



## WYATT INTERNATIONAL LIMITED TERMS AND CONDITIONS FOR SUPPLY OF SERVICES.

### 1. DEFINITIONS & INTERPRETATION

- 1.1 In these Conditions, references to clauses are to clauses of this Contract. Where any provision contained in a Scope of Work conflicts with any provision of the General Terms the following order of precedence shall apply (unless otherwise expressly stated in the Scope of Work):
- (a) General Terms;
  - (b) Scope of Work.
- 1.2 Unless the context otherwise requires:
- (a) a person includes a legal person (such as a limited company) as well as a natural person;
  - (b) the words “include” and “including” shall be construed without limitation;
  - (c) any reference to an enactment of legislation includes any subordinate legislation made from time to time under it and is to be construed as references to that enactment as from time to time amended or modified or any enactment replacing it; and
  - (d) save in relation to notices (see clause 31), a reference to ‘written’ or ‘writing’ includes email.
- 1.3 The headings in this Contract are for ease of reference only and shall be disregarded in construing or interpreting the Contract.
- 1.4 The following terms shall have the corresponding meanings for the purposes of this Contract:

**Accounts:** means the Client’s products and services that are the subject of the Services as referred to in a Scope of Work.

**Advertising Regulation:** means any present or future applicable code of practice or adjudication of the Committee of Advertising Practice, Broadcast Committee of Advertising Practice or the Advertising Standards Authority and includes any applicable modification, extension or replacement thereof in force from time to time, together with other UK laws, statutes and regulations which are directly applicable to the Services.

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

**Agency:** means Wyatt International Limited registered in England and Wales with company number 00512784.

**Agency Materials:** means those Materials specifically created by the Agency for the purposes of a Project by officers, employees or freelancers of the Agency (including any Materials adapted, modified or derived from the Client Materials), whether or not it is incorporated into Deliverables during the Term.

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

**App:** means the application software to be developed as is further described in the relevant Scope of Work and Specification.

**Associates:** means a party’s employees, officers, agents, sub-contractors or authorised representatives.

**Business Day:** means any day other than a Saturday, Sunday or public holiday in the UK.

**Client:** means the person or firm who purchases Services from the Agency.

**Client Materials:** means any Data, client equipment, computer systems, software, documents, copy, Intellectual Property Rights, artwork, logos and any other materials or information owned by or licensed to the Client which are provided to the Agency and/or its Associates by or on behalf of the Client.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 35.4.

**Content:** means any image, text, video, audio file, tweet, status update, or any other Materials which are distributed, shared or otherwise published on a Social Media Site.

**Contract:** the contract between the Agency and the Client for the supply of Services in accordance with these conditions.

**Data:** means the Client’s computer data (in machine readable form).

**Deliverables:** means the advertising, creative and other materials which are to be provided by the Agency as specified in a Scope of Work, including Agency Materials, Third Party Materials and Agency Proprietary Materials where applicable.

**Expenses:** means reasonable travelling, hotel, subsistence and other expenses incurred by the Agency in connection with the supply of Services and Deliverables.

**Fees:** means (as applicable) the Retainer Fee, the Project Fees and such other fees as are set out in the relevant Scope of Work.

**Force Majeure Event:** means any circumstances not within a party’s reasonable control including without limitation, acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war threat or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade disputes, strikes, industrial action or lockouts; non-performance by suppliers or sub-contractors; and interruption or failure of utility service.

**Foreground Software:** means the Software created by the Agency or commissioned by the Agency to be created by a third party in connection with a Project (including any Software adapted, modified, or derived from the Client Materials) together with the GUI which is incorporated into the Deliverables during the Term but not including any Agency Proprietary Materials.

**General Terms:** means the terms and conditions set out in this Contract but not including any Scopes of Work.

**GUI:** means the graphical user interface of any Software application or asset consisting of any textual, graphical and design elements, including the positions of such elements on a Website but excluding the functionality of any such Website and the software underlying such textual, graphical, and design elements.

**Initial Period:** means the period of 12 months from the Commencement Date.

Wyatt International Ltd  
+44 (0)121 454 8181  
hello@wyattinternational.com  
www.wyattinternational.com

Wyatt House 72 Francis Road  
Edgbaston Birmingham B16 8SP UK

Registered Company Number: 00512784

**Intellectual Property Rights:** means the following rights, wherever in the world enforceable, including all reversions and renewals and all applications for registration

- (a) any patents or patent applications;
- (b) any trade marks (whether or not registered);
- (c) inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration;
- (d) copyright or design rights (whether registered or unregistered);
- (e) database rights;
- (f) performer's property rights as described in Part II, Chapter X of the Copyright Designs and Patents Act 1988 and any similar rights of performers anywhere in the world;
- (g) any goodwill in any trade or service name, trading style or get-up; and
- (h) any and all other intellectual or proprietary rights.

**Losses:** means losses, damages, liabilities, claims, demands, actions, penalties, fines, awards, costs and expenses (including reasonable legal and other professional expenses), subject to clause 23.1, 23.2 and 23.4.

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

**Moderation Services:** means the moderation services to be provided by the Agency as set out in the relevant Scope of Work.

**Open Source Software:** means any Software which is developed, tested, or improved through public collaboration and distributed with the idea that it must be shared with others, ensuring an open future collaboration.

**Order:** means the Client's order for Services as set out in the Customer's purchase order form or the Client's written or oral acceptance of a quotation by the Agency, as the case may be.

**Project:** means any project(s) agreed between the parties from time to time under which the Agency is to perform Services and/or supply Deliverables to the Client, as more fully described in this Contract and the applicable Project Scope of Work.

**Project Fee:** means the Agency fees for a Project as set out in the applicable Project Scope of Work.

**Project Scope of Work:** means a Scope of Work for a Project agreed by the parties in writing from time to time.

**Rate Card:** means the Agency's rate card (if applicable) set out in the applicable Scope of Work.

**Retainer Fee:** means the Agency fees for the Services to be provided under the Retainer Scope of Work as may be amended by the parties from time to time in accordance with this Contract.

**Retainer Scope of Work:** means the Scope of Work setting out the Services to be provided in respect of the Retainer Fee by the Agency on an annual basis and as may be amended by the parties from time to time in writing.

**Scope of Work:** means one or more documents as agreed by the parties from time to time containing a description of the relevant Services, and which include a Retainer Scope of Work and/or Project Scopes of Work.

**Services:** means the Services to be supplied by the Agency under this Contract as set out in the relevant Scope of Work, which includes the provision of Deliverables.

**Social Media Services:** means the services to be provided by the Agency in respect of social media which are agreed in a Scope of Work.

**Social Media Site:** means the social media websites in respect of which the Agency has agreed to provide Social Media Services in a Scope of Work or otherwise agreed in writing relating to the Accounts.

**Software:** means the software to be developed as is further described in the Scope of Work and Specification.

**Special Terms:** means any terms specifically designated as varying these General Terms, as set out in the applicable Scope of Work or as otherwise agreed by the parties.

**Specification:** means the functional specification for the Software, App and/or Website (as applicable) as is agreed between the parties in writing in accordance with clause 11.5.

