

We are Broden Media Limited, a company incorporated and registered in England and Wales with company number 04040492 whose registered office is at Central House, 1 Alwyne Road, London, SW19 7AB (“Broden”, “we”, “us”). You are a business (“Customer”, “you”) (each either the “Party” or the “Parties”) who are contracting us for the purchase and promotional services we offer as the Broden Services as set out in the relevant Customer Order which incorporates these Terms and Conditions, as well as the Data Protection Addendum (together the “Agreement”).

Definitions and interpretation are set out below.

## **1 COMMENCEMENT AND DURATION**

This Agreement shall commence on the Effective Date and shall continue until terminated by mutual agreement in line with Clause 13 or in accordance with the date set out on the Customer Order (the “Term”).

## **2 OUR OBLIGATIONS**

- 2.1 Broden will provide the Services in accordance with the Agreement.
- 2.2 Broden shall make available the Services to the Customer in accordance with the relevant Customer Order.
- 2.3 Broden shall not be responsible for any delays to provide the Services caused by the Customer’s (its sub-contractors or suppliers) actions or omissions or caused by reasons out of Broden’s reasonable control.
- 2.4 Broden shall use best endeavours to:
  - (a) perform the Services in accordance with Standard Industry Practice and in compliance with all Applicable Legislation;
  - (b) promptly deal with and respond to reasonable queries from the Customer about any part of the Services and any material developed from the Service;
  - (c) take good care of any Customer Materials and to protect them from damage so far as it is consistent with the performance of the Services.
- 2.5 Broden shall be required throughout the Term and for a period of 6 years thereafter, or longer if required by law, to keep full, accurate and contemporaneous records of all work undertaken in relation to the Services.

## **3 CUSTOMER’S OBLIGATIONS**

- 3.1 In order to enable Broden to provide the Services, the Customer shall comply with all its obligations under this Agreement including:
  - (a) pay any applicable Fees;
  - (b) providing any information and documentation including the Ad content, or Customer Materials that may be reasonably necessary for the provision of the Services;

- (c) promptly granting any approvals that may be reasonably needed from time to time for the provision of the Services;
  - (d) use reasonable endeavours to fully and timely cooperate with Broden in all matters relating to this Agreement to enable Broden to comply with its obligations under this Agreement (and provide any reasonable assistance to Broden that may be necessary for the performance of the Services);
  - (e) use reasonable endeavours to ensure no measure is taken by the Customer (its subcontractors, suppliers and Affiliates) that could interfere with the provision of the Services by Broden or its subcontractors;
  - (f) obtain and maintain all necessary licences, consents, and permissions necessary for Broden, its contractors and agents to perform their obligations under this Agreement; and
  - (g) promptly inform Broden of any data discrepancies.
- 3.2 Broden shall not be liable for its failure to perform any of its obligations under this Agreement and will not be treated as being in breach of this Agreement if this is directly due to the Customer's breach of any of its obligations under this Agreement or to any actions or omissions of its subcontractors or suppliers that cause the Customer to breach its obligations under this Agreement.

#### **4 BRODEN WARRANTIES**

- 4.1 Broden undertakes that the Services will be performed with all reasonable skill and care and in accordance with Standard Industry Practice and that they will be provided in accordance with the requirements set out in the relevant CO and the Terms and Conditions of this Agreement.
- 4.2 The undertaking at Clause 4.14.1 shall not apply to the extent of any non-conformance which is caused by the Customer or use of the Services contrary to Broden's instructions, or modification or alteration of the Services by any party other than Broden or Broden's duly authorised contractors or agents.
- 4.3 If the Services do not conform with the foregoing undertaking, Broden will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's primary, but not sole and exclusive, remedy for any breach of the undertaking set out in Clause 4.14.1 .
- 4.4 Subject to Clause 6, Broden:
- (a) shall provide the Services "as-is";
  - (b) subject to any rights the Customer may have in law with respect to the acts, errors, or non-performance of Broden, does not warrant that the Customer's use of the Software will be uninterrupted or error-free; or that any external/third-party information obtained by the Customer through the Services or access and software will meet the Customer's requirements; and

- (c) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet (unless such failures/loss/damage are caused by Broden's acts or omissions), and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- (d) shall not be liable for any failure to meet its obligations under this Agreement to the extent that such failure arises from a failure of the Customer to meet any of its obligations arising under this Agreement or otherwise.

