Studio Publica Limited

Standard Terms & Conditions of Supply

1. **Application**

1.1. All Services and Deliverables supplied by the Supplier are supplied subject to these Terms and Conditions as follows:

1.1.1. The provisions of the GENERAL SECTION apply to the provision of all and any Services and Deliverables;

1.1.2. The provisions of PART A - DEFINE & STRATEGY apply to provision of strategy, scoping and definition services which may include brand strategy, marketing strategy and planning, digital strategy and scoping services;

1.1.3. The provisions of PART B – BRAND DESIGN SERVICES apply to the provision of brand design services, which may include research, brand concepts, illustration, print design, website design and development services; including wireframing, user flows, user experience design and business application design;

1.1.4. The provisions of PART C – DIGITAL DEVELOPMENT SERVICES apply to the provision of digital development services , website development services, business application development, digital marketing, software as a service development services and systems integration services;

1.1.5. The provisions of PART D – WEBSITE HOSTING SERVICES apply to the provision of website hosting services and maintenance;

1.1.6. The provisions of PART E – PARTNERSHIP SUPPORT SERVICES apply to the provision of ongoing support and optimisation of websites and services from all the other key Services when purchased as a monthly subscription.

1.1.7. Any reference to "Services" or "Deliverables" in PART A - DEFINE & STRATEGY to PART E – PARTNERSHIP SUPPORT SERVICES is a reference to the specific Services or Deliverables provided pursuant to that Part as specified in the Agreement and any documents referenced in the Agreement such as a Project Agreement, Project brief or Scope of Works.

GENERAL SECTION

2. Definitions

2.1. In the Agreement:

2.1.1. Address means the address, premises, site, or location where the Deliverables are to be delivered and/or the Services provided by the Supplier, being the Client's address specified in the Services Agreement or otherwise agreed in writing between the Supplier and the Client.

2.1.2. Agreement means the terms set out in any written agreement between the Supplier and the Client for the supply of Services and Deliverables to the Client, which may include, in order of precedence:

a) any fully executed Variation,

b) a Project Agreement,

c) any Quote or Estimate (when accepted by the client),

d) a Partnership Support Agreement,

e) these Terms and Conditions,

f) any attachments explicitly mentioned as part of the Agreement to the above.

2.1.3. Business Application means any software or set of computer programs used by business users to perform various business functions.

2.1.4. Business Systems Integration means connecting business systems and data through a customised architecture, API or application.

2.1.5. Client means the person to whom the Services and Deliverables are to be supplied.

2.1.6. Client's Materials means all data, graphics, pictures, trademarks, software, website banners, website design & development, advertising, brochures and other materials incorporated or to be incorporated into the Client's Website, including but not limited to user data generated by the operation of the Client's Website, but excluding anything created or developed by the Supplier in providing the Services.

2.1.7. Client's Website means the Website of the Client as specified in the Agreement.

2.1.8. Commencement Date means the commencement date of the relevant services (if any) as specified in the Services Agreement.

2.1.9. Contract Date means the date on which the Agreement is fully executed and the Agreement is formed.

2.1.10. Deliverable means an item to be delivered by the Supplier in the course of providing the Services which is specified in the Agreement and (for the avoidance of doubt) may include software.

2.1.11. Delivery means delivery of the Services and Deliverables in accordance with the Agreement.

2.1.12. Developed Software means any software to be specifically written and developed by the Supplier for the Client pursuant to the Agreement.

2.1.13. Existing IP means all Intellectual Property which is owned by or proprietary to, a party to the Agreement as at the date of the Agreement or developed by (or on behalf of) a party other than pursuant to the Agreement.

2.1.14. Intellectual Property means any and all intellectual and industrial property rights throughout the world including but not limited to rights in respect of, or in connection with copyright (including future copyright) and rights in the nature of, or analogous to, copyright, trade marks, inventions (including patents), any confidential information, commercial strategies, service marks, designs, circuit layouts, rights in databases and code, and rights in internet domain names and website addresses, whether or not existing now and whether or not registered or registrable and includes any right to apply for registration of such rights and includes all renewals and extensions.

2.1.15. Partnership Support Services means providing ongoing monthly Services from any of the Supplier's four key service areas in consideration for a monthly subscription payment.

2.1.16. Price means:

(a) where a price is specified in the Quote or Project Agreement, the price for the work recorded in the Agreement;

(b) where a Partnership Support Agreement is signed, the price shall be the monthly subscription fee and any additional fees as per the agreement;

(c) otherwise, the price will be the Supplier's total time and materials charges for completing the Service(s); for the avoidance of doubt any Estimate is provided as a guide only and work done on an estimate will be charged for actual time spent;

(d) Plus any additional charges pursuant to these terms and conditions, plus GST.

2.1.17. Prohibited Content means any content on a Website that is or could reasonably be considered to be:

(a) in breach of the Consumer Guarantees Act 1993, Fair Trading Act 1993, or any other applicable law or applicable industry code;

(b) misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or

(c) in breach of any person's Intellectual Property; or

(d) of an objectionable nature that it could bring the Supplier into disrepute.

