwide, perpetual and irrevocable licence to use the Third-Party Materials in connection with the Deliverables,
- as determined by Kaleidoko and subject to any ongoing renewal costs as determined by the third party.

- 9.3 All Intellectual Property Rights in the Provider Materials will, as between the parties, be the property of Kaleidoko during the production of any Deliverables and Kaleidoko asserts its full rights as copyright owner of all material in the Provider Materials, whether or not such material forms part of the Deliverables. From the date of acceptance of the Deliverables by the Client, Kaleidoko grants to the Client a non-exclusive worldwide licence to use the Provider Materials in connection with the Deliverables, subject always to the other terms of the Agreement, and providing the Client must not:
- (a) represent the Provider Materials as their own in any way whatsoever;
 - (b) sell, resell, rent, lease, supply, distribute or redistribute the Provider Materials;
 - (c) use the Provider Materials in connection with any promotion, advertising, marketing, website, application, script, program, software or any commissioned project (other than the Deliverables); or
 - (d) alter, adapt or edit the Provider Materials, including acknowledgements to Kaleidoko,
 - (e) make any financial gain, directly or indirectly, from the Provider Materials,
- and the Client may only sub-license the rights licensed under this Paragraph for the limited purposes, and subject to the express restrictions, specified in this Clause [9.3].
- 9.4 All Intellectual Property Rights in the Preparatory Materials will, as between the parties, be the property of Kaleidoko, whether those Intellectual Property Rights exist on the Effective Date or come into existence during the Term, and Kaleidoko asserts its full rights as copyright owner of all material in the Preparatory Materials, whether or not such material forms part of the Deliverables. Kaleidoko retains the right to use any of Preparatory Materials for any legal purpose, including its use within projects for other clients unless:
- (a) Kaleidoko has granted an exclusive licence to any Client, or
 - (b) the material contains trademarks or specific intellectual or imagery copyrighted by the Client, or
 - (c) the material contains any Client Materials with/or without Third-Party Materials.
- and expressly written in the Statement of Work.
- 9.5 To the maximum extent permitted by applicable law:
- (a) Kaleidoko irrevocably and unconditionally waives all moral rights (including rights of paternity and rights of integrity) in respect of the Deliverables (excluding Provider Materials and Preparatory Materials) to which Kaleidoko may at any time be entitled; and
 - (b) Kaleidoko undertakes to ensure that all individuals involved in the preparation of the Deliverables (excluding Provider Materials and Preparatory Materials) will irrevocably and unconditionally waive all moral rights (including rights of paternity and rights of integrity) in respect of the Deliverables to which they may at any time be entitled.
- 9.6 Kaleidoko must use reasonable endeavours to:
- (a) do or procure the doing of all acts; and
 - (b) execute or procure the execution of all documents,
- that the Client may reasonably request from time to time in order to perfect or confirm the Client's ownership of the rights assigned by this Agreement.
- 9.7 Kaleidoko warrants that the Deliverables (excluding the Client Materials) will not infringe the Intellectual Property Rights of any third party in as far as is reasonably possible.
- 9.8 The Deliverables including all Intellectual Property Rights remain the property of Kaleidoko until full payment is made for the Services.

10 Charges

- 10.1 The Client shall pay the Charges to Kaleidoko in accordance with this Agreement as set out in the applicable Statement of Work.
- 10.2 The price and duration stated in the Proposal and/or Statement of Work shall be an estimate based on a qualified estimate of the number of hours and Materials required to provide the Services. This is an estimate only and Services shall be invoiced in accordance with the actual number of hours spent and Materials used in accordance with the price set out in the Statement of Work and in the event that the price is not so stipulated, the Client shall be charged at the hourly rate specified in the Kaleidoko's then current rate card plus any additional Materials. Kaleidoko shall be obliged to update the estimate and budgets on an ongoing basis following, among other things, changes made to this Agreement.
- 10.3 If the Charges are based in whole or part upon the time spent by Kaleidoko performing the Services, Kaleidoko must obtain the Client's written consent before performing Services that result in any estimate of time-based Charges given to the Client being exceeded or any budget for time-based Charges agreed by the parties being exceeded. An Order will be deemed as understanding by the Client that they shall be liable to pay to Kaleidoko any Charges in respect of Services performed in Clause [10.2].
- 10.4 If the Charges are based in whole or part upon Materials used by Kaleidoko performing the Services ("**Material Charges**"), Kaleidoko must obtain the Client's written consent before performing Services that result in any estimate of Material Charges given to the Client being exceeded or any budget for Material Charges agreed by the parties being exceeded; and unless the Client agrees otherwise in writing. An Order will be deemed as understanding by the Client that they shall be liable to pay to Kaleidoko any Material Charges in respect of Services performed in Clause [10.2].
- 10.5 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated in Pounds Sterling and shall be exclusive of any applicable value added taxes, unless the context requires otherwise. VAT will be payable by the Client to Kaleidoko in addition to those principal amounts. In the event that duties are introduced or changed after the conclusion of an Order, Kaleidoko shall be entitled to adjust the agreed prices accordingly.

- 10.6 Whilst every effort is made to ensure that costing estimates in the Proposal and/or Statement of Work are accurate, Kaleidoko reserves the right to amend any Proposal and/or Statement of Work, should an error or omission have been made. Where such changes are required or necessary, notification in accordance with Clauses [10.3] and [10.4] come into effect.
- 10.7 Kaleidoko may elect to vary any element of the Charges (including any hourly rate and/or Material Charges) by giving to the Client not less than ten (10) Business Days' written notice of the variation expiring on any anniversary of the date of execution of this Agreement.
- 10.8 In the event that the Services cannot be delivered either in full or in part due to the Client's failure to assist or delay in assisting in the execution of this Agreement, Kaleidoko shall be entitled to charge to the Client an estimated amount, corresponding to the amount that would have been due had the Services been rendered in accordance with the Statement of Work. Kaleidoko shall be entitled to payment on the basis of Kaleidoko's then current rate card for any additional work (including time, Materials and/or Expenses) required because of the Client's failure to assist or delay in assisting.
- 10.9 Where the Client suspends Services for a period of time for any reason whatsoever, including (but not limited to) Clause [8.7], Kaleidoko reserves the right to issue invoices for the Charges incurred prior to the notice of suspension. Kaleidoko shall be entitled to payment on the basis of Kaleidoko's then current rate card for any additional work (including time, Materials and/or Expenses) required because of the Client's suspension.
- 10.10 If the Client requires Kaleidoko to complete the work within a shorter time frame than specified in the Statement of Work, or in the case of Clauses [10.8] and [10.9] to complete the work within the same time frame as specified in the Statement of Work, Kaleidoko reserves the right to charge additional monies to prioritise such projects ahead of pre-planned work, operations, services and/or deliverables for themselves or other clients.

11 Expenses

- 11.1 The Client shall reimburse Kaleidoko in respect of any Expenses, providing that Kaleidoko must obtain the prior written authorisation of the Client before incurring any Expenses exceeding such limitations as may be agreed in writing by the parties from time to time.
- 11.2 Kaleidoko must collect and collate evidence of all Expenses, and must retain such evidence during the Term and for a period of ninety (90) days following the end of the Term.
- 11.3 Within ten (10) Business Days following receipt of a written request from the Client to do so, Kaleidoko must supply to the Client such copies of the evidence for the Expenses in the possession or control of Kaleidoko as the Client may specify in that written request.

12 Payments

- 12.1 Kaleidoko shall issue invoices for the Charges to the Client from time to time during the Term in accordance with the provisions of the Schedules and Statements of Work.
- 12.2 The Client must pay the Charges to Kaleidoko
- (a) on or before the dates set out in the relevant Schedules or Statements of Work; or
 - (b) where no such dates are set out in the relevant Schedules or Statements of Work, within the period of fourteen (14) days following the issue of an invoice in accordance with this Clause [12].
- 12.3 The Client must pay the Charges by debit card, credit card, direct debit, BACS, CHAPS, bank transfer or cheque (using such payment details as are notified by Kaleidoko to the Client from time to time).
- 12.4 The Client shall pay all amounts due under this Agreement in full in UK Sterling without any deduction (including, without limitation, any bank transference fees or currency exchange rate amendments), or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against Kaleidoko in order to justify withholding payment of any such amount in whole or in part. Kaleidoko may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Kaleidoko to the Client.
- 12.5 If the Client does not pay any amount properly due to Kaleidoko under this Agreement, Kaleidoko may:
- (a) charge the Client interest on the overdue amount at the rate of eight percent (8%) per annum above the Bank of England base rate from time to time, or ten percent (10%) of the total amount outstanding, whichever is greater, (which interest will accrue daily until the date of actual payment and be compounded at the end of each calendar month); or
 - (b) claim interest and statutory compensation from the Client pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
 - (c) at discretion, charge a fee of £25 (to cover administrative expenses and not as a penalty) per reminder for overdue payment submitted to the Client and shall be entitled to submit such reminders on a weekly basis once the fees have become overdue.
 - (d) expressly reserve all rights at all times to bring any legal action it considers appropriate to recover any unpaid sums, in which case the Client shall be responsible for all collection, service or legal fees necessitated by late or default in payment and Kaleidoko shall be entitled to recover all associated costs to recover its costs of enforcement.
- 12.6 Kaleidoko reserves the right to request and receive full payment prior to acceptance of an Order if, in the opinion of Kaleidoko, the credit-worthiness of the Client is not satisfactory, or the Client has not paid previous invoices within Kaleidoko's usual credit terms. Furthermore, if at any time in the opinion of Kaleidoko the credit-worthiness of the Client shall have deteriorated prior to performance by Kaleidoko of any Services Kaleidoko may require full or partial payment of the fees prior to such supply, or the provision of security for payment for the Client in a form acceptable to Kaleidoko.
- 12.7 Without prejudice to its other rights under the Agreement, Kaleidoko may suspend the provision of any or all of the Services if the Client fails to pay by the due date any amount due to Kaleidoko under the Agreement.

12.8 Where payment has not been made in full by the Client, Kaleidoko is under no obligation to hand over any Materials or Deliverables, including but not limited to, any files, system logins or Third-Party Materials and the same shall remain the property of Kaleidoko in accordance with Clause [9.8].

13 Confidentiality obligations

13.1 Kaleidoko must:

- (a) keep the Client Confidential Information strictly confidential;
- (b) not disclose the Client Confidential Information to any person without the Client's prior written consent, and then only under conditions of confidentiality no less onerous than those contained in this Agreement;
- (c) use the same degree of care to protect the confidentiality of the Client Confidential Information as Kaleidoko uses to protect Kaleidoko's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Client Confidential Information; and
- (e) not use any of the Client Confidential Information for any purpose other than the Permitted Purpose.

13.2 The Client must:

- (a) keep the Provider Confidential Information strictly confidential;
- (b) not disclose the Provider Confidential Information to any person without Kaleidoko's prior written consent, and then only under conditions of confidentiality approved in writing by Kaleidoko;
- (c) use the same degree of care to protect the confidentiality of the Provider Confidential Information as the Client uses to protect the Client's own confidential information of a similar nature, being at least a reasonable degree of care;
- (d) act in good faith at all times in relation to the Provider Confidential Information; and
- (e) not use any of the Provider Confidential Information for any purpose other than the Permitted Purpose.

13.3 Notwithstanding Clauses [13.1] and [13.2], a party's Confidential Information may be disclosed by the other party to that other party's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Confidential Information that is disclosed for the performance of their work with respect to the Permitted Purpose and who are bound by a written agreement or professional obligation to protect the confidentiality of the Confidential Information that is disclosed.

13.4 No obligations are imposed by this Clause [13] with respect to a party's Confidential Information if that Confidential Information:

- (a) is known to the other party before disclosure under this Agreement and is not subject to any other obligation of confidentiality;
- (b) is or becomes publicly known through no act or default of the other party; or
- (c) is obtained by the other party from a third party in circumstances where the other party has no reason to believe that there has been a breach of an obligation of confidentiality.

13.5 The restrictions in this Clause [13] do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of either party on any recognised stock exchange.

13.6 Upon the termination of this Agreement, each party must immediately cease to use the other party's Confidential Information.

13.7 Following the termination of this Agreement, and within ten (10) Business Days following the date of receipt of a written request from the other party, the relevant party must destroy or return to the other party (at the other party's option) all media containing the other party's Confidential Information, and must irrevocably delete the other party's Confidential Information from its systems.

13.8 The provisions of this Clause [13] shall continue in force indefinitely following the termination of this Agreement.

14 Publicity

14.1 The Client hereby irrevocably licenses Kaleidoko to use any work covered by this Agreement and the Client's name, figure and logo for display or promotional purposes in their studio, sales literature, portfolio, website, presentation or other types of media as a reference by Kaleidoko whilst they are a Client of the Kaleidoko and for seven (7) years after this Agreement terminates. The Client agrees to send Kaleidoko its most recent logo or figure as and when it is amended from time to time. No use of the work will be made by Kaleidoko for other commercial reasons except with the permission of the Client in writing.

14.2 Neither party may make any public disclosures relating to this Agreement or the subject matter of this Agreement (including disclosures in press releases or public announcements or marketing materials) without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed, and providing that the public disclosures in Clause [14.1] may be made without consent.

14.3 Nothing in this Clause [14] shall be construed as limiting the obligations of the parties under Clause [13].

15 Data protection

15.1 The Client warrants to Kaleidoko that it has the legal right to disclose all Personal Data that it does in fact disclose to Kaleidoko under or in connection with this Agreement, and that the processing of that Personal Data by Kaleidoko for the Permitted Purpose in accordance with this Agreement will not breach any applicable data protection or data privacy laws (including the Data Protection Act 1998).

15.2 To the extent that Kaleidoko processes Personal Data disclosed by the Client, Kaleidoko warrants that:

- (a) it will act only on instructions from the Client in relation to the processing of that Personal Data; and

- (b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of that Personal Data and against loss or corruption of that Personal Data.