## **5 MUTUAL WARRANTIES**

5.1 Each Party warrants and represents for the benefit of the other Party that:

- (a) it has the requisite power and authority to enter into this agreement and to carry out the obligations contemplated in this Agreement;
- (b) this Agreement constitutes a binding obligation on it in accordance with its terms;
- (c) it shall comply with all statutes, laws, regulations and by-laws as are applicable to it; and
- (d) it shall obtain and maintain all necessary licences, consents, and permits to enter into and to perform its obligations under this Agreement.

## **6 CHANGE REQUEST PROCEDURE**

6.1 If either Party at any time during the Term wishes to change the scope or execution of the Services (including Customer requests for additional services), it shall submit details of the requested change to the other by email. The change shall not be effective or binding unless the parties agree in writing the necessary variations to the charges, the implementation plan and any other relevant terms of this Agreement to take account of the change.

## **7 PAYMENT TERMS**

7.1 In consideration for the provision of the Services, the Fees shall be payable as set out in this Clause 7 and in the relevant CO.

7.2 Unless otherwise set out in the relevant CO, when the Customer uses the Services Promotional Space, Broden shall invoice the Customer at the outset of each relevant CO using the final numbers from confirmed by Broden. The Customer shall pay each invoice within thirty (30) days of the date of the invoice.

7.3 If either Party disputes any invoice or any other amounts due under this Agreement or the relevant CO, either Party will always do so acting reasonably and in good faith.

7.4 If either Party has a bona fide dispute in relation to the whole or any part of an invoice submitted by the other Party, the first Party shall notify the other Party of the amount in dispute and the nature of the dispute within thirty (30) days from receipt of the invoice. After such period the invoice shall be deemed to be accepted by the other Party.

- 7.5 The Fees will not be deemed to include any Value Added Tax, which will be charged separately.
- 7.6 Unless the Parties agree otherwise in the relevant CO, the Fees shall not include any costs derived from the acquisition or pass-thru of software licences, sale and purchase of hardware, network connections and communications that are necessary to execute the Services, including data migrations, implantations or integrations.
- 7.7 Broden shall be entitled to request an increase in any element of the Fees at any time from the 1st anniversary of the Effective Date by giving the Customer not less than ninety (90) days' prior written notice of the variation and this Clause 7 shall be deemed to have been amended accordingly. The Parties agree to discuss the request in good faith, and if the Customer either refuses to agree or to or delays its approval of the request beyond thirty (30) days, then Broden shall be entitled to terminate the Agreement on one month's written notice.

## **8 EMPLOYEES**

- 8.1 It is not intended that the provision of the Services pursuant to this Agreement will give rise to a relevant transfer for the purposes of:
- (a) the Transfer of Undertakings (Protection of Employment) Regulations 2006; or
  - (b) any equivalent legislation dealing with the safeguarding of employees' rights in the event of transfers of undertakings or businesses, or a service provision change, in whole or part whether enacted pursuant to or in accordance with the principles of the EU Acquired Rights Directive 2001/23/EC (and/or the Regulations or otherwise, in each case as amended, repealed or replaced from time to time) (hereinafter, the "**Regulations**").
- 8.2 The Regulations shall not apply on commencement of the Services or this Agreement.
- 8.3 Neither Party shall have any liability to the other for any current or former employees, staff, contractors, consultants, agents, officers and workers or any third party engaged by the other Party (hereinafter, a "**Relevant Person**") on the commencement of the Services or this Agreement.
- 8.4 Subject to Clause 12.4, each Party shall indemnify the other (and any Affiliate, subcontractor or supplier of the other) against all employment liabilities suffered or incurred as a result of:
- (a) any claim or demand made or brought by any Relevant Person or any claim submitted on behalf of a Relevant Person by a trade union or employee representative or otherwise on the grounds that their employment and/or any liabilities in connection with that employment, its termination or cessation howsoever arising (including for the avoidance of doubt as a result of its termination or non-acceptance into employment) have or should have transferred pursuant to the Regulations, and
  - (b) any claim or demand made or brought by any person whomsoever on the grounds that there has been a failure in whole or in part to inform and/or consult under Regulation 13 of the Regulations in connection with any relevant transfer under the Regulations.