2.1.18. Secured Products means the products referred to in clauses 13.4.1.to 13.4.3.

2.1.19. Service Levels means the service levels for the provision of the relevant Partnership Support Services (if any) as specified in the Agreement.

2.1.20. Services means the services to be provided by the Supplier to the Client, as specified in the Agreement.

2.1.21. Specifications means any specifications applying to the provision of the Services and Deliverables, as specified in the Agreement or developed as part of the Work such as a Reverse Brief, User Stories or Requirement documentation.

2.1.22. Supplier means Studio Publica Limited and its successors and assigns.

2.1.23. Supplier Reserved IP means all Intellectual Property in the Supplier's processes, systems, code libraries, algorithms, development frameworks, templates strategic framework, workshop methodologies, and practices and in the components of any Deliverable that the Supplier is able to utilise and anticipates utilising (either in its current form or in an adapted or modified form) in its business (including for the purpose of providing services and/or deliverables to any third party). For the avoidance of doubt, this definition shall include the Supplier's software development framework included in each software deliverable.

2.1.24. Supplier's Authorised Representative means the person (or class of persons) named as the Supplier's Authorised Representative in the Services Agreement or otherwise notified to the Client in writing, or any replacement person advised by the Supplier from time to time by written notice to the Client.

2.1.25. Terms and Conditions means these terms and conditions of supply as may be amended by the Supplier from time to time.

2.1.26. Third Party Software is any software sold or licensed to the Client either by a third party supplier directly, or indirectly through the supply of a Deliverable by the Supplier under this Agreement. Such Third Party Software may be used in connection with or integrated with the Services and Deliverables supplied by the Supplier under the Agreement.

2.1.27. User Acceptance Testing (UAT) Phase means the period agreed in writing starting from Delivery during which the Client must conduct a thorough check of the Deliverable to ensure that it performs in accordance with the Specifications and the Supplier. If no period has been agreed the period shall be one month from Delivery. The UAT Phase shall only apply to PART C – DIGITAL DEVELOPMENT SERVICES.

2.1.28. Variation means a variation to the terms of this agreement including changes to agreed scope, budget and delivery dates.

2.1.29. Warranty Period means the period starting on the date of Delivery that runs for the same period as the UAT Phase.

2.1.30. Website means a location which is accessible on the world wide web and which provides multimedia content via a graphical user interface.

2.1.31. Work includes all Services and Deliverables supplied or required to be supplied by the Supplier in the course of performance of the Agreement.

3. Acceptance of Terms & Conditions

3.1. Unless the parties specifically agree otherwise in writing these Terms and Conditions shall apply to the supply and/or performance of all Services and/or Deliverables from the Supplier to the Client, to the exclusion of the Client's standard terms and conditions (if any). An instruction to proceed with Work offered in quote, estimate, project agreement or Partnership Support Agreement provided by the Supplier shall constitute acceptance on the basis of these Terms and Conditions.

3.2. Where more than one Client has entered into the Agreement, the Clients shall be jointly and severally liable for all payments of the Price and performance of all obligations under the Agreement.

3.3. The Supplier is not bound by any statements or representations that are not recorded in the Agreement or otherwise notified to the Client in writing by the Supplier's Authorised Representative.

3.4. The Client undertakes to give the Supplier at least 14 days' prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's Address, contact details or business practice).

4. Services and Deliverables

4.1. The Supplier will supply the Services to the Client and produce the Deliverables in accordance with the Specifications and otherwise in accordance with the terms of the Agreement.

4.2. The Supplier will use reasonable care and skill to provide the Services in accordance with any dates and times specified in the Agreement and to ensure that any key milestones are achieved by the key milestone dates (if any) specified in the Agreement and any subsequent variations or as otherwise agreed in writing.

5. Quotes

5.1. All quotes are provided strictly on the following basis:

5.1.1. Quotes are only binding on the Supplier if they are accepted by the Client in writing within 30 days of the quote being provided to the Client;

5.1.2. That the work to be completed to which the quote relates will proceed in the usual course and there are no unforeseen difficulties or delays with the Work; and

5.1.3. If additional work is required that could not be foreseen by the Supplier at the time of providing the quote, then the Supplier may at its option either cancel the Agreement or charge for such additional work at the Supplier's usual rate.

6. Price

6.1. All Services and Deliverables are supplied at the Price applicable as at date the Services or Deliverables are supplied. The Supplier reserves the rights to pass on to the Client any change in Price after the date of any quote.

6.2. All Prices as quoted are exclusive of goods and services tax unless otherwise stated. Goods and services tax is (where applicable) payable by the Client.

6.3. Unless otherwise stated, the Prices are exclusive of delivery costs. Delivery costs are payable by the Client.

7. Variations and Additional Services

7.1. No Variations to the Work originally contracted for (including changes to the scheduled Work, Specifications or content) shall be carried out without the agreement of both the Client and the Supplier.

7.2. Where the Client and the Supplier have agreed to a Variation or where the Client instructs the Supplier to provide services in addition to the Services, the Supplier will be entitled to charge for the work involved in such Variation at the Supplier's usual rate.