16 Warranties

- 16.1 Kaleidoko warrants to the Client that they:
 - (a) have the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;
 - (b) will comply with all applicable legal and regulatory requirements applying to the exercise of Kaleidoko's rights and the fulfilment of Kaleidoko's obligations under this Agreement;
 - (c) has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement;
 - (d) will perform its obligations under the Agreement with reasonable care and skill; and
 - (e) warrants that the Deliverables (excluding Client Materials) will not infringe the Intellectual Property Rights of any third party.
- 16.2 The Client warrants to Kaleidoko that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- 16.3 The Client hereby acknowledges that the Third-Party Materials will be governed by that third-parties' terms and conditions and that Kaleidoko cannot provide any warranties in respect of the third-party's services and will not be liable to the Client for any delays and/or failings in respect of the same. Providers of Third-Party Materials may provide their own warranties to the Client and the Client must satisfy itself whether or not such warranties (where given) are acceptable for the Client's business purposes or risk management policies.
- 16.4 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

17 Indemnities

- 17.1 Kaleidoko shall indemnify and shall keep indemnified the Client against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Client and arising directly or indirectly as a result of any breach by Kaleidoko of this Agreement (a **"Provider Indemnity Event"**).
- 17.2 The Client must:
 - (a) upon becoming aware of an actual or potential Provider Indemnity Event, notify Kaleidoko;
 - (b) provide to Kaleidoko all such assistance as may be reasonably requested by Kaleidoko in relation to Kaleidoko Indemnity Event;
 - (c) allow Kaleidoko the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to Kaleidoko Indemnity Event; and
 - (d) not admit liability to any third party in connection with Kaleidoko Indemnity Event or settle any disputes or proceedings involving a third party and relating to Kaleidoko Indemnity Event without the prior written consent of Kaleidoko, and Kaleidoko's obligation to indemnify the Client under Clause [17.1] shall not apply unless the Client complies with the requirements of this Clause [17.2].
- 17.3 The Client shall indemnify and shall keep indemnified Kaleidoko against any and all liabilities, obligations, damages, losses, costs and expenses (including legal fees and costs and expenses incurred in investigating, preparing, defending or prosecuting any litigation, claim, proceeding or demand, and amounts reasonably paid in settlement of legal claims) suffered or incurred by Kaleidoko and arising directly or indirectly as a result of any breach by the Client of this Agreement (a **"Client Indemnity Event"**).
- 17.4 Kaleidoko must:
 - (a) upon becoming aware of an actual or potential Client Indemnity Event, notify the Client;
 - (b) provide to the Client all such assistance as may be reasonably requested by the Client in relation to the Client Indemnity Event;
 - (c) allow the Client the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Client Indemnity Event; and
 - (d) not admit liability to any third party in connection with the Client Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Client Indemnity Event without the prior written consent of the Client, without prejudice to the Client's obligations under Clause [17.3].
- 17.5 In respect of all White Label Services, the Client shall indemnify Kaleidoko against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Kaleidoko arising out of or in connection with any contract between the Client and their client for the White Label Services.
- 17.6 Kaleidoko carries professional indemnity and public liability insurance cover of one million pounds each. A copy of Kaleidoko's insurance certificates can be provided on receipt of a request to Kaleidoko's offices. Extended or upgraded specific project insurance cover can be provided if required upon request, provided this is agreed at the time of Order and included in the Statement of Work.
- 17.7 The professional indemnity protection set out in this Clause [17] shall be subject to the limitations and exclusions of liability set out in this Agreement.

18 Limitations and exclusions of liability

- 18.1 Nothing in this Agreement will:
- (a) limit or exclude any liability for death or personal injury resulting from negligence;
 - (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
 - (c) limit any liabilities in any way that is not permitted under applicable law; or
 - (d) exclude any liabilities that may not be excluded under applicable law.
- 18.2 The limitations and exclusions of liability set out in this Clause [18] and elsewhere in this Agreement:
- (a) are subject to Clause [18.1]; and
 - (b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.
- 18.3 Kaleidoko shall not be liable to the Client in respect of any losses arising out of a Force Majeure Event.
- 18.4 Kaleidoko shall not be liable to the Client in respect of any loss of profits or anticipated savings.
- 18.5 Kaleidoko shall not be liable to the Client in respect of any loss of revenue or income.
- 18.6 Kaleidoko shall not be liable to the Client in respect of any loss of use or production.
- 18.7 Kaleidoko shall not be liable to the Client in respect of any loss of business, contracts or opportunities.
- 18.8 Kaleidoko will not be liable to the Client for any loss of or damage to goodwill or reputation.
- 18.9 Kaleidoko shall not be liable to the Client in respect of any loss or corruption of any data, database or software.
- 18.10 Kaleidoko shall not be liable to the Client in respect of any special, indirect or consequential loss or damage.
- 18.11 Kaleidoko shall not be liable to the Client in respect of downtimes, interference in the form of hacking, virus, disruptions, interruptions, faulty third-party software, search engines, websites, social media or software on which a service is dependent and/or other deliveries from a third party.
- 18.12 Kaleidoko shall not be liable to the Client in respect of any changes made without written notice by the Client or a third party employed by the Client affecting the Services delivered by Kaleidoko.
- 18.13 Any work connected with remedial efforts as described in Clauses [18.11] and [18.12] shall be charged to the Client separately in accordance with this Agreement or (at Kaleidoko's discretion) Kaleidoko's then current rate card.
- 18.14 Kaleidoko reserves the right to modify or discontinue, temporarily or permanently, the Services with or without notice to the Client and Kaleidoko shall not be liable to the Client or any third party for any modification to or discontinuance of these Services save for the return of any prepaid sums in connection with the provision of the Services which are subsequently not provided.
- 18.15 The aggregate liability of Kaleidoko to the Client under this Agreement for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by the Client to Kaleidoko in respect of the Services which are the subject of any such claim and provided that the Client notifies Kaleidoko of any such claim within a reasonable period.

19 Force Majeure Event

- 19.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.
- 19.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:
- (a) promptly notify the other; and
 - (b) inform the other of the period for which it is estimated that such failure or delay will continue.
- 19.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

20 Termination

- 20.1 This Agreement shall renew automatically for a further term of one year at the end of each year, or for the same period of time as specified in any Schedule or Statement of Work, unless and until either party notifies the other of its wish to terminate this Agreement.
- 20.2 Either party may terminate this Agreement by giving to the other party not less than thirty (30) days' written notice of termination, expiring at any time after the later of;
- (a) the end of the Minimum Term; and
 - (b) the end of any minimum period specified in any Schedule or Statement of Work.
- 20.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party:
- (a) commits any material breach of this Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within the period of 20 days following the delivery of a written notice requiring the breach to be remedied; or

- (b) persistently breaches this Agreement (irrespective of whether such breaches collectively constitute a material breach).
- 20.4 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:
- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
 - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
 - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement); or
 - (d) if that other party is an individual:
 - (i) that other party dies;
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order.

21 Effects of termination

- 21.1 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party (including accrued rights to be paid) as at the date of termination.
- 21.2 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that:
- (a) the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses [1], [7.5], [9.1], [9.2], [9.3], [9.4], [9.6], [11.2], [11.3], [12.2], [12.4], [12.5], [13], [14], [15], [18.1], [18.2], [18.3], [18.4], [18.5], [18.6], [18.7], [18.8], [18.9], [18.10], [18.11], [18.12], [18.13], [18.14], [18.15], [21.1], [21.2], [25.1], [25.2], [26], [27], [28], [29], [30.1], [30.4], [30.5], [31] and [32]; and
 - (b) the provisions of the Schedules and Statements of Work expressed to survive and continue to have effect will do so (in accordance with their terms of otherwise indefinitely).
- 21.3 Upon termination of this Agreement by the Client without Kaleidoko's fault or consent, the Client shall pay Kaleidoko, in addition to all of the Charges earned by Kaleidoko pursuant to the term, an early termination fee equivalent to 40% of the total remaining Charges payable to Kaleidoko, plus any and all Expenses and third-party costs reasonably incurred by Kaleidoko through the effective date of Agreement completion.
- 21.4 If the Client desires to terminate this Agreement because Client believes Kaleidoko is at fault, the Client must give Kaleidoko written notice detailing the nature of Kaleidoko's alleged fault and the possible remedies Kaleidoko could implement to correct the error. Kaleidoko will have a reasonable period of time (but in no event less than 20 days) to cure the alleged fault. Termination by the Client without providing the foregoing notice and cure period is termination without Kaleidoko's fault, and subject to Clause [21.3].
- 21.5 If the Agreement is terminated under Clause [20.2], or by the Client under Clause [20.3] or [20.4] (but not in any other case), the Client will be entitled to a refund of any Charges paid by the Client to Kaleidoko in respect of any Services which were to be performed after the date of effective termination, minus any fees stipulated in Clause [21.3] or any such amount to be calculated by Kaleidoko using any reasonable methodology.
- 21.6 Save as provided in Clause [21.5], the Client will not be entitled to any refund of Charges on termination and will not be released from any obligation to pay Charges and/or Expenses to Kaleidoko, and all other charges incurred by Kaleidoko including Materials and any costs in the Deliverables, including but not limited to any cancellation fees, up to the date of effective termination.

22 Non-solicitation of personnel

- 22.1 Neither party will, without the other party's prior written consent, either during the Term or within a period of six (6) months after the end of the Term, directly or indirectly, either for itself (or himself or herself) or for any other person, firm or company:
- (a) solicit the business of any person, firm, company or otherwise who is or was a client, supplier, sub-contractor or agent of the other party; or
 - (b) engage, employ or otherwise solicit for employment any employee or contractor of the other party involved in the negotiation or performance of the Agreement.

23 Notices

- 23.1 Any notice given under this Agreement must be in writing, whether or not described as "written notice" in this Agreement.
- 23.2 Any notice given by either party under this Agreement must be:
- (a) delivered personally;
 - (b) sent by courier;

- (c) sent by recorded signed-for post;
 - (d) sent by email; or
 - (e) submitted using the other party's online contractual notification facility, using the relevant contact details set out in Clause [23.4].
- 23.3 The parties' contact details for notices under this Clause [22] are as follows:
- (a) in the case of notices sent by the Client to Kaleidoko, given in the applicable Statement of Work under Provider; and
 - (b) in the case of notices sent by Kaleidoko to the Client, given in the applicable Statement of Work under Client.
- 23.4 The addressee and contact details set out in Clause [23.3] may be updated from time to time by a party giving written notice of the update to the other party in accordance with this Clause [23].
- 23.5 A party receiving from the other party a notice by email must acknowledge receipt by email promptly, and in any event within two (2) Business Days following receipt of the notice.
- 23.6 A notice will be deemed to have been received at the relevant time set out below or, where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:
- (a) in the case of notices delivered personally, upon delivery;
 - (b) in the case of notices sent by courier, upon delivery;
 - (c) in the case of notices sent by post, forty-eight (48) hours after posting;
 - (d) in the case of notices sent by email, at the time of the sending of the email (providing that the sending party retains written evidence that the email has been sent); and
 - (e) in the case of notices submitted using an online contractual notification facility, upon the submission of the notice form.

24 Subcontracting

- 24.1 Kaleidoko may subcontract any of its obligations under this Agreement.
- 24.2 Kaleidoko shall remain responsible to the Client for the performance of any subcontracted obligations.

25 Assignment

- 25.1 Each party hereby agrees that the other party may freely assign any or all of its contractual rights and/or obligations under the Agreement to any Affiliate of the assigning party or any successor to all or a substantial part of the business of the assigning party from time to time.
- 25.2 Save as expressly provided in Clause [25.1] or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any contractual rights or obligations under the Agreement.

26 No waivers

- 26.1 No breach of any provision of this Agreement will be waived except with the express written consent of the party not in breach.
- 26.2 No waiver of any breach of any provision of this Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of this Agreement.

27 Severability

- 27.1 If a provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.
- 27.2 If any unlawful and/or unenforceable provision of this Agreement would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

28 Third party rights

- 28.1 This Agreement is for the benefit of the parties, and is not intended to benefit or be enforceable by any third party.
- 28.2 The exercise of the parties' rights under this Agreement is not subject to the consent of any third party.
- 28.3 No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

29 Variation

- 29.1 This Agreement may not be varied except by means of a written document signed by or on behalf of each party.

30 Entire agreement

- 30.1 The main body of this Agreement and the Statement of Work; shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 30.2 Nothing in this Agreement will constitute a partnership, joint venture, agency or other fiduciary relationship or contract of employment between the parties' other than the contractual relationship expressly provided for in this Agreement.
- 30.3 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.
- 30.4 Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into this Agreement.
- 30.5 Nothing in this Agreement will prevent Kaleidoko from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the Term.
- 30.6 The provisions of this Clause [30] are subject to Clause [18.1].

31 Law and jurisdiction

- 31.1 This Agreement shall be governed by and construed in accordance with English law.
- 31.2 Any disputes relating to this Agreement shall be subject to the non-exclusive jurisdiction of the courts of England.

32 Interpretation

- 32.1 In this Agreement, a reference to a statute or statutory provision includes a reference to:
 - (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 32.2 The Clause headings do not affect the interpretation of this Agreement.
- 32.3 In this Agreement, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.
- 32.4 Words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires. Pronouns in masculine, feminine and neuter genders shall be construed to include any other gender.
- 32.5 References in the Agreement to Clauses are to the clauses of the Terms and Conditions and Paragraphs are the paragraphs of the Schedules unless otherwise stated.