## 9 INTELLECTUAL PROPERTY

- 9.1 Each Party represents, warrants and undertakes that it has, and shall, at all times maintain all licences, authorisations, consents and approvals necessary from third parties (including any licensors of software) or required by applicable law in respect of the tools or programmes, software, material, documentation or other output which it provides to the other Party under or in connection with this Agreement.
- 9.2 Each Party retains ownership of any Intellectual Property Rights owned by it prior to the Effective Date or which are or have been developed independently of this Agreement (whether prior to the Effective Date or not) ("**Pre-Existing IPRs**").
- 9.3 The Customer acknowledges and agrees that Broden and/or its licensors own all Intellectual Property Rights in the Services, including in the Services Promotional Space and grants the Customer, subject to the Customer not being in breach of the terms and conditions of this Agreement, a revocable, non-transferable, non-exclusive and limited licence to receive the Services provided under this Agreement.
- 9.4 Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 9.5 The Customer shall have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Services, including the Services Promotional Space in whole or in part.
- 9.6 The Parties agree that the Intellectual Property Rights in any derivative works, improvement, enhancements or modifications to such Pre-Existing IPRs carried out during the course of this Agreement are to vest in the Party which owns such Pre-Existing IPRs, regardless of who carried out such improvement, enhancement or modification.
- 9.7 Broden hereby grants to the Customer a royalty free licence to freely use Broden's Pre-Existing IPRs and any derivative works, modifications, enhancements or improvements to such Pre-Existing IPRs for as long as necessary, to the extent necessary and for the purpose of receiving the Services to the extent that Broden's Pre-existing IPRs are embedded in the Services.
- 9.8 Unless the Parties agree otherwise in writing, if the Customer requires the use of any Third-Party Materials in order to benefit from the provision of the Services the Customer shall enter directly into a licence agreement with the applicable third-party licensor.
- 9.9 Broden shall indemnify the Customer from and against any Losses suffered or incurred by the Customer as a result of or in connection with any claim that the provision, use or receipt of the Services by the Customer, in accordance with the provisions of this Agreement infringes the Intellectual Property Rights of a third party.
- 9.10 The Customer shall indemnify Broden from and against any Losses suffered or incurred by Broden as a result of or in connection with any claim that Broden's use of the Customer Materials in accordance with the provisions of this Agreement infringes the Intellectual

Property Rights of a third party (with such claims under Clauses 9.9 and 9.10 each being an "IPR Claim").

## 10 CONFIDENTIALITY

- 10.1 Subject to Clause 10.7 below, each Party undertakes that it shall not disclose any Confidential Information received from the other Party for the purposes of the subject matter of this Agreement whether disclosed before or during the term of this Agreement, except as permitted by Clause 10.5.
- 10.2 Once the Services have been completed, each Party shall, to an extent reasonably practical, return to the other any Confidential Information in its possession or those of its employees, or destroy it at the other Party's express request and in the manner established by the latter, irrespective of the means in which this information is registered.
- 10.3 The Parties may not use registered trade marks, logos, commercial names, Internet domain names or any other distinctive sign of the other Party without its prior written consent. This consent will not be necessary in order for either Party to use the foregoing in any proposals and/or presentations to third parties, as a mere commercial reference, or in either Party's internal Intranet, accessed by employees only, as long as the confidentiality obligations stipulated in this Agreement are not breached.
- 10.4 Each Party acknowledges that damages alone would not be an adequate remedy in the event of breach by the other Party of the provisions of this Clause 10. Accordingly, it is agreed that either Party shall be entitled, without proof of special damages, to seek an injunction or other interim remedy for any threatened or actual breach of this Clause 10, without prejudice to any other rights and remedies which that Party may have.
- 10.5 The receiving Party may disclose Confidential Information to its own officers, directors, employees, contractors, sub-contractors (including any of its Affiliates involved in the provision or receipt of the Services), agents, advisers, auditors and (re)insurers who reasonably need to know it for the purposes of this Agreement (each a "**Permitted Third Party**"), provided that the Permitted Third Party is bound by confidentiality obligations equivalent to those specified in this Clause 10 and that the receiving Party shall remain liable to the disclosing Party for the acts, omissions of, and for the compliance with the terms of this Clause 10, by such Permitted Third Party.
- 10.6 If a receiving Party is required by Law or by any regulator to which it is subject to disclose any Confidential Information of the disclosing Party, then it shall be entitled to do so provided that it promptly informs the disclosing Party (if permitted by Law).
- 10.7 The confidentiality obligations under this Clause 10 will remain in force during the term of this Agreement, and for a period of three (3) years after its termination.