8. Invoicing and Payment

8.1. Unless otherwise recorded in the Agreement, prior to completion of the Work, the Supplier may issue interim invoices to the Client at intervals of no less than 1 month for the Services performed up to the date specified in the invoice (including any Variations).

8.2. Unless otherwise recorded in the Agreement, all invoices issued by the Supplier to the Client are payable by the date specified on the invoice, time being of the essence. Where no date for payment is specified, payment must be made within 7 days of the date of the invoice or other payment terms agreed in writing between the parties.

8.3. The Supplier may, at its discretion, require a deposit to be paid by the Client. Where a deposit is required, the Supplier is not obliged to commence work until receipt of the deposit.

8.4. Any variation from the payment terms above must have the prior written approval of the Supplier.

8.5. The Client is not entitled to retain any funds unless expressly agreed in writing with the Supplier prior to the commencement of any Works.

8.6. The Client is not entitled to set off against, or deduct from the Price (or any invoice) any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

8.7. If full payment is not made by the Client to the Supplier in accordance with clause 8.2. above then the Client will be in default under the Agreement and the Supplier may exercise all of the rights and remedies set out in the Agreement and otherwise available at law; and

8.7.1. the Client will pay interest on the default monies at the rate of 1.5 % above the official cash rate OCR per month payable on a daily basis from the due date, and such interest will accrue after as well as before any judgement; and

8.7.2. the Client will be liable for all expenses (including solicitor - own client legal costs) incurred by the Supplier as a result of the default; and

8.7.3. the Supplier may withhold Delivery of the Deliverables and Services; and

8.7.4. the Supplier may suspend the Works; and

8.7.5. the Supplier may withhold the further supply of Services and Deliverables.

8.7.6. If any amount remains unpaid 60 days from the date of the relevant invoice, an immediate amount of $25.00 will be levied against the Client for administration fees, which sum will become immediately due and payable in addition to any interest payable under clause 8.7.1..

8.7.7. If the Client's payment is dishonoured for any reason the Client will be liable for any dishonour fees or other costs incurred by the Supplier in relation to the payment including a reasonable administration fee to cover internal time.

9. Validity of Payment

9.1. The Client acknowledges that:

9.1.1. all payments made to the Client's account with the Supplier are in the ordinary course of the Client's business; and

9.1.2. all payments to the Client's account are received by the Supplier on the reasonably held belief that those payments are valid unless the Client advises otherwise in writing; and

9.1.3. by accepting any payments on or after the due date for payment the Supplier has not altered its position in reliance on the validity of those payments.

10. **Subcontracting**

10.1. The Supplier may licence or sub-contract all or any part of the Work or any of its other rights under the Agreement without the Client's consent. The Supplier confirms that where it uses subcontractors, they shall be from a pool of trusted suppliers who have been tested and approved through our standard procedures.All obligations and responsibilities for Delivery shall remain with the Supplier.

11. **Information**

11.1. The Client is responsible for ensuring that any designs, specifications, information or instructions supplied by the Client (or the Client's agent) are clear and correct in every particular and meet the Client's requirements and purposes whether or not the same have been communicated to the Supplier. The Client shall indemnify and hold harmless the Supplier in respect of any liability, loss, injury, damage, demand, cost, charge or expense which may be incurred or sustained by the Supplier by reason of or arising directly or indirectly out of any claim in respect of any omission, inaccuracy, ambiguity or illegibility in respect of any such designs, specifications or information or otherwise in relation thereto.

12. **Liability**

12.1. Any claim by the Client against the Supplier in respect of the Services or Deliverables supplied must be raised in accordance with the procedures in GENERAL SECTION to PART E – PARTNERSHIP SUPPORT SERVICES as appropriate for the Services or Deliverables in question.

12.2. Where the Supplier has accepted the Client's claim, the Supplier reserves the right in its discretion to either replace or correct the Services or Deliverables. If the Supplier reasonably believes that the Services or Deliverables cannot be replaced or corrected, the Supplier may credit the portion of the Price applicable to those Services and Deliverables.

12.3. The total liability of the Supplier for any and all loss arising from any defect or non-compliance of the Services and Deliverables or any other breach by the Supplier of its obligations under the Agreement will not in any circumstances exceed the Price received by the Supplier.

12.4. The Supplier will not be liable for:

12.4.1. any consequential indirect or special damage or loss of any kind; or

12.4.2. any loss caused by the Client's servants, agents or any other persons whatsoever; or

12.4.3. the Client's use of the Deliverables other than in accordance with any specified assumptions, constraints and documentation supplied by the Supplier; or

12.4.4. any alteration made to the Deliverables by anyone other than the Supplier (or its authorised agents or subcontractors).

12.5. The Client will indemnify the Supplier against any claim by the Client's customers, prospective customers, suppliers, competitors, servants, employees, subcontractors, agents or other persons in respect of any loss arising from any defect in or non-compliance of the Services and Deliverables or in respect to any other matter whatsoever.