Schedule 1

Consultancy Services

1 Definitions and interpretation

1.1 In this Schedule:

“Consultant” means the personnel of Kaleidoko including any employees, officers, consultants or sub-contractors;

“Consultancy Deliverables” means written reports, analyses, strategy, positioning, presentations, advice, training, public speaking and/or other works (including Counsel, Surveys and Seminars) to be supplied by Kaleidoko to the Client under this Schedule, as specified in the applicable Statement of Work;

“Consultancy Charges” means all amounts payable by the Client to Kaleidoko under this Schedule, as specified in the applicable Statement of Work;

“Consultancy Services” means the consultancy services provided or to be provided by Kaleidoko to the Client under this Schedule, as specified in the applicable Statement of Work;

“Counsel” means the advisory service, consulting process and arrangements by which Kaleidoko gives advice, recommendation, opinion, guidance or instruction as to future judgement, procedure and conduct by the Client as part of the Consultancy Deliverables;

“Surveys” means the service by which Kaleidoko conducts a survey, analysis or audit of the market, industry, trends, developments, innovations, technology advancements, trade agreements, economies, financials and regulations applicable to the Client; and the Client’s business, employees, workplace, clients, potential clients and/or competitors culminating in the publishing of a synopsis/review of the results of the survey as part of the Consultancy Deliverables; and

“Seminars” means ideas, information and research prepared, presented and distributed by a Consultant through keynotes, presentations, workshops, training, thought leadership and seminars as part of the Consultancy Deliverables.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, and Clauses are to the clauses in the main Terms and Conditions, unless otherwise stated.

2 Consultancy Services and Deliverables

2.1 Kaleidoko will supply the Consultancy Services to the Client during the Term.

2.2 Kaleidoko will deliver the Consultancy Deliverables to the Client in accordance with the delivery schedule set out in the applicable Statement of Work providing that:

- (a) the delivery schedule shall not be of the essence of the Agreement; and
- (b) the Client acknowledges that delays in the fulfilment of the Client’s obligations under the Agreement may lead to delays in the delivery of the Consultancy Deliverables.

2.3 Kaleidoko may sub-contract the provision of the Consultancy Services without the prior written consent of the Client; providing that if Kaleidoko does sub-contract the provision of the Consultancy Services, Kaleidoko will remain liable to the Client for the performance of the sub-contracted obligations.

2.4 The Client will make available to Kaleidoko office space, IT and telecommunications equipment, internet connectivity and other standard office facilities to enable the personnel of Kaleidoko to work at the premises of the Client during the Term if deemed required and insofar as reasonably necessary for the provision of the Consultancy Services.

2.5 The Client will:

- (a) be responsible for ensuring the health and safety of the Consultant(s) whilst they are at the premises of the Client;
- (c) maintain its premises in good order for the supply of Services, and in accordance with all applicable laws;
- (d) inform Kaleidoko of all health and safety rules and regulations, cultural diversity policies and any reasonable security requirements that apply at its premises; and
- (e) maintain reasonable insurance cover for the Consultant(s) whilst they are working at the premises (including reasonable public liability insurance).

3 Status of Consultant

3.1 The Consultant is not an employee, agent or partner of the Client.

3.2 The termination of this Agreement will not constitute unfair dismissal; nor will the Consultant be entitled to any undue compensation payments, redundancy payments or similar payments upon the termination of this Agreement.

4 Counsel

4.1 Where the Consultancy Deliverables include Counsel the provisions of this Paragraph [4] shall additionally apply.

4.2 Accessibility to the Consultant for Counsel is limited to an agreed retainer package (stating the time, frequency and duration) in the Statement of Work.

- 4.3 Counsel may be delivered to the Client by the Consultant in any form, including (but not limited to), in-person, telephone, video conferencing, email or any other type of communication, whether hard copy or electronic form.
- 4.4 The Client and the Consultant will schedule the time and format of the Counsel required in advance of any Counsel being offered and provide reasonable time for necessary arrangements to be made. If neither the Client or the Consultant is available to make the required time for whatsoever reason, and alternative time that is mutually agreeable will be scheduled.
- 4.5 The Consultant shall provide Counsel lawfully and with sufficient expertise, accuracy and foresight, proceeding from the interests of the Client.
- 4.6 When providing Counsel, Kaleidoko and any Consultant shall endeavour to take all reasonable steps to prevent any conflicts of interest.
- 4.7 The Client ensures that during the implementation of Counsel, organisational conditions in the Client's place of business (if applicable) allow Counsel to proceed in a timely and undisturbed manner.
- 4.8 The Client shall provide a list of required reports, insights, documents and information in advance of Counsel to enable the strongest possible engagement by the Consultant to and on behalf of the Client.
- 4.9 It is the responsibility of the Client to ensure that all documents needed for the performance and completion of this Agreement are made available to Kaleidoko on a timely basis without having to be specifically requested, and that Kaleidoko be informed of all occurrences and circumstances that are of significance to the implementation of this Agreement. This also applies to all documents, procedures, and conditions, which first emerge during Counsel.
- 4.10 The relationship of trust between the client and Kaleidoko requires that the Consultant be fully informed about previously performed and/or current consultations – including in other fields.
- 4.11 The Client must ensure that their employees and employee representatives (works council), as provided for by statute if applicable, are informed of Counsel or consultancy arrangements prior to any commencement.
- 4.12 Any Counsel from Kaleidoko and any Consultant should not be generalised, does not extend to third parties or similar circumstances neither in the future nor the past, and particular recommendations shall not be made public.
- 4.13 The Client acknowledges that any Counsel provided by the Consultant is time relevant and any Counsel by the Consultant to the Client may only be relied upon within the period specified as it relates to any recommendation.
- 4.14 An opinion or assessment concerning the future that the Consultant expresses in relation to a fact or event during Counsel and which Kaleidoko cannot be reasonably expected to verify or guarantee to materialise may not become reality.
- 4.15 Once the Counsel has been provided, neither Kaleidoko nor the Consultant is obliged to:
 - (a) manage the actions of the Client and/or third party;
 - (b) remedy any action that has been executed or implemented by the Client or a third party;
 - (c) remedy any inaction by the Client or a third party; and
 - (c) provide post-mortem evaluation of any execution, implementation or inaction by the Client and/or third party.
- 4.16 The Client recognises that Kaleidoko does not have full authority for any execution or installation of any projects and/or systems outside of the Deliverables offered by Kaleidoko that may arise during Counsel.
- 4.17 When following Counsel, the Client should take into account their needs, preferences, knowledge, experience, capacity, objectives, risk tolerance and any other wider business implications before acting upon any recommendation given in Counsel and hereby assumes all liability for any possible consequences and/or adverse outcomes in accordance with Clause [18].
- 4.18 If the preferred Consultant is unable to attend the Counsel for whatsoever reason, including (but not limited to) personal and/or health reasons, then Kaleidoko will make all reasonable endeavours to satisfy the Consultancy Deliverables, including the right to offer the Client an alternative Consultant of equal standing where possible under this Agreement. A demand by the Client for the use of certain Consultant may occur only when this has been previously agreed upon in writing.
- 4.19 The Consultant is entitled and obligated to correct errors and deficiencies in his Counsel that subsequently become known to him. The Consultant is obligated to inform the Client of such issues immediately. The Consultant is also entitled to inform any third party acquainted with the original statement of these changes.
- 4.20 The Client has the right to remediation of deficiencies in Paragraph [4.20] at no additional charge, in so far as the Consultant was responsible for them. This right will expire after completion of the Term by the Consultant.
- 4.21 The Client may not refer to Counsel provided by Kaleidoko and any Consultant in a legal relationship with a third party, including in legal disputes.

5 Surveys

- 5.1 Where the Consultancy Deliverables include Surveys the provisions of this Paragraph [5] shall additionally apply.
- 5.2 Kaleidoko will provide a list of required reports (competitive, business, financial and transactional) necessary to prepare the Survey within the Statement of Work and according to timelines therein, with the Client responsible for the accuracy of all data supplied.
- 5.3 Where appropriate, the Client will provide access to and credentials for any systems or resources required by the Consultant in order to prepare the Survey.
- 5.4 Kaleidoko and shall treat all access to any reports and/or information in Paragraphs [5.2] and [5.3] as Client Confidential Information.
- 5.5 Where applicable, the Client shall invite those of its employees, contractors, distributors, customers, advisors, experts and/or influencers (“**Respondents**”) to take part in a Survey carried out by Kaleidoko. The Survey may be completed on an anonymous basis but Respondents are given the opportunity to have a copy of the synopsis/review prepared by Kaleidoko as part of the Survey

(“Review”) sent to them, in which case each individual respondent requesting a copy will need to provide his/her name and email address to Kaleidoko for such purpose.

- 5.6 The Respondent’s name and email address constitute personal data which Kaleidoko will hold and use only for the purpose of sending the respondent a copy of the Review. Kaleidoko will hold and use such personal data in accordance with current data protection legislation.
- 5.7 The Client agrees that if it collects the completed Surveys from Respondents on behalf of Kaleidoko it shall forward them all to Kaleidoko and shall not use them for any purpose, in particular but without limitation the Client agrees not to supply the completed surveys to any third party.
- 5.8 Kaleidoko shall use reasonable care and skill when conducting the Survey and preparing the Review. Kaleidoko shall provide the Client with a draft of the Review prior to publication and shall take reasonable account of any request by the Client for changes to be made to the Review, provided always that Kaleidoko shall have ultimate editorial control over the Review. If the Client objects to the Review it may request that Kaleidoko does not publish it but in such event the Client shall not be entitled to any refund of the fees due to Kaleidoko.
- 5.9 In cases where there are ongoing changes in Client data, once the Review is delivered, Kaleidoko will not be obliged in any way to update or reevaluate any Survey with new data (even if it falls within the timeline stipulated within the Statement of Work). If the Client wishes for any changes to data to be taken into account, Kaleidoko reserves the right to require additional Consultancy Charges.
- 5.10 Kaleidoko will provide to the Client an appendix bibliography highlighting the source of all relevant data and information sources where possible in accordance with Paragraph [5.6].
- 5.11 Unless otherwise agreed, the Client acknowledges the Review is considered part of the Preparatory Materials.

6 Seminars

- 6.1 Where the Consultancy Deliverables include Seminars the provisions of this Paragraph [6] shall additionally apply.
- 6.2 Kaleidoko will outline any technical and/or other requirements necessary for the Consultant to perform a Seminar in the Statement of Work. The Client acknowledges responsibility for any third-party costs for any Seminar and/or venues where the Seminar will be conducted unless expressly provided for in the Statement of Work.
- 6.3 The Client shall invite those of its employees, contractors, distributors, customers, advisors, experts and/or influencers (“Delegates”) to attend a Seminar conducted by the Consultant.
- 6.4 The Delegate will be required to attend a location where the Consultant delivers the Seminar as specified in the Statement of Work.
- 6.5 Kaleidoko requires that all Delegates are registered in advance for any Seminar and, where applicable, each Delegate will need to provide his/her name and email address to Kaleidoko to send any pre-requisites or prior preparation before attending the Seminar.
- 6.6 The Delegates’ name and email address constitute personal data which Kaleidoko will hold and use only for the purpose of sending the Delegate information and/or materials in relation to the Seminar, including (but not limited to) name of the Seminar, Seminar timing, and location of Seminar. Kaleidoko will hold and use such personal data in accordance with current data protection legislation.
- 6.7 Delegates may be videoed or recorded during a Seminar and/or used in any analysis for the purposes of training and quality assurance as conducted within the Seminar. The Client should advise all Delegates of any such recording in advance of any Seminar and is responsible for their acceptance and co-operation.
- 6.8 Kaleidoko may offer select content from their Provider Materials in consultation with the Client for the express use in delivering the Seminar (“Training Materials” and/or “Presentation Materials”), and in conjunction with the attendance of the Delegates of such a Seminar.
- 6.9 The Consultancy Charge for a Seminar that delivers training and/or a workshop (“Training Seminar”) includes the granting of a non-exclusive, non-transferable licence to use the Training Materials on the terms of such licence, which are set out in Paragraph [6.10].
- 6.10 Delegates may receive and possess the Training Materials associated with the relevant Training Seminar purchased and to use such Training Materials in conjunction with the attendance of such a course provided by Kaleidoko, as well as use such as a record of information for the term of this licence provided that only the Delegate of the relevant Training Seminar may make such use of them. The Consultant is not to be videoed or recorded and Training Materials are not to be copied, edited, shared, re-purposed or otherwise used including (but not limited to) providing other seminars and/or training, without express written permission from Kaleidoko.
- 6.11 The Client acknowledges that there may be a maximum allowable number of Delegates for a Training Seminar as specified in the Statement of Work.
- 6.12 The Consultancy Charge for a Seminar that delivers keynotes, presentations and/or thought leadership (“Presentation Seminar”) includes the granting of a non-exclusive, non-transferable licence to use the Presentation Materials on the terms of such licence, which are set out in Paragraph [6.13].
- 6.13 The Client may receive and share the Presentation Materials associated with the relevant Presentation Seminar purchased and to use such Presentation Materials in conjunction with the attendance and publicity of such a course provided by Kaleidoko or the Consultant. The Client may video or record the Consultant delivering a Presentation Seminar and may share the contents of such a recording amongst Delegates via a website or social media, providing that a full unedited copy of the recording is delivered to Kaleidoko and both the Consultant and Kaleidoko are referenced by name in any publicity concerning such a recording.
- 6.14 The Client will be responsible for Delegates attendance and all actions therein during the Seminar. Any unacceptable behaviour or comments towards any Consultant will result in an immediate suspension of any Seminar, and if the matter is not rectified as a matter of urgency by the Client, Kaleidoko reserves the right to terminate the Seminar with immediate effect and all fees will remain due to Kaleidoko as stipulated in the Statement of Work in as far as it relates to the Seminar.

- 6.15 If the preferred Consultant is unable to attend the Seminar for whatsoever reason, including (but not limited to) personal and/or health reasons, then Kaleidoko will make all reasonable endeavours to satisfy the Consultancy Deliverables, including the right to offer the Client an alternative Consultant of equal standing where possible under this Agreement. A demand by the Client for the use of certain Consultant may occur only when this has been previously agreed upon in writing.

7 Intellectual Property Rights

- 7.1 Upon the delivery of the completed the Consultancy Deliverables to the Client, Kaleidoko will (and hereby does) grant to the Client a worldwide, non-exclusive licence to use, copy and publish the Consultancy Deliverables, excluding the Client Materials, Provider Materials, Preparatory Materials and Third-Party Materials, in accordance with Clause [9] and the provisions allowed for in Paragraphs [6.10] and [6.13].