## 11 DATA PROTECTION

- 11.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 11 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

11.2 In those cases where the provision of Services by Broden involves processing personal data on behalf of the Customer, this Agreement will include the term of the DPA, and the Parties shall comply with the DPA as attached to the relevant CO.

## **12 LIMITATION OF LIABILITY**

12.1 Nothing in this Agreement shall exclude or restrict either Party's liability for death or personal injury caused by its negligence, fraudulent misrepresentation or fraud or any other liability that cannot be excluded or limited by law.

12.2 Subject to Clause 12.1, the Parties shall not be liable to each other for any of the following types of loss or damage arising under or in relation to this Agreement:

- (a) loss of agreements or contracts; or
- (b) loss or damage to goodwill or reputation; or
- (c) loss of income; or
- (d) loss of the use of money or anticipated savings; or
- (e) loss of use or corruption of software, data, or information; or
- (f) cost of procurement of substitute goods or services; or
- (g) any indirect or special loss or damage of any kind howsoever arising, whether caused by tort (including negligence), breach of contract or otherwise or, whether any such losses could be reasonably foreseen or not or whether either Party has been advised of the possibility of such damages or not.

Each of the sub-clauses 12.2(a) to 12.2(g) shall be deemed to be independent of the other.

12.3 To the extent that the Services provided by Broden to the Customer are based on inaccurate, incorrect or incomplete data provided by the Customer (or its employees, staff, sub-contractors or suppliers), or instructions or information provided by the Customer (or its employees, staff, sub-contractors and suppliers) to Broden, Broden shall not be liable or responsible for any Losses suffered by the Customer as a result of Broden providing the Services to the Customer relying on such inaccurate, incorrect or incomplete data, instructions or information.

12.4 Subject to Clause 12.1 above, the total aggregate liability of the Parties to each other under or in connection with this Agreement, whether arising from tort (including negligence), breach of contract, or otherwise, shall not exceed in aggregate an amount equal to the lower of: (i) in respect of any CO, one hundred per-cent (100%) of the Fees paid by the Customer to Broden pursuant to the applicable CO; or (ii) £100,000.

12.5 This Clause 12 shall survive and shall not be rendered ineffective by the completion of the Services or the expiry or termination of this Agreement for any reason whatsoever.

12.6 Any claim, action or suit by either Party against the other arising under or in relation to this Agreement, including (but not limited to) any claim for breach of contract, breach of duty, fault, negligence, indemnity or otherwise, shall be notified within 6 months of actual

knowledge of the facts giving rise to the claim, action or suit, and be brought within 4 years from the date of that actual knowledge.