12.6. The Supplier represents and warrants that:

12.6.1. All Deliverables shall be prepared best practice code standards;

12.6.2. All Deliverables will function under standard PHP and WordPress or similar CMS conventions;

12.6.3. All Deliverables will conform to the specifications and functions set forth in this Agreement; and

12.6.4. The Supplier will perform all Work called for by this Agreement in compliance with applicable laws. The Supplier will repair, free of charge and within a reasonable period of time, any Deliverable that does not meet this warranty where the defect affects the usability of the Client's Website, Business Application or Business Systems Integration and is notified to the Supplier within the Warranty Period in accordance with clause 29.1.

This warranty does not cover links that change over time, pages that become obsolete over time, content that becomes outdated over time, or other changes that do not result from any error on the part of the Supplier including software updates, browser updates, device updates and the like. The Supplier does not warrant that the development will be uninterrupted or error free.

The parties agree that (a) the limited warranties set forth in this section are the sole and exclusive warranties provided by each party, and (b) each party disclaims all other warranties, express or implied, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose, relating to this agreement, performance or inability to perform under this agreement, the content, and each party's computing and distribution system. If any provision of this agreement shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this agreement and shall not affect the validity and enforceability of any remaining provisions.

12.7. The Client acknowledges that, subject only to any representations or warranties expressly recorded in the Agreement, the Client entered into the Agreement in reliance solely on its own enquiries, skill and judgement and not upon any representations, or warranties of the Supplier.

12.8. Any samples, illustrations, descriptive material or specifications made available by the Supplier including but not limited to , proposals, sketches, preliminary designs, wireframes, prototypes and estimates of performance are indicative only unless specifically stated otherwise. All samples and documents containing such illustrative or descriptive material shall remain the exclusive property of the Supplier and must not be copied, loaned or transferred by the Client.

13. **Ownership of Deliverables**

13.1. Property in and ownership of the Deliverables remains in the Supplier until all money the Client owes to the Supplier (whether under this Agreement or otherwise) has been paid in full. Thereafter, property in and ownership of the Deliverables is subject to the terms of the Agreement.

13.2. If the Supplier's Deliverables become mixed with or incorporated in any other products, property or materials in such a way that they cease to exist as separate Deliverables, the original ownership of the new products created by that mixing will vest immediately on creation in the Supplier as co-owner of the new products with the owner of any other materials which become part of the new products. The co-ownership will be calculated proportionally to the value of the various component materials. The Supplier's ownership of the new products is otherwise on the same terms as the ownership of the Deliverables originally supplied.

13.3. If the Client is in default under the Agreement or if one of the events described in clause 19.1.2. occurs, the Client will at the Supplier's request re-deliver the Deliverables to the Supplier or do anything reasonably necessary to allow the Supplier to retake possession of them.

13.4. The Client hereby grants a security interest to the Supplier in respect of:

13.4.1. the Deliverables; and

13.4.2. any new products in terms of clause 13.2.; and

13.4.3. any other products or personal property owned by the Client that have been installed or worked on by the Supplier or which are required for the completion of the work (the Secured Products).

13.5. If the Client is in default under the Agreement or if one of the events described in clause 19.1.2. occurs, then the Supplier will be entitled without notice to repossess the Secured Products. The Client authorises the Supplier or its representatives, servants, agents or employees to enter the property where the Secured Products are situated for the purpose of repossession. The Supplier will not be liable for any costs, expenses, damage, loss of any kind suffered by the Client as a result of repossession.

13.6. If the Supplier takes possession of the Secured Products or the proceeds and after deduction of all money the Client owes to the Supplier (including any interest due and including any expense incurred by the Supplier in enforcing its rights including legal expenses as between solicitor and client) there is a surplus, the Supplier will pay that surplus to the Client.

14. **Personal Property Securities Act 1999 ("PPSA")**

(Capitalised expressions have the meaning prescribed to them in the PPSA)

14.1. The Client acknowledges the Supplier's Security Interest in the Secured Products ("Collateral") supplied to the Client but not paid for under these terms and conditions.

14.2. The Supplier reserves the right at its discretion to register a Financing

Statement in respect of each category of Deliverables supplied to the Client which comprises collateral. The Supplier's costs of registering a Financing Statement or a Financing Change Statement shall be paid by the Client and where applicable, debited by the Supplier against the Client's account with the Supplier. On the request by the Supplier the Client shall promptly execute any documents and do anything else required by the Supplier to ensure that the Supplier's Security Interest in the Collateral created by these terms and conditions constitutes a Perfected Security Interest over the Deliverables comprising collateral.

14.3. The Client shall not agree to allow any person to file a Financing Statement over the Collateral without the prior consent of the Supplier and shall notify the Supplier immediately if it becomes aware of any person taking steps to file a Financing Statement against any of the Collateral.

14.4. The Client and Guarantor (if any):

14.5. Agree(s) that nothing in s114(1)(a), 133, and 134 of the PPSA will apply to the Agreement; and

14.6. Waive(s) the Client's right to do any of the following:

(a) Object to the Supplier's proposal to retain any Personal Property under s121 of the PPSA;

(b) Not have products damaged when the Supplier removes an Accession under s125 of the PPSA;

(c) Receive notice of the removal of an Accession under s129 of the PPSA;

(d) Apply to the Court for an order concerning the removal of an Accession under s131 of the PPSA;

(e) To receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the Security Interest created by these Terms and Conditions.