**Term:** means the duration of this Contract as more particularly described in clause 4.

**Terms and Conditions of Social Media Sites:** means the terms and conditions of the Social Media Sites as published and amended from time to time on such Social Media Sites.

**Territory:** means the United Kingdom, unless expressly specified otherwise in the applicable Scope of Work. Publication and marketing on globally accessible mediums such as the internet shall not mean that the Territory is deemed to be world-wide.

**Third Party Costs:** has the meaning set out in clause 18.1.

**Third Party Materials:** means those Materials which are either commissioned by the Agency from third parties during the Term and incorporated into the Deliverables, or which have been created by a third party and which are in existence at the time it is desired to make use of them for inclusion in the Deliverables, but which excludes Third Party Software.

**Third Party Software:** means Software which is to be incorporated into the Deliverables, the Intellectual Property Rights in which are owned by or are licensed by a third party but excluding any Open Source Software.

**UGC:** means user-generated content of any kind which is posted, shared, commented on, or otherwise submitted by a user on Social Media Sites in relation to the Accounts.

**Website:** means the website to be developed (including graphical user interface) as is further described in the relevant Scope of Work and Specification.

**Website Hosting Services:** means the services to be provided by the Agency in respect of website hosting which are set out in a Scope of Work.

**Year:** means a twelve month period commencing on the Commencement Date and each anniversary of the Commencement Date during the Term.

1.5 Definitions which are relevant and used only within a particular clause are defined in that clause.

## 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Client to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Agency issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 These Conditions apply to the Contract 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 Any quotation given by the Agency shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

## 3. APPOINTMENT & SCOPES OF WORK

- 3.1 The Agency acts in all its contracts with third parties with regard to the provision of Services set out in a Scope of Work as a principal at law.
- 3.2 During the Term, the Agency shall perform the Services and (where relevant) shall supply the Deliverables to the Client in the Territory in relation to the Accounts in accordance with the relevant Scope(s) of Work which is agreed between the parties from time to time in writing.
- 3.3 A Scope of Work may include one or more schedules which incorporate additions and amendments to these General Terms to reflect the different types of Services to be provided. Any such schedules form part of this Contract for the duration of the relevant Scope of Work.

## 4. TERM

This Contract shall commence on the Commencement Date and:

- (a) in the case of a Retainer Scope of Work, subject to earlier termination in accordance with clause 27, shall continue for the Initial Period and shall automatically extend for 12 months (**Extended Period**) at the end of the Initial Period and at the end of each Extended Period, unless and until terminated by either party giving not less than 4 months' notice in writing to the other party, such notice to expire no earlier than the end of the Initial Period or the relevant Extended Period, as the case may be; or
- (b) in the case of a Project Scope of Work shall continue until completion of the Project, subject to earlier cancellation or termination in accordance with the terms of clauses 15 or 27.

## 5. CLIENT'S OBLIGATIONS

- 5.1 The Client shall:
  - (a) give the Agency full and clear instructions as to its requirements for the Services and Deliverables to be included in a Scope of Work and ensure that the terms of the Order are complete and accurate;
  - (b) co-operate with the Agency in all matters relating to the Services;
  - (c) provide the Agency with such information and materials as the Agency may reasonably require in order to supply the Services and Deliverables, and ensure that such information is complete and accurate in all material respects;
  - (d) promptly supply to the Agency (at no charge) any Client Materials reasonably required by the Agency or otherwise necessary to provide the Services and Deliverables and shall ensure that it has all rights and licences in place to enable use by the Agency of all Client Materials;

- (e) ensure that it has all necessary licences in place to copy and use any relevant Deliverables, including but not limited to licences from the Copyright Licensing Agency and the Newspaper Licensing Agency;
  - (f) ensure that its employees, agents, consultants, subcontractors and other suppliers and agencies co-operate with the Agency;
  - (g) promptly inform the Agency if the Client considers that any Deliverables submitted to the Client by the Agency for approval are false or misleading or in any way contrary to law or applicable Advertising Regulation;
  - (h) promptly provide its approval and/or comments on the Deliverables as required by the Agency and within sufficient time before any deadlines requested by Client to allow the Agency to submit the Deliverables (and incorporate any amendments, if necessary) prior to such deadline; and
  - (i) comply with any additional obligations as set out in the relevant Scope of Work.
- 5.2 If the Client does not fulfil its obligations under or in connection with this Contract (including its payment obligations) (**Client Default**), then (without prejudice to the Agency's other rights and remedies available to it):
- (a) to the extent that such failure prevents the Agency from performing any Services and/or providing any Deliverables in accordance with this Contract, the Agency will be relieved of its obligations to the Client, and the Agency shall not be liable for any Losses incurred by the Client as a result of any such Client Default; and
  - (b) the Client shall reimburse the Agency on written demand for any costs or losses sustained or incurred by the Agency arising directly or indirectly from the Client Default.

## 6. SERVICE DELIVERY

The Agency shall:

- (a) apply such time, attention, and reasonable skill and care as may be necessary or appropriate for its proper performance of the Services and provision of the Deliverables;
- (b) allocate suitable personnel with appropriate levels of experience and seniority to provide the Services;
- (c) comply with all lawful and reasonable directions regarding the Services and Deliverables communicated to it from time to time by the Client (provided such directions do not materially deviate from or add to the relevant Scope of Work and any such material amendment must be agreed in accordance with clause 14);
- (d) keep Client Materials reasonably safe and secure while they are in the possession or control of the Agency;
- (e) use all reasonable endeavours to meet any performance dates set out in the applicable Scope of Work or any other delivery date(s) agreed by the parties in writing, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services; and
- (f) not engage in any activity, practice or conduct which would constitute either:
  - (i) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
  - (ii) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017.

Wyatt International Ltd  
+44 (0)121 454 8181  
hello@wyattinternational.com  
www.wyattinternational.com

Wyatt House 72 Francis Road  
Edgbaston Birmingham B16 8SP UK

Registered Company Number: 00512784

## 7. GOODS/PRODUCTS

- 7.1 To the extent that the Deliverables include any goods or products to be delivered by the Agency to the Client, the Client will notify the Agency:
- (a) within 3 days of the expected delivery date if any or all goods or products have not been delivered;
  - (b) within 3 days of delivery if any of the goods or products are damaged.
- 7.2 In respect of notification pursuant to clause 7.1(a) above, the Agency shall at its option and within a reasonable time deliver replacements for the shortage or missing goods/products, or provide an appropriate refund of the price of the missing goods/products.
- 7.3 In respect of notification pursuant to clause 7.1(b) above, the Client shall return such goods or products to the Agency (at the address specified for this purpose by the Agency) and the Agency shall, at its option, repair or replace the defective goods/products, or provide an appropriate refund of the price of the defective goods/products.