8 Moral rights waiver

- 8.1 Kaleidoko waives (and will use reasonable endeavours to seek to ensure that its employees and subcontractors waive) any moral rights they may have in the Consultancy Deliverables arising under Chapter 4 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights anywhere in the world, excluding the Client Materials, Provider Materials, Preparatory Materials and Third-Party Materials, in accordance with Clause [9] and the provisions allowed for in Paragraphs [6.10] and [6.13].

9 Timesheets

- 9.1 In cases where agreed in the Statement of Work, Kaleidoko will:
- (a) ensure that the Consultant providing Consultancy Services, the Consultancy Charges for which will be based in whole or part upon the time spent in the performance of those Consultancy Services, complete reasonably detailed records of their time spent providing those Consultancy Services; and
 - (b) retain such records during the Term, and for a period of at least 12 months following the end of the Term.
- 9.2 Within 10 Business Days following receipt of a written request, Kaleidoko shall supply to the Client copies of such of the timesheets referred to in Paragraph [9.1] and in Kaleidoko's possession or control as the Client may specify in that written request.
- 9.3 The provisions of this Paragraph [9] in no way obligate Kaleidoko to provide timesheets.

10 Term of Statement of Work

- 10.1 A Statement of Work applying this Schedule will come into force on the date of execution of the Statement of Work, and will continue in force until cancelled in accordance with Paragraph [10.2] or [10.3].
- 10.2 A Statement of Work applying this Schedule will be automatically cancelled:
- (a) on the date of effective termination of the Agreement under Clause [21]; or
 - (b) upon the later of:
 - (i) the completion of all the Consultancy Services under the Statement of Work; and
 - (ii) the payment in cleared funds of all amounts due under the Statement of Work.
- 10.3 Either party may cancel a Statement of Work applying this Schedule by giving to the other party at least 30 days' written notice of cancellation, in accordance with Clause [20] and Clause [21].

11 Consultancy Charges

- 11.1 The Consultancy Charges, and dates upon or after which Kaleidoko may issue invoices for the Consultancy Charges, are as set out in the Statement of Work and where Consultancy Services include Counsel and/or Seminars the provisions of this Paragraph [11] shall additionally apply.
- 11.2 Where the Marketing Deliverables include Counsel the provisions of Paragraphs [11.3] shall additionally apply;
- 11.3 The Client agrees:
- (a) to confirm the agreed budget for the entirety of the Counsel for the Term as specified in the Statement of Work;
 - (b) to pay a retainer fee for an agreed monthly package (number of hours per month) that is required by the Client and the applicable VAT for the ongoing Counsel ("**Counsel Charges**");
 - (c) the Counsel Charges will be invoiced as specified in the Statement of Work and payment is due on the 1st of each month in advance of the Counsel being given within the forthcoming month and considered payment on account;
 - (d) any additional time for Counsel required by the Client that goes beyond the agreed package in the Statement of Work will be charged on a per-hour basis at Kaleidoko's then current rate card;
 - (e) any Counsel time within the Counsel Charges that is not used in one monthly package can be rolled into the following month, on condition that the invoice for the following month as shown on the Statement of Work is still paid under this Agreement; and
 - (f) at the end of the Term, any unused hours of Counsel will be offered to the Client in lieu of carrying on Counsel for the remaining hours, or the Client will be reimbursed all monies beyond the time already used and any already-incurred Expenses.
- 11.4 No Training Seminar booking will be deemed confirmed under this Agreement until Kaleidoko has received:
- (a) a completed and signed Statement of Work from the Client; and

- (b) the greater of either £1,500 or 25% of the Consultancy Charges as stipulated as a Training Seminar in the Statement of Work (the “**Training Deposit**”) and the applicable VAT as a non-refundable deposit.
- 11.5 No Presentation Seminar booking will be deemed confirmed under this Agreement until Kaleidoko has received:
 - (a) a completed and signed Statement of Work from the Client; and
 - (b) the greater of either £2,500 or 50% of the Consultancy Charges as stipulated as a Presentation Seminar in the Statement of Work (the “**Presentation Deposit**”) and the applicable VAT as a non-refundable deposit.
- 11.6 The Client acknowledges the Training Deposit and/or the Presentation Deposit account for necessary preparation of a Seminar.
- 11.7 The remainder of Consultancy Charges in relation to a Presentation Seminar, shall be paid to Kaleidoko no later than 10 days prior to the start of the Presentation Seminar.
- 11.8 Following the signing of the Agreement, the balance of the Consultancy Charges shall be paid to Kaleidoko in accordance with the invoice schedule as specified in the Statement of Work, with the exception of Presentation Seminars which is set out in Paragraphs [11.5] and [11.7].
- 11.9 Where travel and/or accommodation are necessary to provide the Consultancy Services, provision for preparation and/or acclimation by the Consultant must be factored into any booking as specified in the Statement of Work, and one of the following conditions of this Paragraph [11.9] will apply;
 - (a) where Kaleidoko is managing the Consultant’s arrangements, the Expenses in relation to travel and/or accommodation will be invoiced in advance of the Consultancy Deliverables; or
 - (b) where the Client is managing the Consultant’s arrangements these must be booked and paid for by the Client or via a third party working on behalf of the Client in advance of the Consultancy Deliverables, with notification given to the Consultant a minimum of 10 days prior to travel.
- 11.10 Any other reasonable Expenses in relation to the Consultancy Services, including transportation, sustenance, per diem any/or associated expenses will be specified in the Statement of Work, and will be reimbursed within the agreed terms of the invoice schedule, in accordance with Clause [12].
- 11.11 Where the Seminar is cancelled or terminated and where such cancellation or termination occurs due to reasons which are outside Kaleidoko’s or the Client’s reasonable control, Kaleidoko shall be entitled to retain any Expenses and/or Material costs incurred and any Training Deposit and/or Presentation Deposit (whichever is applicable) received from the Client. Kaleidoko may, but shall not be obliged to, take such steps as it shall in its discretion consider reasonable to obtain reimbursement of any such costs and Expenses and/or Materials and shall, subject to deduction of costs incurred in connection therewith, reimburse any sums so recovered to the Client.
- 11.12 If in the case of a preferred Consultant is not able to deliver the Seminar and the Client declines an alternative Consultant in accordance with paragraph [6.15] and Clause [19], the Client will be reimbursed all monies beyond the Presentation Deposit and/or Training Deposit (whichever shall be applicable) and any already-incurred Expenses and/or Materials beyond which can be reasonably recovered in accordance with Paragraph [11.11].
- 11.13 No refund is payable for any cancellation within 10 days of a Seminar by the Client, other than specified in Paragraph [11.11], and the full sum of the Seminar remains due.

Schedule 2

Marketing Services

1 Definitions and interpretation

1.1 In this Schedule:

“Advertisements” means an advertisement or series of advertisements for the Client and/or its products and services including (but not limited to) audio, visual, graphical or text-based advertisements, TV, radio, press, out-of-home, digital, email, search, social media, content distribution, contests, sweepstakes, sponsorships, promotions, partnerships, native content, community building and influencer programs;

“Campaign” means a marketing campaign or series of campaigns for the Client and/or its products and services including (but not limited to) awareness, brand building, direct response, lead generation, product launches, positioning, employees, investors, fund raising, seasonal, educational and political;

“Campaign Management” means the strategic oversight and execution of a Campaign, consisting of planning, scheduling, vendor specifying, buying and reporting by Kaleidoko on behalf of the Client, including (but not limited to) the placement of Advertisements in purchased Media, Advertisement technology, content strategy, brand integration, internal communication, public relations, social media, email, mailing lists, search engine marketing, customer relationship management and establishing KPIs, which is specified in the Statement of Work as part of the Marketing Deliverables;

“Event” means the event or events including (but not limited to) Client events, employee events, exhibitions, campaign events, seminars, workshops, training and the likes, the subject of which is specified in the Statement of Work;

“Event Management” means an Event organised, managed, conducted and executed by Kaleidoko on behalf of the Client, including (but not limited to) the booking or hiring of a Venue, conception, curating, logistics, catering, infrastructure, staffing, sponsors, technical, ticketing, staging, permits, vendor selection, Guest management and outreach, which is specified in the Statement of Work as part of the Marketing Deliverables;

“Guests” means all persons attending the Event at the Venue, whether or not with the express permission of the Client, including any employees, sub-contractors, delegates, exhibitors, media, speakers, guests and/or agents of the Client;

“Marketing Deliverables” means strategies, communications, recommendations, integrations, planning, content, scheduling, and/or other works (including Campaign Management and Event Management) to be supplied by Kaleidoko to the Client under this Schedule, as specified in the applicable Statement of Work;

“Marketing Charges” means all amounts payable by the Client to Kaleidoko under this Schedule, including Venues and/or Publications, as specified in the applicable Statement of Work;

“Marketing Services” means the marketing services and/or any ancillary services to be provided by Kaleidoko to the Client under this Schedule, as specified in the applicable Statement of Work;

“Media” means any media outlet or publication identified by Kaleidoko to the Client, including (but not limited to) print media, TV channels, billboards or signage, websites, search engines, public relations, social media or applications, whether printed, hard-copy, transmitted or digital in nature, in which the Advertisement shall appear (and **“Media Owners”** should be construed accordingly);

“Project” means the goods, works, services and/or materials required for the Marketing Deliverables being delivered by a Vendor for the Client and/or its products and services, including (but not limited to) marketing collateral, graphic design or any development work, excluding Campaign Management and Event Management;

“Project Management” means the strategic oversight, direction and management by Kaleidoko on behalf of the Client for any Project and/or execution by a Vendor, or any multiple of Vendors, required for the Marketing Deliverables, which is specified in the Statement of Work as part of the Marketing Deliverables;

“Vendors” means the third-party services that provide the goods, works, services and/or materials required for the Marketing Deliverables (including Venue and Media) that may be billed through Kaleidoko or directly by the third party to the Client (as applicable), and as specified in the Statement of Work; or which the parties agree in writing shall be incorporated into the Marketing Deliverables; and

“Venue” means floor space taken, property and/or areas identified by Kaleidoko to the Client for the purposes of the Event.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2 Marketing Services and Deliverables

2.1 Kaleidoko will supply the Marketing Services to the Client during the Term in accordance with Clauses [6] and [7].

2.2 Kaleidoko will deliver the Marketing Deliverables to the Client (including the recommendation of Publications, Events, Venues and/or Vendors to the Client as part of the Marketing Services) in accordance with the delivery schedule set out in the applicable Statement of Work providing that:

- (a) the delivery schedule shall not be of the essence of the Agreement; and
- (b) the Client acknowledges that delays in the fulfilment of the Client’s obligations under the Agreement may lead to delays in the delivery of the Marketing Deliverables.

2.3 Kaleidoko will use reasonable care and skill in providing the Marketing Services.

- 2.4 Kaleidoko may sub-contract the provision of the Marketing Services without the prior written consent of the Client; providing that if Kaleidoko does sub-contract the provision of the Marketing Services, Kaleidoko will remain liable to the Client for the performance of the sub-contracted obligations.

6 Project Management

- 6.1 Where the Marketing Deliverables include Project Management the provisions of this Paragraph [6] shall additionally apply.
- 6.2 The Client warrants that:
- (a) they must fully and fairly represent the purpose for which the Project is required and any expectations in terms of timings, features, tone, style, and any other specific criteria, as any misrepresentation may result in cancellation of the Project Management at any time by Kaleidoko;
 - (b) the planned Project must be fully disclosed prior to booking or placing an Order and will be allowed only with full agreement by Kaleidoko and as stipulated in the Statement of Work;
 - (c) they will approach the Vendor in conjunction with Kaleidoko, even when the Client is arranging payments direct with the Vendor, and ensure all correspondence in relation to matters of delivery and expectations of the Vendor for the Client are adequately communicated to Kaleidoko in advance of any Project commencement;
 - (d) where applicable, they will attend and participate in meetings where it is agreed that it will do so as part of the delivery of the Project; and
 - (e) they will sign and abide by all terms set forth by any Vendor in relation to any Project.
- 6.3 Kaleidoko will provide direction to the Client in the form of assisting with any briefs and/or request for proposals (RFPs) for any Vendor(s) to turn into marketing, creative or development deliverables as necessary.
- 6.4 Kaleidoko will develop a timeline for the execution of the Project, and specify recommendations to both the Vendor and the Client as part of the Project Management, in accordance with the Statement of Work.
- 6.5 Kaleidoko will help manage and oversee the delivery of any Project by the Vendor as per the Client's request within the time and budget allocated, as agreed within the Statement of Work.
- 6.6 The Client is responsible to ensure the start-date, duration, features, budget and any other relevant components of the Project are accurately specified in the Statement of Work, and where no such budget and/or Vendor are set in advance, they must be notified to Kaleidoko in writing in advance of any Project commencement. In such circumstances, Kaleidoko reserves the right to make any adjustments to fees accordingly.
- 6.7 The Client ensures that during the implementation of Project Management, organisational conditions in the Client's place of business (if applicable) allow Project Management to proceed in a timely and undisturbed manner.
- 6.8 Where the Client has direct relationships with any Vendors, Kaleidoko will still charge a management fee to oversee the Project Management. All fees associated with the Project are specified in the Statement of Work in accordance with Paragraph [11.2].
- 6.9 It is the responsibility of the Client to ensure that all Client Materials needed for the performance and completion of this Agreement are made available to Kaleidoko on a timely basis without having to be specifically requested, and that Kaleidoko be informed of all occurrences and circumstances that are of significance to the implementation of this Agreement. This also applies to all documents, procedures, and conditions, which first emerge during Project Management.
- 6.10 All Client Materials must be submitted by the Client for the approval of Kaleidoko prior to inclusion in the Project. Kaleidoko reserves the right to refuse any Client Material at its absolute discretion and in such circumstances, will request in writing to the Client the need to remedy the Client Material, or work with the Vendor to remedy the Client Material on behalf of the Client, at cost to the Client.
- 6.11 The Project Management will include an Initial Proof to be presented to the Client and will use its reasonable endeavours to ensure any necessary changes will be implemented before providing a Final Proof, following the development and review process defined in Clauses [6] and [7].
- 6.12 Where Kaleidoko does supply proofs to the Client and the Client fails to check and return any proof submitted by Kaleidoko, Kaleidoko reserves the right to adjust any timings necessary for the Project and any delays or costs associated with the Vendor will be the sole responsibility of the Client.
- 6.13 No additions or alterations ("**Project Creep**"), however small they are deemed by the Client, or any representatives of the Client, are to be considered, without express written permission by Kaleidoko and in such cases, Kaleidoko reserves the right to amend any fees necessary for the Project Creep implementation accordingly.
- 6.14 Where Vendors are being engaged, every endeavour will be made to deliver the Project commissioned on time and within budget, but the Statement of Work is conditional upon any factor to which Kaleidoko has not been made known in writing in advance and/or included in the Statement of Work. Any extra costs or delays by the Vendor to remedy such issues will be considered Project Creep and any make-goods will need to be negotiated with the Vendor in accordance with Paragraph [6.13] and be the sole responsibility of the Client.
- 6.15 Where the Client has approached the Vendor direct, or leaves Kaleidoko out of any communication with the Vendor in any way, or where disputes arise between any Vendor and the Client as to the expectation of deliverables beyond which Kaleidoko was aware, Kaleidoko will not be liable in whatsoever form for any expectations in timings, features, tone, style, and any other specific criteria.
- 6.16 Subject to Paragraph [6.15], if the Client becomes aware of any such issue, they must immediately inform Kaleidoko in writing of the situation and Kaleidoko reserves the right to adjust their fees accordingly. Where issues are unable to be resolved, Kaleidoko reserves the right to terminate the Project Management and any fees due to date for the Project Management by Kaleidoko become due.
- 6.17 In relation to the Project, the Client further warrants that:

- (a) any description relating to its products or services in the Project is true and accurate;
 - (b) the Project does not contravene any act or Parliament nor is it in any other way illegal or defamatory;
 - (c) they will only use the Project for lawful purposes and the Project will conform to all codes of practice and any such standards made available by Kaleidoko from time to time;
 - (d) it will supply or approve supplied content for the Project prior to any deadlines, as advised/published by Kaleidoko;
 - (e) will comply with all laws and regulations concerning the collection and management of any data; and
 - (f) where the Client is a White Label Service, that it will procure compliance by its client for whom Project Management is being procured, of Paragraph [6.17].
- 6.18 If the Client breaches Paragraph [6.17] it shall immediately rectify the breach and fully indemnify Kaleidoko against any fines, losses, costs, damages, charges, claims, demands, expenses direct losses, loss of profits and indirect and consequential losses incurred by Kaleidoko as a result of the Client's breach.
- 6.19 Kaleidoko shall not be liable to the Client in respect of Projects relating to response, sales, purchases or otherwise or otherwise.
- 6.20 The Client acknowledges that the Vendor is not an employee of Kaleidoko and under the Agreement, the Client agrees that if at any time a Vendor ceases to offer their services or, if at any time for any reason, a Vendor refuses service to the Client for any reason, including but not limited to any non-compliance of their terms, that Kaleidoko will not be held responsible for non-delivery of any aspect of the Project, and any fees due to date for the Project Management by Kaleidoko will still be due.

7 Campaign Management

- 6.1 Where the Marketing Deliverables include Campaign Management the provisions of this Paragraph [7] shall additionally apply.
- 7.2 The Client warrants that:
- (a) they must fully and fairly represent the purpose for which the Campaign is required as any misrepresentation may result in cancellation of the Campaign at any time by Kaleidoko;
 - (b) the planned Campaign must be fully disclosed prior to booking or placing an Order and will be allowed only with full agreement by Kaleidoko and as stipulated in the Statement of Work;
 - (d) where applicable, they will attend and participate in meetings where it is agreed that it will do so as part of the delivery of the Campaign; and
 - (d) they will sign and abide by all terms set forth by Vendor and/or Media Owners, including (but not limited to) delivery dates, duration, quantity, frequency, placement, actions, responses, targets and filters.
- 7.3 The Client is responsible to ensure the start-date, duration and budget for the Campaign is accurately specified in the Statement of Work.
- 7.4 Kaleidoko will develop a strategy for the execution of the Campaign, specify placements of Advertisements and recommend Media Owners and/or Vendors as part of the Campaign Management against the Statement of Work ("**Campaign Strategy**").
- 7.5 The Campaign Strategy will be presented to the Client as an Initial Proof and any necessary changes will be implemented before providing a Final Proof, following the development and review process defined in Clauses [6] and [7].
- 7.6 All fees associated with the Campaign Strategy are specified in the Statement of Work in accordance with Paragraph [12.4].
- 7.7 Where the Client has direct relationships with any Vendors and/or Media Owners, Kaleidoko will still charge a management fee to oversee the Campaign Management in accordance with Paragraph [12.4].
- 7.8 Where Media is being planned and/or purchased, every endeavour will be made to deliver the correct Media quantity ordered, but the Statement of Work is conditional upon mutually agreed working margins of variations being allowed for under- and over-delivery in any Media Owner and/or Vendor engagement. The Client acknowledges that all amounts booked may vary at time to time beyond Kaleidoko's control due to the nature of Media placement, and any under- or over-delivery make-goods will need to be negotiated directly with the Vendor and/or Media Owner.
- 7.9 Where a Vendor is being utilised for any delivery, targeting, filtration and/or customisation of any Advertisement ("**Ad Tech**"), every endeavour will be made to ensure the Ad Tech works as requested by the Client as part of the Campaign Management, but the Statement of Work is conditional upon third party implementation by any Vendor and/or Media Owner. The Client acknowledges that all Ad Tech may fault in a form beyond Kaleidoko's control due to the nature of Ad Tech, and any make-goods will need to be negotiated directly with the Vendor and/or Media Owner.
- 7.10 If a threshold of any quantity of Advertisement impressions is required to limit the Client's exposure to Media costs ("**Hard Stop**"), this Hard Stop needs to be communicated to Kaleidoko, Media Owners and/or Vendors in advance of any Campaign going live. Kaleidoko will endeavour to advise the Client when any Hard Stop levels are being approached per Media placement, and will communicate accordingly both with the Client, Media Owner and/or Vendor as part of the Campaign Strategy.
- 7.11 In the event that any Hard Stop limits are not communicated in adequate time, and/or outside of any agreed third-party terms and conditions, any costs associated with the Media and/or Vendors that are incurred by Kaleidoko, will be charged to the Client.
- 7.12 In relation to Advertising, the Client further warrants that:
- (a) any description relating to its products or services in the Advertisement is true and accurate;
 - (b) the Advertisement does not contravene any act or Parliament nor is it in any other way illegal or defamatory;
 - (c) it will at all times comply with the British Code of Advertising Practice, the recommended standards produced by the Advertising Association and all other relevant advertising standards guidelines and regulations;
 - (d) it will supply or approve supplied copy for Advertisements prior to copy deadlines, as advised/published by Kaleidoko; and

- (e) where the Client is a White Label Service, that it will procure compliance by its client for whom Campaign Management is being procured, of Paragraph [7.12].
- 7.13 If the Client breaches Paragraph [7.12] it shall immediately rectify the breach and fully indemnify Kaleidoko against any fines, losses, costs, damages, charges, claims, demands, expenses direct losses, loss of profits and indirect and consequential losses incurred by Kaleidoko as a result of the Client's breach.
- 7.14 All Advertisements must be submitted by the Client for the approval of Kaleidoko prior to publication. Kaleidoko reserves the right to refuse, omit, alter, suspend, withdraw or otherwise deal with any Advertisement at its absolute discretion and without explanation or liability to the Client. Where Advertisements are being produced by Kaleidoko, these will be defined in the Statement of Work and guided by Schedule 3 Creative Services and notwithstanding the rest of this Paragraph.
- 7.15 Visuals and copy shall be supplied in accordance with Kaleidoko's publication deadlines as published/advised on a periodic basis. If the Client fails to comply with this Paragraph [7.15]:
- (a) Kaleidoko shall not be under an obligation to supply proofs to the Client and reserves the right to use the copy last supplied by the Client; and
- (b) Kaleidoko shall be entitled to payment of its fee in accordance with Paragraph [12.4], even if no visuals or copy whatsoever have been supplied.
- 7.16 Where Kaleidoko does supply proofs to the Client and the Client fails to check and return any proof submitted by Kaleidoko, Kaleidoko reserves the right to publish the Advertisement as prepared.
- 7.17 Kaleidoko cannot accept responsibility for changes to approved copy although it will use its reasonable endeavours to make these if they are submitted prior to the final copy deadline as published/advised from time to time, provided always where changes are made pursuant to this Paragraph [7.17] the Client shall be responsible for any additional costs thereby incurred by Kaleidoko.
- 7.18 Kaleidoko shall use its best endeavours to ensure the appearance of contracted for Advertisement but does not accept liability for the non-appearance of any Advertisement.
- 7.19 Unless the parties have agreed to the position of the Advertisement in the Media (in which case this shall be agreed in writing by the parties), Kaleidoko does not guarantee the position of any Advertisement in any Media. Where the Client has expressed a preference only as to the position of its Advertisement in the Media, Kaleidoko shall use its reasonable endeavours to comply with the Client's preference but shall have no liability to if the Advertisement is not published in the preferred position.
- 7.20 Kaleidoko shall not be liable to the Client in respect of Advertisements relating to positioning, leading to a minimum number of views, response or frequency or otherwise. In addition, Kaleidoko shall not be liable for ensuring that such Advertisements lead to a certain volume of traffic, number of calls, clicks, registrations, attendees, sales, purchases or the like.
- 7.21 The Client warrants to Kaleidoko that the Client will only use the Campaign for lawful purposes. In particular, the Client further warrants and undertakes to Kaleidoko that they:
- (a) will not, nor will authorise or permit any other party to, use the Campaign in violation of any law or regulation;
- (b) will not knowingly or recklessly post, link to or transmit: any goods or services that are unlawful, threatening, abusive, harmful, malicious, libellous, defamatory, obscene, pornographic, profane or otherwise objectionable in any way; or any goods or services containing a virus or other hostile computer program, or any goods or services that can no longer be honoured by the Client;
- (c) will not post, link to or transmit any material that shall constitute or encourage a criminal offense, give rise to civil liability or that violates or infringes any data protection regulation, trade mark, copyright, other intellectual property rights, or similar rights of any person, firm or company under the laws of any jurisdiction;
- (d) will conform to all codes of practice relating to the Campaign and any such standards made available by Kaleidoko from time to time;
- (e) will comply with all laws and regulations concerning the collection and management of any data.
- 7.22 Kaleidoko reserves the right to terminate or deny Campaign for any reason including (but not limited to) any standards that are accepted and adopted by the advertising industry and/or trade bodies, where failure to comply with such standards would adversely affect the provision of the Campaign; and as highlighted in Paragraph [7.21].
- 7.23 Under the Agreement, the Client agrees that if at any time a Media owner ceases to offer space or listings or, if at any time for any reason, a Media Owner or Vendor refuses service to the Client for any reason, including but not limited to any non-compliance of their terms, that Kaleidoko will not be held responsible for non-delivery of any aspect of the Campaign.

8 Event Management

- 8.1 Where the Marketing Deliverables include Event Management the provisions of this Paragraph [8] shall additionally apply.
- 8.2 The Client warrants that:
- (a) they must fully and fairly represent the purpose for which the Event is required as any misrepresentation may result in cancellation of the Event at any time by Kaleidoko;
- (b) the planned sponsorship of the Event must be fully disclosed prior to booking or placing an Order and will be allowed only with full agreement by Kaleidoko and as stipulated in the Statement of Work;
- (c) where applicable, they will attend and participate in Events where it is agreed that it will do so as part of the delivery of the Event;
- (d) they will not publish, circulate or distribute any Advertisement or publicity material relating to the Event or the Venue without obtaining the prior written approval of Kaleidoko;
- (e) they will not invite or permit more than the agreed number of Guests to attend the Event; and