15. **Consumer Guarantees Act**

15.1. Where the Supplier is supplying Services and Deliverables to the Client for business purposes within the meaning of the Consumer Guarantees Act 1993, the Client acknowledges that, pursuant to Section 43, the provisions of that Act will not apply to the Agreement.

15.2. Where the Supplier is supplying Services and Deliverables to the Client other than for business purposes the provisions of clauses 12.3. to 12.7. above will have no effect and the provisions of the Consumer Guarantees Act 1993 will apply.

16. **Information and Privacy Act**

16.1. For the purpose of facilitating the efficient running of the Supplier's business, the Client and Guarantor (if any) authorise the Supplier:

16.1.1. to collect all information it may require from any third parties and authorises those third parties to release that information to the Supplier; and

16.1.2. to hold all information given by the Client, Guarantor or any third parties to the Supplier; and

16.1.3. to use that information, including giving information to any other person to facilitate collection of debts from the Client or the Guarantor.

16.2. The information will be collected, held and used on the condition that:

16.2.1. it will be held securely at the Supplier's registered office or on it's secure IT systems; and

16.2.2. it will be accessible to any of the Supplier's employees and agents who need access to it for the efficient running of the Supplier's business; and

16.2.3. the Client or Guarantor may request access to and correction of it at any time.

16.2.4. Where the provision of Services will expose the Supplier's employees or subcontractors to personal Information or data, the Client warrants that it is using the personal data in accordance with the Privacy Act 2020 including obtaining any required consent from data subjects for the Supplier to process the data. The Client will not send personal data via email and will arrange secure transfer methods.

17. **Delivery & Risk**

17.1. Notwithstanding that the Supplier may retain Intellectual Property and property in the Deliverables, all risk in the Deliverables passes to the Client on Delivery.

18. **Intellectual Property**

18.1. All Existing IP owned by either party will remain the sole and exclusive property of that party, and nothing in the Agreement confers on either party any right or interest in, or licence to use, or permit to be used, any of the other party's Existing IP, except that:

18.1.1. to the extent that any Existing IP of the Supplier is contained in the Deliverables, the Supplier grants the Client an irrevocable (subject to clause 18.10), royalty free, non-exclusive licence to access and use any such Existing IP as may be reasonably required by the Client to enable it to obtain the full use and benefit of the Deliverable

18.1.2. The Supplier will have a non-exclusive licence to access, use, reproduce, store and/or adapt the Client's Existing IP to the extent required to perform the Services and otherwise give effect to the Agreement.

18.2. The Client warrants that all designs or instructions given to the Supplier, including any software supplied by the Client, will not cause the Supplier to infringe any patent, registered design, trademark or copyright in the execution of the Agreement and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

18.3. The Client warrants that it has and will continue to have the right and authority of all third party owners, head licensors, and any sub-licensors to use any information, material, systems. software, or processes that the Client does not own but uses and which the Supplier needs access to in order to provide the Services.

18.4. All Intellectual Property in any Third Party Software that is supplied to the Client (or incorporated in any of the Deliverables supplied to the Client) under the Agreement remains the sole and exclusive property of the supplier of the Third Party Software, irrespective of whether the relevant Third Party Software is supplied to the Client by the Supplier or by the relevant Third Party Software supplier directly.

18.5. The Client agrees that it is aware of and will strictly comply with the terms of any Third Party Software licence agreements or arrangements for Third Party Software which has been supplied by the Supplier as a Deliverable (or incorporated into any Deliverable) under the Agreement. If the Client changes to a new Supplier, any third party software or data such as plugins or fonts may require that the Client moves off the Supplier's Agency licence and applies for a direct licence from the technology provider at their own cost.

18.6. Notwithstanding any other provision of the Agreement, unless it is expressly stated otherwise in the Services Agreement, or other written agreement between the parties, notwithstanding any Intellectual Property rights of the Client in a Deliverable that might be specified in the Agreement, all Supplier Reserved IP will be and remain the sole and exclusive property of the Supplier and, except as provided in clause 18.7., the Client will obtain no rights or interests in the Supplier Reserved IP.

18.7. The Supplier grants to the Client an irrevocable (subject to clause 18.10.), royalty free, non-exclusive licence to access, possess, store and use such Supplier Reserved IP as may be reasonably required by the Client to enable it to obtain the full use, benefit and enjoyment of each Deliverable provided pursuant to the Agreement, subject to any limitations or restrictions on such rights imposed by any supplier of Third Party Software to the extent that Supplier's Reserved IP incorporates Third Party Software.

18.8. Nothing in the Agreement affects the Supplier's right to continue to develop solutions that are similar to and which use or are based upon any Deliverable, its development methods, techniques, technical components or software routines built and used before entry into the Agreement or during its term.

18.9. The Client agrees that the Supplier may publicly identify the Client as a client of the Supplier and grants the Supplier a perpetual, royalty-free licence to use the Client's name, logo and a factual description of the project in any of the Supplier's marketing materials such as in proposals to third parties, in its annual report and on its website or social media channels.