## 8. EVENTS

- 8.1 Where the Services include the Agency organising and hosting events for the Client, the relevant Scope of Work will set out whether the Agency or the Client is responsible for organising and securing venues at which the events will be hosted.
- 8.2 Where the Agency is responsible for organising and securing venues at which the events will be hosted, provided that the Agency has notified the Client of all material terms entered into with such venue owners, the Client shall be liable for any breach of such venue hire terms and conditions by the Client or its Affiliates.
- 8.3 The Client shall be liable for and hereby indemnifies the Agency against any and all Losses suffered as a result of any use of the Client's products or services at any event, provided that, where applicable, the Agency has complied with any directions of the Client as to how such products or services are to be offered to the public.
- 8.4 Where the Client's products include food and/or drink, the Client shall ensure that appropriate allergy information is given to the public at any event involving sampling of the Client's products.

## 9. PROMOTIONS

Unless otherwise agreed between the Client and the Agency in writing, the Client shall be responsible for sourcing any promotional gift or prize being offered to the public or entrants to a promotion (**Promotional Prize**). As such, the Client shall be liable for, and hereby indemnifies the Agency against any and all Losses incurred as a result of any such Promotional Prize, including any claim by a third party arising out of the use or enjoyment of such Promotional Prize.

## 10. SOCIAL MEDIA SERVICES

- 10.1 Where the Services include Social Media Services, this clause 10 shall apply to such Social Media Services.
- 10.2 The Agency will use reasonable endeavours to ensure that in providing the Social Media Services, it understands the Terms and Conditions of Social Media Sites and that it keeps the Client informed of any material risk of which it becomes aware that the Deliverables which are to be delivered as part of the Social Media Services may not comply with the Terms and Conditions of Social Media Sites.

- 10.3 The Agency shall not be liable for any Losses incurred by the Client and the Client shall indemnify the Agency against any Losses incurred by the Agency arising from or as a result of the Agency using any Deliverable as part of the Social Media Services on the Client's instruction having informed the Client of any material risk in doing so in accordance with clause 10.2.
- 10.4 The Agency will use reasonable endeavours to ensure that in providing the Social Media Services, it:
- (a) keeps administrative passwords for Social Media Sites safe and secure from unauthorised access, which shall include changing passwords regularly, ensuring that any personnel who leave the Agency do not have administrative access rights to the Social Media Sites, and keeping the Client informed of any changes to the administrative passwords for the Social Media Sites; and
  - (b) ensures that any Deliverables posted by the Agency on Social Media Sites will be reasonably transparent to users as being marketing in accordance with Advertising Regulation by using hashtag disclosures such as #ad or #spon where reasonably necessary.
- 10.5 The Client and the Agency will agree moderation guidelines as to how the Social Media Sites should be moderated, including guidance for the Agency on:
- (a) offensive UGC;
  - (b) UGC which is critical, derogatory of third parties or which could give rise to adverse publicity;
  - (c) UGC which is unlawful or appears to be contrary to any law;
  - (d) use of Content where the Intellectual Property Rights in such Content are known to belong to a third party (or where it is reasonably obvious that the Intellectual Property Rights will belong to a third party); and
  - (e) how often the UGC should be moderated (and whether pre moderated, post moderated or merely reactive).
- 10.6 The Client shall provide the Agency with sufficient access to any computer systems and/or software programs used by or belonging to the Client which the Agency may require in order to provide the Moderation Services. The failure to provide such access shall relieve the Agency from its obligations to provide those aspects of the Moderation Services which are affected during such period that the Agency cannot access such systems or software.

## 11. SOFTWARE, APP AND/OR WEBSITE DEVELOPMENT SERVICES

- 11.1 Subject to the Agency receiving payment of all Fees attributable to the Foreground Software, the Agency grants to the Client a licence to use the Foreground Software in the Territory for the purposes set out in the Scope of Work.
- 11.2 The Client acknowledges that ownership of (including, without limitation, ownership of all Intellectual Property Rights in) any Third Party Software shall remain vested in Agency's licensors. Subject to the Agency receiving payment of all Fees attributable to the Third Party Software licensed under this clause and to the rights of the Agency's licensors, the Agency hereby grants to Client a licence to use such Third Party Software for the purposes and period of time set out in the Scope of Work.

- 11.3 It is acknowledged that the Agency may use Open Source Software as part of the Deliverables provided that: (i) Agency shall have supplied to Client details of which Deliverable(s) and/or part(s) thereof it is proposed shall include such Open Source Software and in what manner, together with full details of which licence(s) apply to such Open Source Software; and (ii) Client has approved same, such approval not to be unreasonably withheld or delayed.
- 11.4 The Client's use of Open Source Software shall be governed by the terms of the applicable open source licence(s). Client warrants and undertakes that it will comply with the terms of the applicable open source licence(s) as such terms apply to Client's use of the applicable Open Source Software.
- 11.5 Promptly following the execution of a Scope of Work, the Agency shall, in collaboration with Client, commence the preparation of the Specification for the Software, Website or App as appropriate and the Agency shall submit the completed Specification to the Client for approval (which shall not be unreasonably withheld or delayed). Upon approval of the Specification by the Client, the Agency shall then develop the Software, Website and/or App based upon the Specification.
- 11.6 When developing an App, the Agency shall use reasonable endeavours to ensure that the App complies with any relevant platform operating system terms and conditions and to obtain the relevant permissions from the platform operators in order that the App may be published and used on such platform operating system.
- 11.7 Approval by Client of Deliverables consisting of Software, a Website or Apps shall occur in accordance with this clause 11.7:
- (a) promptly, and in any event within 10 Business Days of completion of stages of Deliverables for each part of the Software, Website and/or App or such other period as agreed by the parties, the Client shall accept or reject such Software, Website and/or App by issuing the Agency a notice to that effect (**Acceptance/Rejection Notice**) which shall contain full details of the material deviation from the Specification. The Client shall only be entitled to issue a Rejection Notice upon the basis that (and by detailing the manner in which) each part of the Software, Website and/or App exhibits a fault which materially affects the functionality of the Software, Website and/or App to the extent that a user's ability to use the Software, Website and/or App is materially impaired;
- (b) the Client acknowledges that acceptance of each part of the Software, Website and/or App shall be deemed to occur on the earliest of the following events:
- (i) receipt by the Agency of an Acceptance Notice; or
- (ii) if the Client puts the Software Website or App to any live operational use, other than for the purposes of testing.
- (c) if Client shall serve a valid Rejection Notice in accordance with clause 11.7(a), the Agency shall correct and/or replace the defective Deliverables within the timeframe agreed by the parties in writing so that they perform in accordance with the relevant Specifications in all material respects and re-deliver the same to Client.
- 11.8 For the avoidance of doubt Client shall not be entitled to reject the Software, Website or App Deliverables by reason of any failure to provide any facility or function not specified in a Specification or on account of deviations from the Specification which do not materially affect a user's ability to use the Software, Website or App (**Minor Discrepancies**). The Client and Agency shall co-operate with one another to try to rectify such Minor Discrepancies.
- 11.9 The Agency warrants that on the date of delivery to Client, to the extent that the Deliverables comprise Software, Website or Apps such Deliverables will comply in all material respects with their Specifications and/or this Contract.
- ## 12. WEBSITE HOSTING
- 12.1 Where the Services include Website Hosting Services, this clause 12 shall apply to such Website Hosting Services.
- 12.2 The Agency does not warrant that:
- (a) the Client's use of the Website Hosting Services will be uninterrupted or error-free; or
- (b) the Services or the relevant website will be free from weaknesses in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability.
- 12.3 The Client will provide content to the Agency from time to time for incorporation in the relevant site the subject of the Website Hosting Services and the Agency will update the site from time to time, but subject to any limitations set out in the relevant Scope of Work.
- 12.4 The Client shall ensure that the content it provides to the Agency pursuant to clause 12.3 does not infringe any applicable laws, regulations or third party rights (such as material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (**Inappropriate Content**). The Agency reserves the right to remove content from the site where it reasonably suspects such content is Inappropriate Content.
- 12.5 The Client shall indemnify the Agency against all damages, losses and expenses arising as a result of any action or claim that the content provided by it to the Agency pursuant to clause 12.3 or any other material posted to, or linked to, the site constitutes Inappropriate Content.
- 12.6 The Client shall pay the fees for the Web Hosting Services in accordance with clause 17.
- ## 13. CLIENT: OTHER APPOINTMENTS
- During the Term, the Client will not either itself and/or through another agency or other third party entity procure services which are the same or substantially similar to the Services and Deliverables in respect of a current Scope of Work in the Territory.
- ## 14. AMENDMENTS
- 14.1 In the event that either party wishes to make any material amendment to a Scope of Work, any such amendment shall be subject to the agreement of both parties in writing.
- 14.2 In the event of any amendment to a Scope of Work by the Client, the Fees payable to the Agency in respect of the amended Services shall not decrease below the level of Fees that would have been payable had the Services not been amended, save with the prior written approval of the Agency.
- 14.3 Pending approval (in accordance with this clause 14) of any amendments to a Scope of Work, the Agency shall (unless otherwise agreed) continue to perform and be paid for the Services as if such change had not been requested.