- (f) they will sign and abide by all terms set forth by the Venue and any Vendors (if applicable), including (but not limited to) arrival, entry, decoration, equipment, delivery, alcohol, catering, guest list, staffing, good order and vacating.
- 8.3 Kaleidoko will develop a strategy for the execution of the Event, and recommend Venue and/or Vendors as part of the Event Management against the Statement of Work (“**Event Strategy**”).
- 8.4 The Event Strategy will be presented to the Client as an Initial Proof and any necessary changes will be implemented before providing a Final Proof, following the development and review process defined in Clauses [6] and [7] and in accordance with Paragraph [12.4].
- 8.5 All fees associated with the Event Strategy are specified in the Statement of Work in accordance with Paragraph [12.6].
- 8.6 Where the Client has direct relationships with any Vendors and/or Media Owners, Kaleidoko will still charge a management fee to oversee the Event Management in accordance with Paragraph [12.6].
- 8.7 Every endeavour will be made to ensure the Venue and/or Vendors delivers as requested by the Client as part of the Event Management, but the Statement of Work is conditional upon the terms and conditions set out by the Venue and/or Vendors and supplied to the Client in advance of the Event. The Client acknowledges that any derivation from the Venue’s and/or Vendors established guidelines by the Client and/or the Guests may result in additional charges, the right to interrupt the Event and/or early termination of the Event. If this occurs, Kaleidoko may invoice any additional charges to the Client accordingly.
- 8.8 The Client will be permitted to enter the Venue with Kaleidoko on two occasions prior to the day of the Event for the purpose of making any operational or spatial planning investigations necessary for the smooth running of the Event, at such dates and times as shall be agreed in advance with Kaleidoko. Kaleidoko will use reasonable endeavours to answer any operational questions as the Client may reasonably ask during or following such visits.
- 8.9 Kaleidoko will take appropriate measures, within its control, and as agreed with the Venue and set forth in the Statement of Work, to provide all technical resources, set design, catering, alcohol and staff requirements as required by the Client to perform the Event and reserves the right to:
- (a) determine the number of staff provided for an Event and charge the Client accordingly to ensure the smooth running of the Event; and
 - (b) engage any Vendors, including (but not limited to) audio, visual and lighting technicians, as required to assist with audio-visual, sound or lighting, and charge additional fees as necessary;
 - (c) engage caterers, bar staff, security, front of house staff and the likes as required by the Client, having negotiated with the Venue and charge additional fees as necessary; and
 - (d) supply creative sources for set design and other promotional Materials as necessary for the Event, and charge accordingly.
- 8.10 Kaleidoko reserves the right to use their preferred suppliers and contractors for all services and insist that their authorised contractors be present at an event and charge as appropriate. No other contractors are permitted access to the venue unless they have been approved and/or vetted by Kaleidoko, they have been briefed on the Venue and its restrictions, and the appropriate fees paid. Use of any non-Kaleidoko Event staff is subject to Kaleidoko discretion, vetting and management. Reasonable expenses incurred will be charged to the Client.
- 8.11 Unless stipulated in the Statement of Work, Kaleidoko or Kaleidoko’s designated contractor(s) shall have the exclusive right to sell and/or supply food and/or beverages within the Venue and charge corkage fees as necessary. No alcohol of whatever description or associated beverages or food items may be brought onto the premises at any time or for any purpose except where the Statement of Work stipulates otherwise.
- 8.12 Vendors, technicians, caterers and other contractors are subject to availability and Kaleidoko reserves the right to amend the choice of Vendor or contractor and to substitute any food or drink products specified in the Statement of Work with similar.
- 8.13 No Client Materials, Third-Party Materials and/or equipment is to be delivered to the Venue without the prior agreement of Kaleidoko.
- 8.14 Kaleidoko, its representatives, employees or agents reserve the right to:
- (a) request a list of anticipated Guests at least 24 hours in advance of the commencement of the Event;
 - (b) refuse entry to any persons who are in the opinion of Kaleidoko posing a safety or security risk at or in the vicinity of the Property during, immediately prior to or immediately following the Event;
 - (c) request proof of invitation or identification from each or any Guest, without which entry to the Property may be refused; and
 - (d) refuse any request to increase party size; and
 - (e) terminate any Event not properly conducted.
- 8.15 If the Client breaches Paragraph [8.14] it shall fully indemnify Kaleidoko against any fines, losses, costs, damages, charges, claims, demands, expenses direct losses, loss of profits and indirect and consequential losses incurred by Kaleidoko as a result of the Client’s breach and Paragraph [12.6] still apply.
- 8.16 It is a condition of this Agreement that the Client has made all Guests who are party to the Event aware of the Venue’s terms and conditions. Each Guest must individually agree to comply with those terms and conditions as the Venue reserves the right to enforce their terms and conditions against Guests individually where relevant.
- 8.17 All Venue and/or Vendor property will be inventoried prior to Client access and a Client signed copy of this inventory must be provided prior to the start of the Event. Any losses incurred due to inventoried property found to be missing or damaged will be charged to the client and/or recovered from the Security Deposit in accordance with Paragraph [12.6].
- 8.18 Any changes to the Event must be requested by the Client in writing before an updated booking is confirmed. Extensions to times, equipment, catering and any other resources incur additional charges. Though Kaleidoko will always endeavour to accommodate the wishes of the Client where possible, the Client acknowledges in certain circumstances this may not be possible. No variation in times, equipment, catering or otherwise may be permitted once an Event has started.

- 8.19 Any additional services requested by the Client not stipulated under the Statement of Work will incur relevant fees.
- 8.20 If the Client uses any of their own equipment, engages with any Vendor direct, or does not avail itself of the opportunity for Kaleidoko to provide any resources (where prior specified and available), Kaleidoko shall accept no responsibility for maintenance, loss or damage howsoever caused as a result of any equipment failure and/or adverse effect on the Event.
- 8.21 Kaleidoko shall not be liable for actual attendance levels being lower than those anticipated, nor any anticipated outcome of any Event.

9 Intellectual Property Rights

- 9.1 Upon the delivery of the completed the Marketing Deliverables to the Client, Kaleidoko will (and hereby does) grant to the Client a worldwide, non-exclusive licence to use, copy and publish the Marketing Deliverables, excluding the Client Materials, Provider Materials, Preparatory Materials and Third-Party Materials, in accordance with Clause [9].

10 Moral rights waiver

- 10.1 Kaleidoko waives (and will use reasonable endeavours to seek to ensure that its employees and subcontractors waive) any moral rights they may have in the Marketing Deliverables arising under Chapter 4 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights anywhere in the world, excluding the Client Materials, Provider Materials, Preparatory Materials and Third-Party Materials, in accordance with Clause [9].

11 Term of Statement of Work

- 11.1 A Statement of Work applying this Schedule will come into force on the date of execution of the Statement of Work, and will continue in force until cancelled in accordance with Paragraph [11.2] or Paragraph [13].
- 11.2 A Statement of Work applying this Schedule will be automatically cancelled:
- (a) on the date of effective termination of the Agreement under Clause [21]; or
 - (b) upon the later of:
 - (i) the completion of all the Marketing Services under the Statement of Work; and
 - (ii) the payment in cleared funds of all amounts due under the Statement of Work.

12 Marketing Charges

- 12.1 The Marketing Charges, and dates upon or after which Kaleidoko may issue invoices for the Marketing Charges, are as set out in the Statement of Work.
- 12.2 Where the Marketing Deliverables include Project Management the provisions of Paragraphs [12.3] shall additionally apply;
- 12.3 The Client agrees:
- (a) to confirm the agreed budget for the entirety of the Project Management for the Term as specified in the Statement of Work;
 - (b) to pay a monthly management fee of 15% of the third-party deliverables or an agreed monthly management fee (for a set number of hours) and the applicable VAT for the ongoing management of third parties on behalf of the Client ("**Project Charges**");
 - (c) the Project Charges will be invoiced as specified in the Statement of Work and in accordance with Clauses [10] and [12] and this Paragraph [12];
 - (d) where Project Charges are an agreed monthly cost for a set number of hours of Project Management in the Statement of Work, that any additional time for Project Management required by the Client that goes beyond the agreed package will be charged on a per-hour basis at Kaleidoko's then current rate card.
 - (e) the Project Charges will be paid regardless of any third-party disputes and irrespective of whether Kaleidoko or the Client are paying any third party direct; and
 - (f) the Project Management will be dependent upon the complexity of the deliverables undertaken by the third-party and agreed in advance with the Client in the Statement of Work as part of the Agreement.
- 12.4 Where the Marketing Deliverables include Campaign Management the provisions of Paragraph [12.5] shall additionally apply.
- 12.5 The Client agrees:
- (a) to confirm the agreed budget for the entirety of the Campaign as specified in the Statement of Work ("**Campaign Charges**");
 - (b) to pay Kaleidoko an initial set up fee (where applicable) in order to set up the Campaign ("**Set Up**") and the applicable VAT which covers the initial Campaign Strategy;
 - (c) the Set Up will be paid regardless of whether the Campaign ultimately moves forward, and must be paid in advance of any Campaign being activated;
 - (d) to pay a monthly management fee of 15% of Campaign spend or an agreed monthly retainer fee ("**Retainer**") and the applicable VAT for the ongoing maintenance of the Campaign Strategy and management of Vendors;
 - (e) the Retainer will be invoiced as specified in the Statement of Work and payment is due on 1st of each month in advance of the Campaign being delivered within the forthcoming month and considered payment on account;

- (f) the Retainer will be paid regardless of any Media and/or Vendor costs and irrespective of whether Kaleidoko or the Client are paying the Vendor or Media direct;
 - (g) the Set Up and Retainer will be dependent upon the complexity of the Campaign and agreed in advance with the Client in the Statement of Work as part of the Agreement; and
 - (h) that no Advertisement relating to any Campaign will be made public until the Set Up and any specific Retainer to the month in question has been received by Kaleidoko in full and advance.
- 12.6 Where the Marketing Deliverables include Event Management the provisions of Paragraph [12.7] shall additionally apply.
- 12.7 The Client agrees:
- (a) to confirm the agreed budget for the entirety of the Event as specified in the Statement of Work (“**Event Charges**”);
 - (b) to pay Kaleidoko the greater of either £5,000 or 50% of the Event Charges (the “**Deposit**”) and the applicable VAT as a non-refundable deposit for the Event Management and management of Vendors;
 - (c) to pay a further refundable amount of the greater of either £1,000 or 5% of the Event Charges (“**Security Deposit**”) to be held by Kaleidoko for the Venue for the duration of the Event, the sum of which is due 30 days prior to the Event and to be held until the inventory has been checked in accordance with Paragraph [8.2] and [8.15];
 - (c) following the signing of the Agreement, the balance of the Event Charges shall be paid to Kaleidoko no later than 15 days prior to the start of the Event;
 - (d) if the Agreement is signed within 30 days prior to the start of the Event, notwithstanding this Paragraph [12.5], the Event Charges (including Security Deposit) shall be payable in full at the time of signing;
 - (e) additional items including, but not limited to, Expenses, disbursements, or any items requested by the Client after the signing of this Agreement must be confirmed by the Client in writing before being acted upon by Kaleidoko. Any such items shall be invoiced by Kaleidoko to the Client at the discretion of Kaleidoko and payment therefore shall be due within 14 days of the date of the invoice; and
 - (f) that no tickets, itineraries, maps or other final details with respect to the arrangements relating to any Order will be forwarded to the Client until payment has been received by Kaleidoko in full.

13 Cancellation

- 13.1 Either party may cancel a Statement of Work applying to this Schedule by giving to the other party at least 30 days’ written notice of cancellation, in accordance with Clause [20] and Clause [21]. Where Marketing Services include Projects, Campaigns and/or Events that are to be cancelled at the Client’s request, the provisions of this Paragraph [13] shall additionally apply.
- 13.2 If the Client wishes to cancel the Project, they may do so at any time by written notice to Kaleidoko provided that:
- (a) If the Campaign is cancelled or terminated in the middle of a Project, all costs associated with the Project Charges in regard to the work undertaken so far are still due;
 - (b) all costs according to the Vendor terms and conditions, including any tie ins or cancellation costs, are still liable, which the Client understands will vary between Vendors and are solely the responsibility of the Client to engage with direct; and
 - (c) any additional costs reasonably incurred by Kaleidoko in cancelling any arrangements connected with the Project shall be paid by the Client.
- 13.3 If the Client wishes to cancel the Campaign, they may do so at any time by written notice to Kaleidoko provided that:
- (a) under no circumstances will the Set Up be returnable;
 - (b) If the Campaign is cancelled or terminated in the middle of a Campaign, all costs associated with the Retainer Fee in regard to the preparation for the forthcoming month are still due;
 - (c) all costs according to Media and/or Vendor terms and conditions, including any tie ins or cancellation costs, are still liable, which the Client understands will vary between Media and/or Vendors; and
 - (d) any additional costs reasonably incurred by Kaleidoko in cancelling any arrangements connected with the Campaign shall be paid by the Client.
- 13.4 Where the Client pays a subscription for an agreed number of Advertisements to be published, displayed or served in any Media during an agreed period of time during the Campaign (“**Subscription Period**”) and the Client fails to take up the agreed number during the Subscription Period:
- (a) the Client shall not be entitled to a refund of the fees in respect of the Retainer Fee and Media which has failed to take up during the Subscription Period; and
 - (b) the Client shall not be automatically entitled to carry forward Advertisements which has failed to take up during one Subscription Period into a subsequent Subscription Period without express written consent by Kaleidoko.
- 13.5 If the Client wishes to cancel the Event, they may do so at any time by written notice to Kaleidoko provided that:
- (a) under no circumstances will the Deposit be returnable;
 - (b) if the cancellation notice is received by Kaleidoko not less than 30 days but less than 60 days before the start date of the Event, 75% of the Event Charges payable shall become immediately due and payable to the extent that the same has not already been received by Kaleidoko;
 - (c) if the cancellation notice is received by Kaleidoko less than 30 days before the start date of the Event, the balance of the Event Charges shall become immediately due and payable to the extent that the same has not already been received by Kaleidoko; and

(d) any additional costs reasonably incurred by Kaleidoko in cancelling any arrangements connected with the Event shall be paid by the Client on demand.

13.6 Where either the Campaign and/or Event is cancelled due to reasons which are outside Kaleidoko's reasonable control, Kaleidoko shall be entitled to retain any sums hitherto received from the Client or which may still be due from the Client to Kaleidoko for such costs, expenses and disbursements which it has incurred or for which it shall or may be liable in connection with the Campaign Management and/or Event Management:

- (a) Kaleidoko may, but shall not be obliged to, take such steps as it shall in its discretion consider reasonable to obtain reimbursement of any such costs and expenses and shall, subject to deduction of costs incurred in connection therewith, reimburse any sums so recovered to the Client; and
- (b) if Kaleidoko secures another booking in respect of the date of a cancelled Event, up to 50% of the fees beyond the Deposit may be refunded to the Client once reasonable deductions for costs incurred by Kaleidoko have been deducted.