### 13 TERMINATION

- 13.1 Either Party may terminate this Agreement, or any CO, without cause, at any time after the first anniversary of the Effective Date and thereafter, on giving thirty (30) days' written notice to the other Party of such termination.
- 13.2 Broden may suspend any of the Services provided under this Agreement, if the Customer fails to pay any amount under this Agreement within fourteen (14) days of its due date for payment, and such amount has not been disputed in accordance with the terms of this Agreement, provided that Broden has provided the Customer with a seven (7) days' reminder notice before suspending any Service under this Clause.
- 13.3 Broden may terminate this Agreement or any associated CO if the Customer fails to pay any amount under this Agreement on the due date for payment and remains in default for more than thirty (30) days after being notified in writing by Broden to make such payment, unless such amount has been disputed in accordance with Clause 7.4 of this Agreement, provided that Broden has provided the Customer with a seven (7) days' reminder notice before terminating any Services under this Clause.
- 13.4 If either Party commits a material breach of this Agreement and (in the case of a remediable breach) fails to remedy the breach within thirty (30) days of receipt of the other Party's written notice requiring it to do so, the other Party may terminate this Agreement with immediate effect on written notice to the Party in breach.
- 13.5 If an Insolvency Event occurs in respect of a Party, the other Party may terminate this Agreement with immediate effect on written notice to the Party to whom the Insolvency Event relates. An "**Insolvency Event**" means, in relation to a person (a "**Relevant Entity**"):
- (a) when the Relevant Entity becomes unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent;
  - (b) a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the Relevant Entity;
  - (c) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to the Relevant Entity and/or over all or any part of the assets of the Relevant Entity;
  - (d) the Relevant Entity enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally; or
  - (e) anything equivalent to any of the events or circumstances stated in 13.5 inclusive occurs in any applicable jurisdiction.
- 13.6 Termination or expiry of any CO shall not affect the continuing validity or operation of any other COs entered into pursuant to this Agreement (nor the continuing application of the terms of this Agreement to such other COs), or this Agreement itself. Termination or expiry



of this Agreement as a whole shall not affect any outstanding COs then in force and the provisions of this Agreement shall be deemed to apply to any such outstanding COs for the duration of each applicable COs, until the termination or expiry of such outstanding COs.

- 13.7 If this Agreement is terminated for any reason which does not relate to the error, act, omission, negligence, misconduct, misrepresentation or non-performance of Broden in connection with this Agreement, the Customer shall, unless otherwise mutually agreed in writing between the Parties:
- (a) in relation to Services already provided at the point of termination notice, pay Broden all Fees and previously approved expenses, or due to Broden under this Agreement until the date of termination of this Agreement; and
  - (b) in relation to Services provided during the thirty (30) days' notice period and prior to the termination date, pay Broden and its sub-contractors all Fees and previously approved expenses, or due to Broden or its sub-contractors under this Agreement until the date of termination of this Agreement.
- 13.8 Broden may submit an invoice to cover the payments set-out in Clause 13.7 above, which shall be payable by the Customer within thirty (30) days of the date of the invoice.
- 13.9 Termination or expiry of this Agreement or any CO shall be without prejudice to the respective rights and liabilities of each of the Parties accrued prior to such termination or expiry.
- 13.10 All licences granted between the Parties shall be terminated, with the exception that the termination of this Agreement or any CO shall not affect the licences specified in Clause 9 which shall continue in full force and effect notwithstanding the termination of this Agreement or the relevant CO.
- 13.11 All rights and obligations of the Parties under this Agreement or the relevant CO (as applicable) shall cease to have effect immediately upon termination or expiry of this Agreement or the relevant CO (as applicable) save that the Clauses of this Agreement which are expressed to survive its termination or expiry, or which from their nature or context it is contemplated that they are to survive termination or expiry shall continue in force following termination or expiry of this Agreement or any CO.

## **14 ASSIGNMENT**

- 14.1 The Customer may not assign its obligations derived from this Agreement without Broden's prior written consent, such consent not to be unreasonably withheld. Broden may assign the provision of the Services to any of its Affiliates, or, on written notice to the Customer, use subcontractors to provide the Services.
- 14.2 Broden shall remain responsible for the acts and omissions of all its subcontractors and Affiliates in each case as if they were the acts and omissions of Broden, to the extent that Broden would be liable under this Agreement or a CO.
- 14.3 The Customer shall remain responsible for the acts and omissions of all its subcontractors in each case as if they were the acts and omissions of the Customer, to the extent that the Customer would be liable under this Agreement or a CO.