## 15. CANCELLATION OF PROJECTS

- 15.1 Subject to clauses 15.2, 15.3 and 27.2 the Client may request, in writing, the Agency to cancel any Project or part thereof, including any plans, schedules or work in progress in respect of any Project. The Agency will take all reasonable steps to comply with any such request provided that the Agency is able to do so within its contractual obligations to suppliers.
- 15.2 In the event of any cancellation of a Project pursuant to clause 15.1 the Client will reimburse the Agency for all Fees up to the date of cancellation, together with any third party charges or other expenses or costs incurred by the Agency or to which the Agency is committed as well as any charges or other expenses or costs imposed on the Agency by third parties arising from the cancellation, provided that the Agency shall use reasonable endeavours to mitigate any such third party charges or expenses if reasonably possible.
- 15.3 In addition to the above, and subject to clause 15.4, in the event of cancellation of a Project or part thereof, including any and all plans or work in progress, by the Client, the Client shall pay 25% of the relevant Project Fee.
- 15.4 The amounts paid pursuant to clauses 15.2 and 15.3 shall not exceed the total Project Fee.

## 16. APPROVALS AND AUTHORITY

- 16.1 Where a party is asked to give approval under or in connection with this Contract, such approval shall not be unreasonably withheld or delayed.
- 16.2 Notwithstanding the terms of clause 18, the Agency will seek the Client's prior approval of any estimates or quotations for any costs and expenses to be paid by the Client which are not set out in the relevant Scope of Work and the Client's approval of such costs and estimates will be the Agency's authority to commit to such costs and/or enter into contracts with relevant third parties.
- 16.3 The Agency will seek the Client's prior approval of any draft Deliverables and such approval will be the Agency's authority to proceed with the use of the relevant Deliverables.
- 16.4 Save in relation to Deliverables which consist of a Software Website or an App (the terms of which shall be governed by clause 11), the relevant Scope of Work will specify the quantity and type of amendment requests to the draft Deliverables included within the Fees which the Client is entitled to. If the Client exceeds such quantities and/or types of amendments to the draft Deliverables, the Agency reserves the right to charge the Client for time spent on such further amendments which shall be calculated on the basis of the hourly rates set out in the Rate Card.
- 16.5 If following approval of any Deliverables, the Client makes or requests any further amendments to the Deliverables, the Agency reserves the right to charge the Client for time spent on such further amendments which shall be calculated on the basis of the hourly rates set out in the Rate Card.
- 16.6 In the event that the Client does not approve any matter requiring approval it shall notify the Agency of its reasons for disapproval within 7 days of the Agency's request. If the Client does not notify the Agency of its disapproval in accordance with this clause 16.6, it shall be deemed approved.

- 16.7 In the event of any delay or failure of the Client giving approvals (or disapprovals) requested under or in connection with this Contract, the Agency will not be liable for any resulting delays or adverse impact caused to the delivery of the Project or any Deliverables.

## 17. FEES

- 17.1 The Agency will invoice the Client in respect of all Fees, Expenses and Third Party Costs. For the avoidance of doubt, the Fees are payable in addition to all payments for Expenses and Third Party Costs.
- 17.2 In consideration of the Agency providing the Services set out in the relevant Scope of Work, the Client shall pay the Agency the Fees which shall be payable in accordance with clauses 17.6 and 17.7.
- 17.3 Unless otherwise specified in the relevant Scope of Work and to the extent not covered by clauses 16.2 or 18.1, all Fees, Expenses and Third Party Costs exclude the following: the purchase of stock imagery, costs involved in illustration, video or the creation of other visual assets, planning costs, briefing costs, art directing or shooting any original photography or film footage, retouching, resizing, editing, grading or any other post production image or film based manipulation. Where such costs and expenses have been approved by the Client they shall be charged in line with the amounts approved. Where such costs and expenses involve additional work, they shall be charged on the basis of the hourly rates set out in the Rate Card. Any mileage shall be charged on the basis of the rates set out in the Rate Card. Such costs and expenses shall be invoiced to the Client in addition to the Fees, Expenses and Third Party Costs.
- 17.4 The Fees also exclude costs relating to packaging and carriage of Deliverables which shall be invoiced monthly to the Client in line with the amounts approved by the Client in addition to the Fees, Expenses and Third Party Costs.
- 17.5 In the case of a Retainer Scope of Work, on or before the date falling 5 months before the end of the Initial Term and then on or before the date falling 5 months before the end of the then current term in each subsequent Year, the parties shall commence negotiations in good faith to agree the Retainer Fee for the next Year of this Contract and a new Retainer Scope of Work for such Year. If the parties fail to reach agreement before the start of that Year, the preceding Year's Retainer Fee shall automatically be adjusted with effect from the commencement of that Year in accordance with the movement during the preceding Year in the All Items Index of Retail Prices published by the UK Office for National Statistics.
- 17.6 The Fees are calculated on the basis of normal working hours being 9.00 am to 5.00 pm on Business Days (**Normal Working Hours**). If it is necessary, or the Agency is required, to provide the Services outside of Normal Working Hours the Agency shall be entitled to charge the Client at the overtime rates set out in the Rate Card for any time worked by the Agency or its Associates on the Services outside the Normal Working Hours. The Agency reserves the right to incur any additional reasonably necessary costs to meet any deadlines notified to the Agency by the Client and to charge the Client for such costs. Where possible, the Agency will endeavour to agree any overtime fees and costs with the Client prior to such amounts being incurred.