Schedule 3

Creative Services

1 Definitions and interpretation

1.1 In this Schedule:

“Artwork” means the creative work and/or page layouts and content therein comprised in the Creative Deliverables together with all graphical or typographical mark-ups and style sheets comprised in or generated by the Creative Deliverables, that is in a finalised state ready for Reproduction but excluding the Client Materials;

“Audio-Visual” means the capture, recording, preparation, editing, manipulation and rendering of any static or moving image and audio-visual work including (but not limited to) raw footage, photos, negatives, transparencies, video files, audio files, sounds, images, animation, 3D animation, motion capture, titles, lyrics or musical composition and edited photographic, audio or video files and/or other works to be supplied by Kaleidoko to the Client under this Schedule, as specified in the applicable Statement of Work;

“Creative Deliverables” means Artwork, graphic works, logos, copywriting, papers, documents, advertisements, presentations, Video, animation, illustrations, Photography, scripts, storyboards and/or other works to be supplied by Kaleidoko to the Client under this Schedule, as specified in the applicable Statement of Work;

“Creative Charges” means all amounts payable by the Client to Kaleidoko under this Schedule, as specified in the applicable Statement of Work;

“Creative Services” means the creation and refinement of the Creative Deliverables in accordance with the provisions of this Schedule and the applicable Statement of Work; and

“Reproduction” means the reproducing of the Creative Deliverables to print, film, plates, disc, web and software in accordance with the provisions of this Schedule and the applicable Statement of Work.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2 Creative Services and Deliverables

2.1 Kaleidoko will

- (a) supply the Creative Services to the Client during the Term in accordance with Clauses [6] and [7];
- (b) incorporate the Client Materials and Third-Party Materials (if any) into the Creative Deliverables in accordance with Clause [9];

2.2 Kaleidoko will deliver the Creative Deliverables to the Client in accordance with the delivery schedule set out in the applicable Statement of Work providing that:

- (a) the delivery schedule shall not be of the essence of the Agreement; and
- (b) the Client acknowledges that delays in the fulfilment of the Client’s obligations under the Agreement may lead to delays in the delivery of the Creative Deliverables;
- (c) that any delays that are the result of the Client and/or any third party under the direction of the Client may be liable to additional charges, and any costs incurred by Kaleidoko as a result will be chargeable.

2.3 Kaleidoko will use reasonable care and skill in providing the Creative Services and the Client shall grant a degree of creative flexibility and artistic license to Kaleidoko.

2.4 Kaleidoko may sub-contract the provision of the Creative Services without the prior written consent of the Client; providing that if Kaleidoko does sub-contract the provision of the Creative Services, Kaleidoko will remain liable to the Client for the performance of the sub-contracted obligations.

2.5 The Client warrants that:

- (a) any description relating to its products or services in the Creative Deliverables is true and accurate;
- (b) it will supply or approve supplied copy for Creative Deliverables prior to copy deadlines, as advised/published by Kaleidoko;
- (c) where the Client is a White Label Service, that it will procure compliance by its client for whom Creative Deliverables are being procured, of Paragraph [2.5].

2.6 If the Client breaches Paragraph [2.5] it shall immediately rectify the breach and fully indemnify Kaleidoko against any fines, losses, costs, damages, charges, claims, demands, expenses direct losses, loss of profits and indirect and consequential losses incurred by Kaleidoko as a result of the Client's breach.

2.7 The Creative Deliverables will be presented to the Client as an Initial Proof and any necessary changes will be implemented before providing a Final Proof, following the development and review process defined in Clauses [6] and [7] and in accordance with Paragraph [6], including failure to respond within such time period be deemed an approval of such material, and in all cases Kaleidoko shall incur no liability for any errors not corrected by the Client in proofs so submitted.

2.8 The Client should see the Statement of Work as a working creative brief and take responsibility that all tone, style and direction are contained therein. All Creative Services requested by the Client, carried out beyond the agreed resources specified in the Statement of Work, whether experimentally or otherwise, (including, without limitation, amendments or additional time capturing and/or filming Video) will be charged on a per-hour basis at Kaleidoko’s then current rate card.

- 2.9 All Client Materials supplied by the Client will be checked as fit for purpose by Kaleidoko and the Client will be advised if they are not suitable for inclusion in the Creative Deliverables and/or Reproduction. Should the Client wish to go ahead with Reproduction in accordance with the Client Materials provided without modification, Kaleidoko shall incur no liability for any errors not corrected and such Reproduction will be deemed to satisfy the obligations of Kaleidoko.
- 2.10 Kaleidoko reserves the right to charge for all modifications and/or corrections to any Artwork that are found to be problematic or inoperable due to creation and/or alterations by and on behalf of the Client in the Client Materials supplied from sources not commissioned by Kaleidoko and/or to conform with any applicable safety or other statutory requirements.
- 2.11 The client accepts that due to technological limitations, Kaleidoko cannot always guarantee or warrant the exact replication of size, colour, sounds or any other styles perceived by the human means in the Reproduction.
- 2.12 Where printing and/or physical goods are required at the Reproduction stage, every endeavour will be made to deliver the correct quantity ordered, but the Statement of Work is conditional upon margins of up to 10% for work being allowed for overs and shortage, the same to be charged or deducted.
- 2.13 Where Kaleidoko is supplying Artwork and the Client is arranging their own Reproduction, no responsibility will be taken for errors occurring in the uploading and ongoing maintenance of the transmitted, printed, or reproduced files. In such instances, it will be the Client's responsibility to ensure that all specific requirements are passed onto Kaleidoko before commencement of the Artwork. Any changes made by the Client once the Artwork has commenced will be chargeable.
- 2.14 Where the Creative Deliverables include Audio-Visual, the Client further warrants that:
- (a) clear and safe access to any facilities for the purpose of Audio-Visual capture shall be ensured by the Client and all fees (if relevant) have been paid;
 - (b) Kaleidoko reserves the right to change the date or time including (but not limited to) inclement weather, health and safety risks, equipment damage, talent no-show or anything else beyond the control of Kaleidoko that has the potential to prevent successful Audio-Visual capture, which may result in additional charges;
 - (c) in the event of the Client wishing to change or cancel the Audio-Visual capture date Kaleidoko requires a minimum of 21 days' notice in writing and failure to comply may result in additional charges.
- 2.15 Any equipment used will be at the discretion of Kaleidoko, and no further claims or liability will be accepted. In the event that Kaleidoko experiences equipment failure or technical difficulties, all efforts will be made to find suitable replacement equipment and/or personnel so as not to delay Creative Deliverables or adversely impact upon the Creative Deliverables.

3 Intellectual Property Rights

- 3.1 Upon the delivery of the completed Creative Deliverables to the Client, Kaleidoko will (and hereby does) assign to the Client all of its existing and future Intellectual Property Rights in the Creative Deliverables, excluding the Client Materials, Provider Materials, Preparatory Materials and Third-Party Materials, in accordance with Clause [9].
- 3.2 The assignment in Paragraph [3.1] is for the full term of those Intellectual Property Rights, including all extensions, renewals, reversions, and revivals; and includes the right to bring proceedings for any infringement of those Intellectual Property Rights pre-dating their assignment.

4 Moral rights waiver

- 4.1 Kaleidoko waives (and will use reasonable endeavours to seek to ensure that its employees and subcontractors waive) any moral rights they may have in the Creative Deliverables, excluding the Client Materials, Provider Materials, Preparatory Materials and Third-Party Materials, arising under Chapter 4 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights anywhere in the world.

5 Term of Statement of Work

- 5.1 A Statement of Work applying this Schedule will come into force on the date of execution of the Statement of Work, and will continue in force until cancelled in accordance with Paragraph [5.2] or [5.3].
- 5.2 A Statement of Work applying this Schedule will be automatically cancelled:
- (a) on the date of effective termination of the Agreement under Clause [21]; or
 - (b) upon the later of:
 - (i) the completion of all the Creative Services under the Statement of Work; and
 - (ii) the payment in cleared funds of all amounts due under the Statement of Work.
- 5.3 Either party may cancel a Statement of Work applying this Schedule by giving to the other party at least 30 days' written notice of cancellation, in accordance with Clause [20] and Clause [21].

6 Creative Charges

- 6.1 The Creative Charges, and dates upon or after which Kaleidoko may issue invoices for the Creative Charges, are as set out in the Statement of Work.
- 6.2 Changes made by the Client which depart from the original brief as it pertains to the Statement of Work, including alterations in style and the cost of additional visuals or proofs as a result of such alterations, will be chargeable.

- 6.3 When style, type or layout is left to Kaleidoko's judgement, and an Initial Proof has been supplied and agreed upon by the Client, any changes therefrom (including Artwork) made by the Client may incur additional charges in accordance with Clauses [6] and [7].
- 6.4 Any changes made by the Client at the Reproduction stage, including any reprinting or replacements, will be charged at the full cost of Reproduction as specified in the Statement of Work, and Kaleidoko shall incur no liability for any costs associated.
- 6.5 The transference of any template files away from Kaleidoko will incur a fee ("**Transference Fee**") at the discretion of Kaleidoko, and no items shall be transferred until the Transference Fee and any additional charges as set out in the Statement of Work have been paid in full. In addition, Kaleidoko will hold no liability that any Creative Deliverables will work correctly in the case or transference away from Kaleidoko and furthermore, be released from any warranties implied or given in Paragraph [6.5].
- 6.6 Unless otherwise specified, the Creative Charges include delivery of the Creative Deliverables to the Client's specified address as set out in the Statement of Work. A charge may be made to cover any extra costs involved in delivery to a different address or multiple or split deliveries not specified in the Statement of Work.
- 6.7 The acceptance of the Creative Deliverables by the Client shall constitute full and final delivery and all monies are due and non-refundable under any circumstance.

Schedule 4

Development Services

1 Definitions and interpretation

1.1 In this Schedule:

“Acceptance Criteria” has the meaning given to it in Paragraph [3.4];

“Acceptance Period” has the meaning given to it in Paragraph [3.3];

“Defect” means a defect, error or bug having a material adverse effect on the appearance, operation or functionality of the Development Deliverables but excluding any defect, error or bug caused by or arising as a result of:

- (a) an act or omission of the Client, or an act or omission of one of the Client’s employees, officers, agents or sub-contractors;
- (b) an incompatibility between the Development Deliverables and any other application, program or software (other than the Client Materials and the Third-Party Materials);

“Design Elements” means the final visual appearance of the Development Deliverables (including page layouts, artwork, photographs, logos, graphics, animations, video works and text comprised in the Development Deliverables) together with all mark-ups and style sheets comprised in or generated by the Development Deliverables, but excluding Client Materials, Provider Materials, Preparatory Materials and Third-Party Materials;

“Development Charges” means the Charges specified as such in the Statement of Work;

“Development Services” means the Services to be provided under this Schedule, as detailed in Paragraph [2.1];

“Development Deliverables” means the website(s), web and/or mobile application(s), video game(s), software, systems, processes, products, programs and/or database(s) (including Design Elements and Software Elements) to be developed by the Developer for the Client under this Schedule;

“Delivery Date” means the date specified as such in the Statement of Work;

“Maintenance Charges” means the ongoing, periodic Charges specified as such in the Statement of Work;

“Software Elements” means the final working programming and coding as part of the Development Deliverables, excluding the Client Materials, Provider Materials, Preparatory Materials and Third-Party Materials;

“Specification” means the specification for the Development Deliverables set out in the Statement of Work;

“Server” shall mean the computer server equipment and/or Internet provider service operated by or contracted through Kaleidoko or directly by the third party to the Client (as applicable), in connection with the provision of the Development Services; and;

“Vendors” means the third-party services that provide the goods, works, services and/or materials required for the Development Deliverables that may be billed through Kaleidoko or directly by the third party to the Client (as applicable), and as specified in the Statement of Work; or which the parties agree in writing shall be incorporated into the Marketing Deliverables.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2 Development Services

2.1 Kaleidoko will:

- (a) design, develop and deliver the Development Deliverables during the Term in accordance with Clauses [6] and [7] and Paragraph [3];
- (b) incorporate the Client Materials and Third-Party Materials (if any) into the Development Deliverables in accordance with Clause [9];
- (c) keep the Client informed of the progress of the development of the Development Deliverables; and
- (d) provide the Client with reasonable access to the Development Deliverables during their development, (the **“Development Services”**).

2.2 Subject to Paragraph 2.3, Kaleidoko will use reasonable endeavours to perform the Development Services in accordance with the timetable set forth in the Statement of Work providing that:

- (a) the delivery schedule shall not be of the essence of the Agreement; and
- (b) the Client acknowledges that delays in the fulfilment of the Client’s obligations under the Agreement may lead to delays in the delivery of the Development Deliverables;
- (c) that any delays that are the result of the Client and/or any third party under the direction of the Client may be liable to additional charges, and any costs incurred by Kaleidoko as a result will be chargeable.

2.3 Without prejudice to the provisions of Paragraph [2.2], Kaleidoko does not guarantee that the timetable referred to in Paragraph [2.2] will be met.

2.4 Kaleidoko will use reasonable care and skill in providing the Development Services.

- 2.5 Kaleidoko may sub-contract the provision of the Development Services without the prior written consent of the Client; providing that if Kaleidoko does sub-contract the provision of the Development Services, Kaleidoko will remain liable to the Client for the performance of the sub-contracted obligations.
- 2.6 The Client should see the Statement of Work as a working development brief and take responsibility that all purpose, feature sets, usability requirements and direction are contained therein. All Development Services requested by the Client, carried out beyond the agreed resources specified in the Statement of Work, whether experimentally or otherwise, will be charged on a per-hour basis at Kaleidoko's then current rate card.
- 2.7 As standard across the Development Services and unless otherwise notified, the Client shall be exclusively responsible for implementing any business or technology changes recommended by Kaleidoko. As notified by Kaleidoko, in certain cases for amendments to existing Development Deliverables, the Client shall grant Kaleidoko access to the Client's IT and/or business system(s) via username and password in order to gain access to make appropriate changes.
- 2.8 Kaleidoko require that prior notice be given for any alterations relating to the Client's Design Elements and/or Software Elements that may affect the Development Services supplied by Kaleidoko. If alterations are made by the Client or a third party to the Client's Design Elements and/or Software Elements, services including (but not limited to) search engine placements, software security, virus vulnerabilities, compatibility and operation may be affected and Kaleidoko cannot be held responsible.
- 2.9 Kaleidoko advises that the Development Deliverables including (but not limited) to the Server, Vendor, Third-Party Materials and any associated software and technology will require regular maintenance updates to ensure the Development Deliverables are kept up to date with current security and operational requirements, and in certain cases, Server, Vendor and/or Third-Party Materials may auto-update themselves. In such cases, Kaleidoko is limited in liability in accordance with Paragraph [5.1].
- 2.10 Where Kaleidoko is supplying Design Elements and/or Software Elements exclusively and the Client is arranging their own Server and/or Vendor direct, no responsibility will be taken for errors occurring in the uploading and ongoing maintenance of the transmitted or reproduced content under Development Deliverables. In such instances, it will be the Client's responsibility to ensure that all specific requirements are passed on to Kaleidoko before commencement of the Design Elements and/or Software Elements. Any changes made by the Client once the Development Deliverables have commenced will be chargeable.
- 2.11 Any Client Materials submitted to Kaleidoko for hosting on one of our Servers will be subject to checking, evaluation and quality assurance and if found to be problematic, Kaleidoko reserve the right to not host or disconnect the offending web site and/or software and a charge will be made for necessary adjustments.
- 2.12 The Client warrants that:
 - (a) any description relating to its products or services in the Development Deliverables is true and accurate;
 - (b) it will supply or approve supplied copy for Development Deliverables prior to copy deadlines, as advised/published by Kaleidoko;
 - (c) where the Client is a White Label Service, that it will procure compliance by its client for whom Development Deliverables are being procured, of Paragraph [2.12].
- 2.13 If the Client breaches Paragraph [2.12] it shall immediately rectify the breach and fully indemnify Kaleidoko against any fines, losses, costs, damages, charges, claims, demands, expenses direct losses, loss of profits and indirect and consequential losses incurred by Kaleidoko as a result of the Client's breach.