18.10. Any licence granted by the Supplier to the Client pursuant to the Agreement may be terminated by the Supplier on the occurrence of any of the events specified in clause 19.

18.11. Unless otherwise agreed in writing by the parties, any improvements, developments or modifications to the Supplier's Existing IP created by, or on behalf of, either party during the term of the Agreement and all Intellectual

Property therein, will vest absolutely and automatically upon creation in the Supplier.

19. Termination

19.1. Without prejudice to the Supplier's other remedies, this Agreement (including any unperformed obligations of the Supplier) may be terminated by the Supplier's written notice to the Client that no further Services and Deliverables will be supplied if:

19.1.1. the Client is in default under the Agreement (including the terms of any licence granted pursuant to the Agreement); or

19.1.2. the Client becomes insolvent; or is subject to the appointment of a receiver, manager, liquidator, or statutory manager; or commits an act of bankruptcy; or makes a scheme of arrangement with its creditors; or is unlikely to be able to meet its obligations to the Supplier (in the opinion of the Supplier).

19.2. The agreements of the parties will not merge with termination under this clause.

20. Confidentiality and non-solicitation

20.1. Notwithstanding clause 18.9., each party agrees to treat all information and ideas communicated to it by the other confidentiality and agrees not to divulge it to any third party without the other party's prior written consent. The parties will not copy such information supplied (except to the extent necessary to carry out its obligations under the Agreement) and will either return or destroy the information together with all copies at the request of the other party.

20.2. The Client will not, during the provision of the Work or for a period of six months after Delivery, without the Supplier's prior written consent, directly solicit or offer employment to employees or individuals contracting to, the Supplier.

21. Priority

21.1. If there is any conflict or inconsistency between these Terms and Conditions and any other document that forms part of the Agreement, the precedence in clause 2.1.2. shall apply.

22. General

22.1. **Amendment:** The Supplier reserves the right to review and amend these Terms and Conditions at any time. Any change will take effect from the date on which the Supplier notifies the Client of the change.

22.2. **Severability:** If any provision of the Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the Agreement will remain in full force apart from such provision which will be deemed deleted.

22.3. **Governing Law:** The Agreement will be governed by, and construed in accordance with, the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.

22.4. **Waiver and Forbearance:** All the Supplier's rights will remain in full force despite any delay in enforcement. The Supplier will not be deemed to have waived any condition unless that waiver is in writing and signed by a duly authorised officer of the Supplier. Any waiver will apply only to the particular matter in respect of which it is given.

22.5. The provisions of the Contractual Remedies Act 1979 shall apply to the Agreement as if section 15(d) were omitted from that Act.

22.6. **Force Majeure:** Neither party will be liable for any default due to any act of God, war, terrorism including cyber terrorism, strike, lockout, industrial action, fire, flood, drought, earthquake, tsunami, pandemic, government restrictions, storm or other event beyond the reasonable control of the relevant party, provided that this clause will not excuse a party from any obligation to make payment when due under the Agreement and that reasonable efforts under the circumstances towards meeting obligations under the agreement have been made. Reasonable costs may be incurred and charged for, to allow for handover, due to the change in circumstances.

22.7. **Assignment:** The Supplier is entitled at any time to assign its rights under the Agreement. The assignee will be entitled to claim full rights of set off or counter claim against the Client, its charge holders or successors in respect of the Agreement or part of the Agreement which is assigned. The Client is not entitled to assign its rights under this Agreement.

22.8. **Entire Contract:** The Supplier and the Client agree that the Agreement expresses the complete agreement between them. There has been no representation made by either party to the other except as expressly set out in this document.

22.9. **Disputes :** If a dispute arises out of or in connection with this Agreement then:

22.9.1. The parties should immediately notify the other party in writing of the dispute.

22.9.2. The dispute should first be escalated to the senior leadership or signatories documented in the agreement who should meet within 5 business days to discuss in good faith how to resolve the dispute.

22.9.3. If no resolution can be reached within 5 days from meeting then the dispute should be escalated to the Directors who should meet within 5 days to discuss in good faith how to resolve the dispute.

22.9.4. If the Directors are unable to resolve the dispute, then the parties must immediately refer the dispute for mediation; any mediation must be conducted in terms of the Resolution Institute Standard Mediation Agreement. The mediation must be conducted by a mediator and a fee agreed by the parties. If the parties can't agree on a mediator, one shall be appointed for them by the Resolution Institute.

22.9.5. If the dispute remains unresolved after Mediation then either party may submit the Dispute to arbitration or litigation.

22.9.6. Nothing in this dispute resolution process shall restrict either party from bringing a claim for urgent interlocutory relief.

PART A - DEFINE & STRATEGY

23. Delivery

23.1. Delivery shall take place when the final strategy documents and related Deliverables are sent to the Client or the Client instructs the Supplier to proceed to the next stage (such as Design).

23.2. Subject to clause 18., all Intellectual Property in the Deliverables resulting from the provision of the Services will vest in the Client on payment by the Client of all amounts owing to the Supplier pursuant to the Agreement.