17.7 The Fees, Expenses and Third Party Costs will, subject to clauses 17.8 and 18.6, be invoiced as follows and will be payable in accordance with the following payment terms (or as otherwise set out in the applicable Scope of Work):

Services being invoiced	Point of invoice	Payment terms
Services pursuant to a Retainer Scope of Work	Monthly in advance	30 days from invoice date
Services provided pursuant to a Project Scope of Work	Monthly in arrears	30 days from invoice date
Incidental costs and out of pocket expenses, including travel costs	Monthly in arrears	30 days from invoice date
Direct mail postage	In advance of distribution	Immediately upon receipt of invoice (within 2 Business Days)
Exhibition stand construction	50% in advance upon the placing of the relevant Order	Immediately upon receipt of invoice (within 2 Business Days)
Venue and equipment hire	50% (balancing charge) one week prior to exhibition open date	Prior to exhibition open date
Appearance fees		
Multi-media productions, including but not limited to websites, Apps, VR, film and video, TV and radio commercial production	50% in advance upon the placing of the relevant Order	Immediately upon receipt of invoice (within 2 Business Days)
Photography and illustration	50% balancing charge will be invoiced upon relevant project completion	7 days from invoice date
Event management		
Media advertising space	In advance, in line with publication cancellation date, typically 6 weeks in advance of insertion date	30 days from invoice date
Social media advertising space	In full, one week prior to commencement of campaign start date	30 days from invoice date
TV and radio commercial transmission	In advance, one month prior to transmission date	On the 10th day of the month following the month of transmission
Website hosting services	Annually in advance of the commencement of hosting	30 days from invoice date

Wyatt International Ltd  
+44 (0)121 454 8181  
hello@wyattinternational.com  
www.wyattinternational.com

Wyatt House 72 Francis Road  
Edgbaston Birmingham B16 8SP UK

Registered Company Number: 00512784

- 17.8 The payment terms set out in clause 17.7 and/or the relevant Scope of Work are the Agency's standard payment terms, but there may be extraordinary circumstances under which the Agency may, with as much advance notice to the Client as is practical in the circumstances, need to amend such payment terms.
- 17.9 All sums stated in this Contract or in any Scope of Work, quotation or estimate exclude VAT and any other applicable sales tax (unless otherwise stated) which shall also be payable by the Client at the rate prevailing from time to time.
- 17.10 The terms of remuneration set out in this Contract do not cover the performance of services which are outside of a Scope of Work nor do they cover the performance of services outside the Territory. If any such services are required the terms relating to their provision together with the applicable fees will be agreed in writing by the parties.
- 17.11 In the event that the Client fails to make any payment in full when due to the Agency under this Contract, then without prejudice to its other rights and remedies under or in connection with this Contract or otherwise in law, the Agency shall be entitled to charge the Client interest on such overdue sum in accordance with The Late Payment of Commercial Debts Act (1998).
- 17.12 If any payment of the Fees, Expenses or Third Party Costs is subject to tax (whether by way of direct assessment or withholding at its source), the Agency shall be entitled to receive from the Client such amounts as shall ensure that the net receipt to the Agency of the Fees, Expenses and Third Party Costs after tax in respect of the payment is the same as it would have been were the payment not subject to such tax.
- 17.13 If the Client is overdue with any payment hereunder, then without prejudice to the Agency's other rights or remedies:
- the Agency shall have the right to suspend performance of the Services on seven (7) days' written notice until the Agency has received payment of the overdue amount together with any accrued interest; and/or
  - the Agency shall have the right to terminate the applicable Scope of Work immediately upon seven (7) days' written notice to the Client.
- 17.14 Where a surcharge is levied by a supplier against the Agency due to late payment and this results from late payment by the Client, the Client shall immediately reimburse to the Agency the amount of such surcharge, together with any accrued interest charged by the supplier in respect of the overdue amount.
- 17.15 Where a late copy charge is levied by a media owner against the Agency due to copy being delivered late, and this does not result from the Agency's negligent or wilful act or omission, then the Client shall immediately reimburse the amount of such late copy charge to the Agency.
- 17.16 Each party shall pay all monies which are payable by it to the other without any right of set off, abatement or withholding in respect of monies which are due to it or alleged to be due to it from the other party.
- 18. THIRD PARTY SERVICES & COSTS**
- 18.1 The Agency will invoice the Client in respect of all Third Party Costs incurred by the Agency on behalf of the Client in performing the Services, subject to the Client approving such costs in advance in writing which have not been set out in the relevant Scope of Work, including but not limited to:
- third party production work required to produce the Deliverables including illustrations, film production, artwork, photography, model fees, recordings, the services of performers, animation, print and post production work and other content; and
  - all costs incurred in taking legal or other advice or searches and enquiries, as agreed between the parties from time to time (collectively defined as "**Third Party Costs**").
- 18.2 The Agency will advise the Client promptly of any changes in the estimated cost of items of Deliverables.
- 18.3 Where the Agency places agreed advertising in scheduled media, the Agency may retain any commissions given by the relevant media and will charge the Client at the gross price invoiced to the Agency plus, if applicable, a further sum which results in the Agency receiving a net return of 15% of the gross amount shown on the Rate Card.
- 18.4 Where the Agency incurs Third Party Costs in respect of printing, the Client acknowledges that such printing is subject to the following quantity margins:
- in respect of single colour, a 5% variation in quantity of printing; and
  - in respect of multiple colour, a 10% variation in quantity of printing;
- and the Client shall be invoiced for the actual quantities printed.
- 18.5 The actual cost to the Agency of Third Party Costs in respect of materials or services purchased overseas for the Deliverables may be more or less than the cost anticipated at the date when the Agency ordered the relevant materials or services (or obtained the Client's approval for such Third Party Costs) as a result of fluctuations in the rate of currency exchange. If so, the Agency will charge the Client at the rate of currency exchange in operation on the date the Agency pays for the relevant Third Party Costs.
- 18.6 In the event that any Third Party Costs require payment in advance or sooner than the payment terms set out in clause 17.7, the Agency will notify the Client as soon as reasonably practicable in advance and the Client shall pay such costs within the period set out in the relevant invoice.
- 19. THIRD PARTY SUPPLIERS: BUSINESS TERMS & SELECTION**
- 19.1 The Agency enters into contracts with third party suppliers in respect of Services and Deliverables in accordance with such suppliers' standard or individual conditions and contracts (**Third Party Contracts**).
- 19.2 Provided that the Agency has notified the Client of any significant restrictions or contract terms contained in such Third Party Contracts (including any cancellation provisions contained in the contract between the Agency and such third party suppliers):
- Client hereby acknowledges that its right to use or otherwise benefit from any Services or Deliverables acquired under such Third Party Contracts shall be as set out in such Third Party Contracts;
  - any charges or liabilities (to the extent caused by an act or omission of the Client or its Affiliates or any third party acting for or on its behalf) for which the Agency is liable under such Third Party Contracts (including cancellation payments) shall be the responsibility of the Client; and



(c) the Client hereby indemnifies and shall keep the Agency indemnified against any Losses caused by any act or omission of the Client which puts the Agency in breach of any such Third Party Contracts.