3 Delivery and acceptance

- 3.1 Kaleidoko will use reasonable endeavours to deliver the Development Deliverables to the Client for acceptance testing on or before the Delivery Date.
- 3.2 The Development Deliverables will be developed against the Statement of Work in accordance with Paragraphs [2.1] and [2.6].
- 3.3 The Client is expected to sign off at two major approval points, following the development and review process defined in Clauses [6] and [7], but in particular to the Development Deliverables:
 - (a) an Initial Proof of the Design Elements and a preliminary working prototype of the Software Elements ("**Alpha**"); and
 - (b) a Final Proof of the Design Elements and a functional working version of the Software Elements ("**Beta**");and the time between Alpha and Beta will be as specified in the Statement of Work (the "**Acceptance Period**").
- 3.4 During the Acceptance Period, the Client will carry out acceptance tests to determine:
 - (a) whether the Development Deliverables conform in all material respects with the Specification; and
 - (b) whether the Development Deliverables have any Defects, (the "**Acceptance Criteria**").
- 3.5 If the Development Deliverables meet the Acceptance Criteria, the Client will send to Kaleidoko a written notice during the Acceptance Period confirming acceptance of the Development Deliverables.
- 3.6 If the Development Deliverables do not meet the Acceptance Criteria:
 - (a) the Client will send to Kaleidoko a written notice during the Acceptance Period setting out in detail the respect(s) in which the Development Deliverables do not meet the Acceptance Criteria; and
 - (b) Kaleidoko will have a further remedial period (of 20 Business Days) to modify the Development Deliverables so that they meet the Acceptance Criteria.
- 3.7 Once a Beta has been accepted following the development and review process defined in the Acceptance Criteria and in accordance with Clauses [6] and [7], any request by the Client for substantial deviation from the Statement of Work will result in additional charges.
- 3.8 The Development Deliverables will be deemed to have been accepted by the Client if:

- (a) the Client does not give any notice to Kaleidoko under either Paragraph 3.5 or 3.6 during the Acceptance Period; or
- (b) the Client publishes the Development Deliverables or uses the Development Deliverables for any purpose other than development and/or testing.

4 Intellectual Property Rights

- 4.1 From the date of acceptance of the Development Deliverables by the Client, Kaleidoko hereby assigns to the Client all its Intellectual Property Rights in the Design Elements, excluding the Client Materials, Provider Materials, Preparatory Materials and Third-Party Materials, in accordance with Clause [9]. These rights are assigned for the whole term of such rights together with all reversions, revivals, extensions and renewals, and this assignment includes the right to bring proceedings for past infringement of the assigned Intellectual Property Rights.
- 4.2 All Intellectual Property Rights in the Software Elements will, as between the parties, be the property of Kaleidoko and, from the date of acceptance of the Development Deliverables by the Client, Kaleidoko grants to the Client a non-exclusive worldwide licence to use the Software Elements in connection with the Development Deliverables, subject always to the other terms of the Agreement, and providing the Client must not:
- (a) sell, resell, rent, lease, supply, distribute or redistribute the Software Elements;
 - (b) use the Software Elements in connection with any website, web application, script, computer program or software (other than the Development Deliverables); or
 - (c) alter or adapt or edit the Software Elements,
- and the Client may only sub-license the rights licensed under this Paragraph for the limited purposes, and subject to the express restrictions, specified in this Paragraph.
- 4.3 The Third-Party Materials will be at the option of Kaleidoko and subject to licensing in accordance with Clause [9.2] and may be limited for usage in time subject to ongoing renewal costs.
- 4.4 Notwithstanding any other provision of the Agreement, the assignments and licences granted by Kaleidoko under this Schedule are subject to the payment by the Client of all amounts owing to Kaleidoko under this Schedule in full and on time. In the event that the Client owes any amount to Kaleidoko under this Schedule and fails to pay that amount to Kaleidoko within 30 days of receiving a notice:
- (a) requiring it to do so; and
 - (b) specifying that the assignments will revert and the licences will terminate if the amount remains unpaid,
- then Kaleidoko may immediately revert the assignments and terminate the licences granted by Kaleidoko under this Schedule by giving written notice of reversion and termination to the Client.
- 4.5 Subject to Paragraph [4.4], upon and following the termination of the Agreement, any licence granted by Kaleidoko to the Client will continue notwithstanding termination, and this Paragraph [4] will continue to apply.
- 4.6 Kaleidoko waives (and will use reasonable endeavours to seek to ensure that its employees and subcontractors waive) any moral rights they may have in the Development Deliverables, excluding the Client Materials, Provider Materials, Preparatory Materials and Third-Party Materials, in accordance with Clause [9], arising under Chapter 4 of the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights anywhere in the world.

5 Additional Warranties

- 5.1 Kaleidoko warrants to the Client that:
- (a) the Development Deliverables will meet the Specification as at the date of actual delivery to the Client; and
 - (b) the Development Deliverables will continue to operate without any Defects for a period of 6 months from the date of acceptance of the Development Deliverables, providing nothing is updated by the Client, anybody working under direction from the Client outside of Kaleidoko, or any Server, Vendor and/or Third-Party Materials (and if the Development Deliverables do not so operate, Kaleidoko will, for no additional charge, carry out any work necessary in order to ensure that the Development Deliverables operate without any Defects during this period); and
 - (c) where patch updates from Third-Party Materials, Vendor- and/or Server-related enhancements are required, these will be subject to a remedial cost at Kaleidoko's hourly rate plus any additional services required, including Third-Party Materials, unless specifically agreed under Paragraph [8].
- 5.2 The Client acknowledges that Kaleidoko will design the Development Deliverables to work with the technologies as agreed within the Statement of Works and Kaleidoko does not warrant that the Development Deliverables will work with any other contingent technologies.
- 5.3 Kaleidoko specifically excludes any warranty as to the accuracy or quality of information received by any person via the Server and in no event, will Kaleidoko be liable for any loss or damage to any data stored on the Server. The Client is responsible for maintaining insurance cover in respect of any loss or damage to data stored on the Server.
- 5.5 The Client warrants to Kaleidoko that the Client will only use the Development Deliverables for lawful purposes. In particular, the Client further warrants and undertakes to Kaleidoko that:
- (a) will not, nor will authorise or permit any other person or third party acting on their behalf to, use the Server in violation of any law or regulation;

- (b) will not, nor will authorise or permit any other person or third party acting on their behalf to, knowingly or recklessly post, link to or transmit: any goods or services that are unlawful, threatening, abusive, harmful, malicious, libellous, defamatory, obscene, pornographic, profane or otherwise objectionable in any way; or any goods or services containing a virus or other hostile computer program, or any goods or services that can no longer be honoured by the advertiser;
 - (c) will not, nor will authorise or permit any other person or third party acting on their behalf to, post, link to or transmit any material that shall constitute or encourage a criminal offense, give rise to civil liability or that violates or infringes any data protection regulation, trade mark, copyright, other intellectual property rights, or similar rights of any person, firm or company under the laws of any jurisdiction;
 - (d) will conform to the standards made available by Kaleidoko from time to time and the Client will not (and will ensure that none of their end users) make excessive or wasteful use of the Server to the detriment of Kaleidoko or that of our other clients.
- 5.6 The Client is responsible for sending any mail or messages in accordance with any relevant legislation (including data protection legislation) and for sending the same in a secure manner. Kaleidoko will take all reasonable steps to ensure accurate and prompt routing of messages but we will not accept any liability for non-receipt or misrouting or any other failure of email, SMS or other messaging service. The Client warrants, undertake and agree that:
- (a) all transactions within the Development Deliverables will be contracts for the sale of goods between you as the merchant and your end-user customer and you agree that we may include an exclusion of Kaleidoko's liability in respect of such purchases and transactions in such form as Kaleidoko deems appropriate;
 - (b) the information contained within the Development Deliverables complies with all applicable law, including, without limitation, any distance selling regulations and data protection regulations from time to time in force;
 - (c) will keep secure any identification, password and other confidential information relating to the Client's account and will notify Kaleidoko immediately of any known or suspected unauthorised use of the Clients' account, or any known or suspected breach of security, including loss, theft or unauthorised disclosure of the Client's password information.
- 5.7 Kaleidoko does not warrant or guarantee that any domain name or social media moniker applied for will be registered in the Client's name or is capable of being registered by the Client. Accordingly, the Client should take no action in respect of the requested name(s) until the Client has been notified that the requested name(s) has/have been registered in accordance with Paragraph [5.8].
- 5.8 Without prejudice to Paragraph [5.7], the Client warrants, undertake and agree that:
- (a) The registration of the domain name and its ongoing use is subject to the relevant naming authority's terms and conditions of use and the Client is responsible for ensuring for complying with them. The Client irrevocably waives any claims against Kaleidoko in respect of the decision of a naming authority to refuse to register a domain name and, without limitation agree that the administration charge paid by the Client to Kaleidoko shall be non-refundable in any event.
 - (b) Kaleidoko accepts no responsibility in respect of the use of any domain name and/or social media name by the Client and any dispute between the Client and any other individual or organisation regarding any name and must be resolved between the parties concerned and Kaleidoko will take no part in any such dispute. Kaleidoko reserves the right, on becoming aware of such a dispute, at Kaleidoko's sole discretion and without giving any reason, to either suspend or cancel the name, and/or to make appropriate representations to the relevant naming authority.

6 Term of Statement of Work

- 6.1 A Statement of Work applying this Schedule will come into force on the date of execution of the Statement of Work, and will continue in force until cancelled in accordance with Paragraph [6.2] or [6.3].
- 6.2 A Statement of Work applying this Schedule will be automatically cancelled:
- (a) on the date of effective termination of the Agreement under Clause [21]; or
 - (b) upon the later of:
 - (i) the acceptance of the Development Deliverables by the Client in accordance with Paragraph [3]; and
 - (ii) the payment of all Charges due to Kaleidoko under this Schedule and the Statement of Work by the Client.
- 5.3 Either party may cancel a Statement of Work applying this Schedule by giving to the other party at least 30 days' written notice of cancellation, in accordance with Clause [20] and Clause [21].

7 Development Charges

- 7.1 The Development Charges, and dates upon or after which Kaleidoko may issue invoices for the Development Charges, are as set out in the Statement of Work.
- 7.2 Kaleidoko reserves the right to limit, restrict or refuse access to any systems and/or Server via login or otherwise, nor offer training to the Client, Vendor or any third-party representative, until all Charges have been paid in full. Furthermore, the Client acknowledges Kaleidoko reserves the right;
- (a) to only offer access at a suitable level and to those person(s) at Kaleidoko's discretion that have been deemed knowledgeable to perform such tasks; and under explicit agreement that any such access that results in any error, fault, omissions, deletion or otherwise inability to function arising from such access is solely with the Client and that the Client will bear any cost's incurred associated with remedying content or working functionality, if even possible, based on the necessary time, materials and software required to do so;
 - (b) to only offer any such training will incur a fee ("**Training Fee**") at the discretion of Kaleidoko, and that no training will be offered until the Training Fee and any additional charges as set out in the Statement of Work have been paid in full; and

- (c) to maintain full administrative access to all areas and at all times, and failure to have such access will result in immediate Termination of the Agreement and potential for any restricted content to be immediately removed from any Server, in which case Kaleidoko will be released from any financial or operational responsibilities as a result of such action and furthermore, be released from any warranties implied or given in Paragraph [5.1].
- 7.2 The transference of any Design Elements, Software Elements and/or Server away from Kaleidoko will incur a fee (“**Transference Fee**”) at the discretion of Kaleidoko, and no items shall be transferred until the Transference Fee and any additional charges as set out in the Statement of Work have been paid in full. In addition, Kaleidoko will hold no liability that any Development Services will work correctly in the case or transference away from Kaleidoko and furthermore, be released from any warranties implied or given in Paragraph [5.1].

8 Maintenance Charges

- 8.1 The Development Services including (but not limited to) hosting, security, filtration, optimisation, domain naming as well as other Third-Party Materials, Vendor dependent and technical provision of the Server may incur ongoing and/or upgrade charges.
- 8.2 Kaleidoko will charge a Maintenance Charge for the administration, preparation, updating, patching and/or rectifying any technical issues at their discretion and as becomes necessary from time to time to ensure the quality of the service is maintained and any vulnerabilities are reduced.
- 8.3 Any search positioning or other marketing requirements the Client may have are subject to Schedule 2 Marketing Services and must be agreed accordingly in the Statement of Work.
- 8.4 The Maintenance Charges, and dates upon or after which Kaleidoko may issue invoices for the Maintenance Charges, are as set out in the Statement of Work.
- 8.5 Where the Client wishes does not wish to avail themselves of a Maintenance Charge, or wishes to cancel, suspend or terminate any Maintenance Charges hereafter, the ongoing technical provisions, usability, operation and/or Intellectual Property Rights from any Third-Party Materials, Vendor or Server cannot be confirmed as to suitability of purpose, and the Client releases Kaleidoko of any liabilities and/or warranties implied or otherwise in accordance with Paragraph [5.1].