23.3. For the avoidance of doubt, the Client does not acquire any Intellectual Property in any ideas or strategies or concepts proposed by the Supplier in the course of providing the Services which were rejected by the Client.

PART B – DESIGN SERVICES

24. Delivery

24.1. Delivery shall take place when the visual designs representing the Client's brand are signed off by the Client or the Client instructs the Supplier to proceed to the next stage (such as development or production).

25. **Intellectual Property**

25.1. Subject to clause 18., all Intellectual Property in the Deliverables resulting from the provision of the Services will vest in the Client on payment by the Client of all amounts owing to the Supplier pursuant to the Agreement, provided that:

25.1.1. For the avoidance of doubt, the Client does not acquire any Intellectual Property in any designs or concepts proposed by the Supplier in the course of providing the Services which were rejected by the Client.

25.1.2. Where the Supplier has provided photographic or graphical (digital or otherwise) images for the Client, any such images may be subject to on-going licence payments for the use of such images.

PART C – DIGITAL DEVELOPMENT SERVICES

26. Supplier Obligations

26.1. The Supplier will use reasonable skill and care to develop the Client's Website, Business Applications and Business system Integrations in accordance with the Specifications and Development Stages specified in the Agreement.

26.2. The Supplier will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Website, Business Application or Business Systems Integrations which is attributable to:

26.2.1. Incorrect information provided by the Client, either pursuant to the Agreement or otherwise;

26.2.2. Failure by the Client to provide relevant information; or

26.2.3. Any third party materials used by the Supplier in the development of the Website.

27. Client Obligations

27.1. The Client will:

27.1.1. Provide all Client Materials;

27.1.2. Provide any other information, ideas or suggestions which are to be expressly considered by the Supplier in developing the Website, Business Application or Integration Development Services;

27.1.3. Ensure that the Supplier is given such information and assistance as the Supplier reasonably requires to enable it to develop the Client's Website, including timely access to brand information, systems, premises, or subject matter experts.

28. **Delivery**

28.1. Delivery of digital Services shall take place when the Client is provided with the UAT link.

29. **Testing**

29.1. The Client will commence the User Acceptance Testing Phase on Delivery. Any alleged defects, shortages in quality or quantity, errors, omissions or failure to comply with the Specifications must be notified to the Supplier in writing or through the supplied system within one month (or other warranty period agreed in writing) of Delivery. If no notice is given pursuant to this clause, the Deliverable shall be conclusively presumed to be in accordance with the Agreement and the free from any defect or damage.

29.2. Where the Client notifies the Supplier of any defect within the timeframe specified in clause 29.1., the Client will allow the Supplier an opportunity to inspect the Deliverable within a reasonable time following Delivery.

29.3. Any request for service after the Warranty Period shall be charged at the Standard rate for additional services listed in the Agreement

30. **Intellectual Property**

30.1. The Supplier retains all Intellectual Property in the Supplier Reserved IP but grants to the Client an irrevocable (subject to clause 18.10.), royalty free, non-exclusive licence to access, store and use the Supplier's Reserved IP but not to resell, adapt or distribute. Other than as allowed under the Copyright Act 1994 and the conditions therein, the Client agrees that it will not in any way sell, reproduce, adapt, distribute, transmit, publish.

PART D – WEBSITE HOSTING SERVICES

31. **Term**

31.1. The Supplier will provide the Website Hosting Services to the Client specified in the Agreement from the Commencement Date until terminated in accordance with these Terms and Conditions.

31.2. The term of a Web Hosting Services Agreement is open and the subscription shall renew automatically every 3 months and become due each quarter in advance of service.

31.3. Termination of a minimum of one (1) months notice is required in writing for a termination of Service at any time by either party. Termination during a 3 month term shall not result in a refund.

32. **Price**

32.1. The Price for the Services may be reviewed by the Supplier once in every 12 month period. Any revised Price will apply to the Services from the price review date, provided that the Client has received three month written notice of the revised Price.

33. **Supplier Obligations**

33.1. The Supplier will ensure that from the Commencement Date:

33.1.1. Sufficient capacity is maintained on the Supplier's webserver to enable users to access the Client's Website in a timely manner;

33.1.2. The Client's Website is accessible to users in accordance with the Service Levels (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime, or website maintenance in accordance with the Services Agreement or in accordance with clause 26.2).

33.2. Except where the Client has engaged the Supplier to provide maintenance services, the Supplier will provide the Client with reasonable access to the Client's website to perform maintenance services.