## 20. CONFIDENTIALITY

- 20.1 Each of the parties acknowledges that, whether by virtue of and in the course of this Contract or otherwise, it may receive or otherwise become aware of information relating to the other party, its clients, customers, businesses, business plans or affairs, which information is proprietary and confidential to the other party (**Confidential Information**).
- 20.2 Confidential Information shall include any document marked "Confidential", or any information which the recipient has been informed is confidential or which it ought reasonably to expect the other party would regard as confidential.
- 20.3 Confidential Information shall exclude information which:
- (a) at the time of receipt by the recipient is in the public domain;
  - (b) subsequently comes into the public domain through no fault of the recipient, its officers, employees or agents;
  - (c) is lawfully received by the recipient from a third party on an unrestricted basis; and/or
  - (d) is already known to the recipient before receipt hereunder.
- 20.4 Each of the parties undertake to maintain the confidentiality of the other party's Confidential Information at all times and to use no less adequate measures than it uses in respect of its own confidential information to keep the other party's Confidential Information reasonably secure. Neither party shall at any time, whether during the Term or at any time thereafter, without the prior written approval of the other party, use, disclose, exploit, copy or modify any of the other party's Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the exercise of its rights and/or the performance of its obligations in connection with this Contract.
- 20.5 Each of the parties undertakes to disclose the other party's Confidential Information only to those of its Associates to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Contract.
- 20.6 The Client acknowledges and agrees that any identifiable and original idea or concept presented by the Agency in relation to any promotion or advertising campaign developed by the Agency shall be acknowledged as being available only for such promotion or campaign and shall not be used for any other purposes whatsoever without the Agency's express prior written approval. Even where no promotion or campaign is agreed, the ideas and concepts presented to the Client shall remain strictly confidential and shall not be used in any way, including communication to any third party, without the Agency's prior written approval.
- 20.7 The Client acknowledges that nothing in this Contract shall affect the Agency's right to use as it sees fit any general marketing or advertising intelligence gained by the Agency in the course of its appointment.
- 20.8 Neither party shall be in breach of this clause 20 if it discloses the other party's Confidential Information in circumstances where such disclosure is required by law, regulation or order of a competent authority, provided that the other party is given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

20.9 The terms of and obligations imposed by this clause 20 shall survive the termination of this Contract for any reason.

## 21. AGENCY WARRANTIES

- 21.1 The Agency warrants that:
- (a) subject to clause 21.3, the use of the Deliverables by the Client in the United Kingdom in accordance with this Contract and for the purposes set out in the Scope of Work will not infringe the copyright of any third party; and
  - (b) to the best of its knowledge and belief and subject to clause 21.3, as at the date of delivery of the Deliverables the use of the Deliverables in accordance with this Contract for the purposes set out in the Scope of Work will comply with all Advertising Regulations in the United Kingdom, save that where the Client's business involves any industry sector which is subject to its own industry specific Advertising Regulations or other code, regulation, statute or law (collectively "**Specialist Advertising Regulations**") the Client shall be responsible for ensuring that the Deliverables are compliant with such Specialist Advertising Regulations.
- 21.2 All warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise are hereby excluded to the fullest extent permitted by law, including any condition of satisfactory quality or fitness for a particular purpose.
- 21.3 The Client releases the Agency from any liability under or in connection with this Contract and hereby indemnifies the Agency against any Losses incurred by the Agency to the extent that such Losses arise as a result of:
- (a) the Deliverables infringing third party Intellectual Property Rights, breaching Advertising Regulations or other laws and regulations, where the Agency had previously notified the Client of a specific risk that the Deliverables infringed third party Intellectual Property Rights or breached Advertising Regulations or other laws and regulations and the Agency had obtained the prior approval of the Client to use such Deliverables notwithstanding such notified risk; and/or
  - (b) the incorporation of Client Materials into the Deliverables; and/or
  - (c) any Deliverables which have been approved by the Client.

## 22. CLIENT WARRANTIES

- 22.1 The Client warrants and undertakes that:
- (a) it has full power and authority to enter into this Contract and that by doing so it will not be in breach of any obligation to a third party;
  - (b) the Client Materials will not infringe third party copyright;
  - (c) to the best of its knowledge and belief, the Client Materials will comply with all applicable laws and regulations including all Advertising Regulations; and
  - (d) the Client Materials are accurate and complete in all material respects.
- 22.2 The Client hereby indemnifies the Agency against any Losses suffered or incurred by the Agency as a result of breach by the Client of its warranty in clause 22.1(b).

## 23. LIABILITY

- 23.1 In respect of Services provided by the Agency pursuant to a Project Scope of Work, and subject always to clause 23.3, the Agency's total liability under or in connection with this Contract (including any indemnity contained in this Contract), whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed the Project Fees for that Project paid or payable by the Client under this Contract.
- 23.2 In respect of Services provided by the Agency pursuant to a Retainer Scope of Work, and subject always to clause 23.3, the Agency's total liability to the Client under or in connection with this Contract (including any indemnity contained in this Contract), in respect of all breaches of duty occurring within any Year shall not exceed the Retainer Fees for that Year paid or payable by the Client under this Contract.
- 23.3 Nothing in this Contract shall exclude or in any way limit either party's liability for fraud, death or personal injury caused by its negligence or any other liability to the extent such liability may not be excluded or limited as a matter of law.
- 23.4 Subject to clause 23.3 (and including for the avoidance of doubt any indemnity contained in this Contract), in no event will the Agency be liable under or in connection with this Contract for:
- (a) loss of actual or anticipated income or profits;
  - (b) loss of goodwill or reputation;
  - (c) loss of anticipated savings;
  - (d) loss of data; or
  - (e) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.
- 23.5 Although the Agency takes reasonable precautions to ensure no viruses are present in its communications or digital files, the Agency cannot accept responsibility for any loss or damage sustained by the Client or any third party as a result of computer viruses and the Client must ensure that communications and digital files are virus free.
- 23.6 From time to time the Agency may give the Client target or estimated numbers relating to anticipated exposure of the Deliverables to audiences. Any such calculations are estimates only and the Agency shall not be liable in the event that such target or estimated numbers are not achieved.
- 23.7 The Client acknowledges that it is in the nature of public relations consultancy services that the Agency and Client do not control whether and how Deliverables are published in the media. The Agency shall not be liable in the event that third parties do not publish or distribute the Deliverables as anticipated or agreed with the Client.

## 24. INTELLECTUAL PROPERTY RIGHTS

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

- 24.2 The Client acknowledges that all Intellectual Property Rights in the Agency Materials shall be owned by and remain the property of and vested in the Agency. Subject to the Agency receiving payment of all Fees attributable to the Agency Materials, the Agency grants to the Client a perpetual licence to use the Agency Materials in the Territory, for inclusion in the Deliverables and for the purposes and in the media set out in the Scope of Work.
- 24.3 If the Client wishes to use the Deliverables:
- (a) either outside of the Territory; and/or
  - (b) after the period of time set out in clause 24.2; and/or
  - (c) outside of the purposes and/or media set out in the Scope of Work;
- then the Client shall notify the Agency of any intended use of Deliverables and will pay the Agency a fee to be agreed by the parties.
- 24.4 The Client acknowledges that all Intellectual Property Rights in the Agency Proprietary Materials shall be owned by and remain the property of and vested in the Agency. Subject to the Agency receiving payment of all Fees attributable to the Agency Proprietary Materials to be licensed under this clause, the Agency hereby grants to the Client a perpetual licence to use such Agency Proprietary Materials as are included in the Deliverables, in the Territory and for the purposes set out in the Scope of Work.
- 24.5 Prior to delivery of the Deliverables, the Agency shall obtain such licences or consents in respect of Third Party Materials as shall be necessary in order that the Client can use such Third Party Materials for the purposes set out in the Scope of Work. The Agency shall notify the Client of any restrictions on usage and any other contractual restrictions arising in respect of such Third Party Materials, and the Client hereby indemnifies and keeps the Agency indemnified against any Losses suffered by the Agency as a result of the Client or its Affiliates breaching any such restrictions.
- 24.6 The Agency agrees, at the Client's request and expense, to take all such actions and execute all such documents as are necessary (in the Client's reasonable opinion) to enable the Client to obtain, defend or enforce its rights in the Deliverables.
- 24.7 Notwithstanding any of the above and save as otherwise expressly provided for in a Scope of Work or the schedule(s) thereto, the Agency shall:
- (a) be able during and after the Term to use any Deliverables which have been broadcast, published, distributed or otherwise made available to the public, and use the Client's name and logo for the purposes of promoting its work and its business including on the Agency's website and in credentials pitches. Any other use by the Agency shall be subject to the Client's prior approval; and
  - (b) retain all know how obtained in connection with the Services and Deliverables.

During the Term, if the Agency is asked to take part in a competitive pitch or other similar process for the Client, then notwithstanding any of the previous provisions of this clause 24, the Agency shall retain ownership of all Intellectual Property Rights in any Materials forming part of the pitch process, save to the extent that the Agency is successful in such pitch and the parties agree that such Materials will be used in accordance with Services to be provided under a Scope of Work.

- 24.8 For the avoidance of doubt, the Agency shall not be liable under or in connection with this Contract for any modifications, adaptations or amendments to any Deliverables made by the Client or by a third party on the Client's behalf, nor in the event that any fault, error, destruction or other degradation in the quality and/or quantity of the Deliverables arises due to the acts or omissions of the Client and/or its Associates.
- 24.9 The terms of and obligations imposed by this clause 24 shall survive the termination of this Contract for any reason.
- 25. RETENTION**
- 25.1 The Agency shall keep copies of Deliverables consisting of digital media for 2 years following delivery of the Deliverables.
- 25.2 Personal Data shall be retained in accordance with clause 34.
- 26. ADVERTISING STANDARDS**
- 26.1 Both parties acknowledge that they have a responsibility to comply with all Advertising Regulations.
- 26.2 The parties will co-operate with each other in ensuring that suitable objective factual product and other information is available as required to satisfy the requirements of any applicable Advertising Regulation.
- 27. TERMINATION**
- 27.1 Where this Contract relates to a Retainer Scope of Work, either party may terminate this Contract without cause by giving not less than 4 months written notice to the other party, provided that such notice to terminate cannot expire until the end of the Initial Period or the relevant Extended Period (as defined in clause 4(a)), as the case may be.
- 27.2 Where this Contract relates to a Project Scope of Work, the Client may terminate or cancel a Project, in writing, subject to clause 15 and payment of all Third Party Costs and Fees as referred to in clause 15 at any time.
- 27.3 Either party may terminate this Contract or any Project immediately upon written notice to the other party:
- (a) under clause 30.3; or
  - (b) in the event of any material breach of this Contract by the other party which breach is not remediable or, if remediable, is not remedied within thirty (30) days after the service by the party not in default of a written notice on the defaulting party, specifying the nature of the breach and requiring such breach to be remedied; or
  - (c) if the other party suspends, or threatens to suspend payment of its debts or is unable to pay its debts as they fall due, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - (d) if the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal or enters into any compromise or arrangement with its creditors (other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other party with other companies); or
  - (e) if a petition is filed, or a notice is given, or a resolution is passed or an order is made for or in connection with the winding up of that other party (other than for the sole purpose of a solvent reconstruction or a scheme for a solvent amalgamation of that other party with other companies); or
- (f) if an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party.
- 28. CONSEQUENCES OF TERMINATION**
- 28.1 Subject to clause 28.3, to the extent that this Contract covers both a Retainer Scope of Work and one or more Project Scopes of Work, then termination or cancellation of a Project in accordance with clauses 15 and/or 27.2 by either party shall not serve to terminate this Contract in respect of the Retainer Scope of Work or any other Project Scopes of Work, which shall continue in full force and effect.
- 28.2 Subject to clause 28.3, to the extent that this Contract covers both a Retainer Scope of Work and one or more Project Scopes of Work, then termination of a Retainer Scope of Work in accordance with clauses 4(a) or 27.1 by either party shall not serve to terminate this Contract in respect of any Project Scopes of Work, which shall continue in full force and effect.
- 28.3 Upon termination of this Contract pursuant to clause 27.3 all Scopes of Work shall be terminated.
- 28.4 Without prejudice to other rights and remedies a party may have upon termination of this Contract or a Project for any reason:
- (a) the Client shall pay the Agency all Fees, Expenses and Third Party Costs due to the Agency (in accordance with clause 15 where relevant) including during any relevant notice period; and
  - (b) subject to clause 28.4(a) each party shall on the reasonable request of the other party promptly deliver or dispose of any and all materials and property belonging or relating to the other party (including all Confidential Information) and all copies of the same, which are then in its possession, custody or control and which relate to all affected Projects or Services, and shall on the request of the other party certify in writing that the same has been done.
- 28.5 If prior to termination of the Contract, the Agency has (at the request of the Client) prepared detailed plans or proposals for future Deliverables in respect of which the Agency has not been paid, the Agency shall be entitled to receive remuneration from the Client based on the Agency's time spent preparing such plans or proposals and the Rate Card.
- 28.6 Provisions of this Contract which are either expressed to survive its termination or which from their nature or context are contemplated to survive termination shall remain in full force and effect notwithstanding termination of this Contract. Notwithstanding the generality of the foregoing, the following clauses shall survive termination of this Contract:
- (a) Clause 20 (Confidentiality);
  - (b) Clause 21 (Agency warranties);
  - (c) Clause 22 (Client warranties);
  - (d) Clause 23 (Liability);
  - (e) Clause 24 (Intellectual Property Rights);
  - (f) Clause 28 (Consequences of Termination);
  - (g) Clause 29 (Non-Solicitation);
  - (h) Clause 31 (Notices);
  - (i) Clause 35 (General); and
  - (j) Clause 36 (Governing law and jurisdiction).