33.3. The Supplier will not, except to the extent expressly authorised by the Agreement, without the Client's written consent:

33.3.1. Alter or amend, or permit any person to alter or amend the Client's Website;

33.3.2. Post or display on the Client's Website any advertisement, sponsorship or promotion, except a link to Supplier's website in the footer;

33.3.3. Use any user data for marketing, referral or other purposes;

33.3.4. Sub-licence, rent, time-share, lease or grant any rights to use the Client's Website; or

33.3.5. Assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this agreement.

34. **Client Obligations**

34.1. The Client will, at its sole cost and expense:

34.1.1. Except to the extent that it has contracted the Supplier to provide those services, develop and maintain the Client's Website;

34.1.2. Provide the Client's Materials to the Supplier, in such form as reasonably prescribed by the Supplier from time to time, and hereby grants the Supplier a non-exclusive, world-wide irrevocable licence to use the Client's Materials for the purposes of hosting the Client's Website;

34.1.3. Do all things reasonably necessary to enable the Supplier to host the Client's Website on the Supplier's webserver

34.1.4. Ensure that the Client's Materials supplied to the Supplier do not contain:

(a) Prohibited Content;

(b) A link to any Website that contains Prohibited Content;

(c) Any viruses, Trojan horses, worms, time bombs or any other software program or routine designed for or capable of interfering with the operation of the Supplier's webserver or the provision of Website hosting services to the Client or any other client of the Supplier.

34.2. The Client must not do (or permit any other person to do) anything that prevents or hinders the Supplier from providing Website hosting services to any other person.

34.3. The Client should notify the Supplier if expecting large volumes of traffic due to promotion or business activity.

35. **Change of Server**

35.1. The Supplier reserves the right to change the Client's hosting level and move the Client's Website to a different webserver at anytime during the Term, where the Supplier considers such actions to be appropriate with reference to (among other things) the level of usage of the Client's Website and the transactions being carried out via the Client's Website (for example e-commerce transactions that might require a more secure webserver).

35.2. The Client acknowledges that if the Supplier needs to change the infrastructure due to change in customer demand, a change in the webserver may result in an increase in the Price, and the Client agrees to pay any additional hosting costs associated with any change in the webserver in accordance with clause 32., provided that the Supplier notifies the Client in writing of the exercise of its rights and the increased cost prior to effecting the change.

PART E – PARTNERSHIP SUPPORT SERVICES

36. **Term**

36.1. The Supplier will provide the Partnership Support Services specified in the Agreement to the Client from the Commencement Date until terminated in accordance with these Terms and Conditions.

36.2. The term of a Partnership Support Services Agreement is open and the subscription shall renew automatically and become due each month in advance of service.

36.3. Termination of one (1) months notice is required in writing for a termination of Service at any time by either party.

37. **Price**

37.1. The Price for the Services may be reviewed by the Supplier once in every 12 month period. Any revised Price will apply to the Services from the price review date , provided that the Client has received one month written notice of the revised Price.

38. **Supplier Obligations**

38.1. The Supplier will keep full and accurate records of all work performed in providing the Services.

39. **Client Obligations**

39.1. The Client will:

39.1.1. Ensure that the Supplier is given such information and assistance as the Supplier reasonably requires to enable it to provide the Services.

39.1.2. The Client will procure all necessary authorisations, licences and consents to enable the Supplier to have access to the Client's Website and/or Developed Software or personnel in order to provide the Services.

39.1.3. The Client's representative will be responsible for day to day management of the Agreement on behalf of the Client and any action or notice given by the Client's representative will be binding on the Client

40. **Intellectual Property**

40.1. Unless otherwise agreed in writing by the parties, any improvements, developments or modifications to the Client's Existing IP created by, or on behalf of, either party during the term of the Agreement and all Intellectual Property therein will vest absolutely and automatically upon creation in the Client.

40.2. Any developments, upgrades, or modifications to the Client's Website or the Developed Software carried out by the Supplier in performing the Services will be owned by the Client.

40.3. The Clients grants the Supplier a non-exclusive, non-transferable and royalty free licence to use the Client's Intellectual Property for the term of the Agreement for the purposes of, and to the extent necessary for, the provision of the Services.

41. **Service Requests and Service Levels**

41.1. Service Requests under the Partnership Support Agreement can be submitted by:

a) email to the support central hub support @publica.co.nz; or
b) to the support system (Asana);or
c) to the Client's dedicated account manager, if one is assigned under your Partnership package

41.2. Service Requests will be assigned a Service Level as they are received by the Supplier. The following treatments shall apply:

41.2.1. URGENT – issues that affect core business functions and stop the Client's business operation. Immediate action during business hours and by negotiation outside of business hours. After hours rates may apply.

41.2.2. HIGH – issues that impact on core business functions but 'work arounds' can still support operations – within 24 – 36hrs during business hours.

41.2.3. MEDIUM – within 5 working days; and booking any strategy and design services

41.2.4. LOW – at the earliest opportunity within 4 weeks.

42. **Delivery**

42.1. Delivery for any digital Services shall take place when any digital Deliverables are deployed to the live environment.

42.2. A Request for Information (RFI) may be issued where the Supplier requires further details from the Client. RFIs should be by email or through the Partnership Support system (such as Asana). The Client acknowledges that a delay in responding to the RFI will affect the ability of the Supplier to complete the Work.

43. **User acceptance testing**

43.1. The digital Work will be deemed accepted by the client three working days after go-live. The client has three working days after features are pushed live to highlight any issues or bugs.

43.2. The client will have the opportunity to inspect the Deliverable in a development environment before accepting the Deliverable.