**29. NON-SOLICITATION**

During the Term and for a further period of 12 months after its termination, neither party shall (except with the prior written approval of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party either in the provision or receipt of any Services or Deliverables, other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.

**30. FORCE MAJEURE**

- 30.1 Neither party shall be liable for any delay in performing or failure to perform its obligations hereunder to the extent that and for so long as the delay or failure results from any act, event, non-happening, omission or accident beyond its reasonable control (**Force Majeure Event**).
- 30.2 The party whose performance is affected by a Force Majeure Event shall, as soon as reasonably practicable after becoming aware of the Force Majeure Event, provide a notice to the other party, giving details of the Force Majeure Event, its likely duration and the manner and extent to which its obligations are likely to be prevented or delayed.
- 30.3 If any Force Majeure Event occurs, the date(s) for performance of the affected obligation(s) shall be postponed for so long as is made necessary by the Force Majeure Event, provided that if any Force Majeure Event continues for a period of or exceeding four (4) months, the non-affected party shall have the right to terminate this Contract immediately on written notice to the affected party. Each party shall use its reasonable endeavours to minimise the effects of any Force Majeure Event.

**31. NOTICES**

- 31.1 A notice given to a party under or in connection with this Contract shall be in writing and sent to the party at the address given in this Contract or as otherwise notified in writing to the other party in accordance with this clause.
- 31.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand	On signature of a delivery receipt
Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage	9.00 am on the second Business Day after posting
Pre-paid airmail providing proof of postage	9.00 am on the fifth Business Day after posting

- 31.3 For the purpose of this clause and calculating deemed receipt all references to time are to local time in the place of deemed receipt.
- 31.4 This clause does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.
- 31.5 A notice given under this Contract is not valid if sent by e-mail or fax.

**32. ASSIGNMENT AND SUB-CONTRACTING**

The Client may not assign, transfer or charge or otherwise dispose of this contract or any of its rights or obligations arising hereunder without the prior written approval of the Agency.

**33. THIRD PARTY RIGHTS**

Save in respect of the Client's Affiliates to whom the Agency has provided Services and/or as identified in an applicable Scope of Work, a person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

**34. DATA PROTECTION**

- 34.1 This clause applies to Services which involve the processing of Personal Data (defined below) by the Agency on behalf of the Client.
- 34.2 In this clause the following definitions shall apply:
  - Applicable Laws:** means (for so long as and to the extent that they apply to the Agency) the law of the European Union, the law of any member state of the European Union and/or UK Data Protection Legislation.
  - Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
  - Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).
  - UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679) (GDPR); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- 34.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 34.4 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and the Agency is the processor.
- 34.5 The relevant Scope(s) of Work set out the scope, nature and purpose of processing by the Agency, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 34.6 The Client will ensure that it has all necessary and appropriate notices, and where relevant consents, in place to enable lawful transfer of the Personal Data to the Agency and/or lawful collection of the Personal Data by the Agency on behalf of the Client for the duration and purposes of the relevant Services.

Wyatt International Ltd  
 +44 (0)121 454 8181  
 hello@wyattinternational.com  
 www.wyattinternational.com

Wyatt House 72 Francis Road  
 Edgbaston Birmingham B16 8SP UK

Registered Company Number: 00512784

- 34.7 The Agency shall, in relation to any Personal Data processed in connection with the performance by the Agency of its obligations in respect of the Services:
- (a) process that Personal Data only on the documented written instructions of the Client which includes the terms of this Contract and any relevant Scope of Work, unless the Agency is required by Applicable Laws to otherwise process that Personal Data. Where the Agency is relying on Applicable Laws as the basis for processing Personal Data, the Agency shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Agency from so notifying the Client;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, those measures listed in Article 32 GDPR);
  - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
    - (i) the Client or the Agency has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) the Agency complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (iv) the Agency complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
  - (e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (f) notify the Client without undue delay on becoming aware of a Personal Data Breach;
  - (g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the Services unless required by Applicable Law to store the Personal Data;
  - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause;
  - (i) on at least 21 days' notice and subject to the Client or the Client's designated auditor first entering into suitable confidentiality undertakings, allow for one audit per year during the term of the Contract by the Client or the Client's designated auditor; and
  - (j) immediately inform the Client if, in the Agency's opinion, an instruction infringes the Data Protection Legislation.
- 34.8 The Client consents to the Agency appointing the approved sub-contractors set out in the relevant Scope of Work as third party processors of Personal Data under this Contract. The Agency confirms that it has entered or (as the case may be) will enter with the third party processors into a written agreement substantially on that third party's standard terms of business or which incorporate terms which reflect the requirements of the Data Protection Legislation (but which for the avoidance of doubt are not necessarily back-to-back with the terms in this clause 34). As between the Client and the Agency, the Agency shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 34.8.
- 34.9 In the event that the Agency wishes to appoint or change third party processors, it shall provide notice to the Client regarding the same. The Client shall have 10 Business Days from the date of the notice to object to such changes on reasonable grounds. If the Client objects on reasonable grounds, the Agency and the Client will work together to find a reasonable alternative solution. If a reasonable alternative solution cannot be found or agreed upon within 10 Business Days of the date of the objection, the Agency may terminate only those Services which cannot be supplied without the relevant third party processor and the Agency shall not be liable to the Client in respect of such termination. If no objection is received from the Client within 10 Business Days of the date of the notice, the Client shall be deemed to approve such changes.

## 35. GENERAL

- 35.1 The failure of either party to enforce or exercise at any time any term or any right under this Contract does not constitute and shall not be construed as a waiver of such term or right and shall in no way affect that party's later right to enforce or to exercise it.
- 35.2 If any term of this Contract is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Contract and shall in no way affect the legality, validity or enforceability of the remaining terms provided that if any provision of this Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid.
- 35.3 This Contract contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. Each of the parties acknowledges and agrees that:
- (a) in entering into this Contract it has not relied on, and shall have no remedy in respect of, any statement, representation, warranty or understanding other than the statements, representations, warranties and understandings expressly set out in this Contract; and
  - (b) its only remedies in connection with any statements, representations, warranties and understandings expressly set out in this Contract shall be for breach of contract as provided in this Contract. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

- 35.4 No modification or variation of this Contract shall be valid unless it is in writing and signed by each of the parties to this Contract. Unless expressly set out in this Contract, no modification or variation of this Contract shall:
- (a) be valid if made by e-mail;
  - (b) be construed as a general waiver of any provisions of this Contract; or
  - (c) affect any rights, obligations or liabilities under this Contract which have already accrued up to the date of such modification or waiver. The rights and obligations of the parties under this Contract shall remain in full force and effect, except and only to the extent that they are so modified or varied.
- 35.5 Nothing in this Contract is intended to or shall operate to create a partnership or joint venture of any kind between the parties or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.

## **36. GOVERNING LAW AND JURISDICTION**

- 36.1 This Contract shall be governed by and construed in accordance with the laws of England and Wales.
- 36.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales to resolve any dispute between them arising under or in connection with this Contract (save in respect of enforcement of judgments where their jurisdiction shall be non-exclusive).