## **15 FORCE MAJEURE**

- 15.1 If any Party is totally or partially prevented or delayed in the performance of any of its obligations under or pursuant to this Agreement by Force Majeure and gives written notice thereof to the other Party specifying the matters constituting Force Majeure and the period for which it is estimated that such prevention or delay will continue, together with such evidence as it reasonably can give, the Party so prevented or delayed shall, subject to the provisions of Clause 15.2, be excused the performance as from the date of such notice for so long as such cause or delay shall continue.
- 15.2 If any Party gives to the other Party such notice as is referred to in Clause 15.122, both Parties shall attempt so far as reasonably within their power to mitigate the effect of such notice and, in particular, but without limitation, shall endeavour to agree a reasonable and cost effective solution to the consequences of the matters constituting Force Majeure.

## **16 WAIVER**

- 16.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 16.2 A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## **17 ANTI-BRIBERY AND ANTI-CORRUPTION**

- 17.1 Each of the Parties shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

## **18 RIGHTS AND REMEDIES**

- 18.1 The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **19 SEVERANCE**

- 19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this Agreement.
- 19.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **20 THIRD PARTY RIGHTS**

20.1 A person who is not a Party to this Agreement (including any CO) may not enforce any of its provisions under the Contracts (Rights of Third Parties) Act 1999.

## **21 NO PARTNERSHIP OR AGENCY**

21.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, nor authorise any party to make or enter into any commitments for or on behalf of any other Party.

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

## **22 NOTICES**

22.1 Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing and provided in line with the details as set out in the relevant Customer Order.

## **23 ENTIRE AGREEMENT**

23.1 This Agreement together with any documents referred to in it constitute the entire Agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the subject matter of this Agreement.

23.2 Where there is a conflict between the DPA, the CO and the main body of this Agreement, the main body of this Agreement shall take precedence unless the relevant DPA or CO expressly states to the contrary.

23.3 Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

23.4 The only remedy available to either Party for breach of this Agreement shall be for breach of contract under the terms of this Agreement.

23.5 Each Party acknowledges that in entering into this Agreement it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other Party in relation to the subject-matter of this Agreement at any time before their signature (together "**Pre-Contractual Statements**"), other than those which are set out in this Agreement.

23.6 Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements. Nothing in this Clause 23 shall exclude or restrict the liability of either Party arising out of its pre-contract fraudulent misrepresentation or fraudulent concealment.

## **24 VARIATION**

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

## 25 COUNTERPARTS

25.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

## 26 GOVERNING LAW AND JURISDICTION

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

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

Broden and Customer will also enter into and duly execute a Customer Order incorporating these Terms and Conditions effective as of the Effective Date.

## 27 DEFINITIONS AND INTERPRETATION

27.1 The following definitions shall have the following meanings:

**“Ad”** means the content comprising the image, promotional materials, or customer provided experiences which are in promotion of an item, service or brand which are facilitated by or via the Digital Services;

**“Affiliate”** means any subsidiary or holding company of a Party or a subsidiary of such subsidiary or holding company from time to time;

**“Agreement”** means these Terms and Conditions, the DPA if and in such circumstances that it is relevant and such applicable Customer Order from time to time in force, which together constitute the agreement between Broden and the Customer;

**“Applicable Legislation”** means all applicable legislation, regulations, any and all directives and/or guidelines of any applicable regulatory or governmental authority, including without limitation the Data Protection Legislation;

**“Business Day”** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

<b>“Confidential Information”</b>	means information of each of the Parties by its nature confidential, or that the other Party knows or ought to know is confidential, or designated by the first Party as confidential, relating the business, products, affairs and finances of the relevant Party, including the contents of this Agreement;
<b>“Connection Services” or “CS”</b>	Events and opportunities for Customers to interact, engage, or communicate with individuals and users where personal data may be aggregated;
<b>“Customer Materials”</b>	means any Ad content, information, specifications, designs, goods, documents or other materials provided by the Customer (or on its behalf) to Broden;
<b>“Customer Order” or “CO”</b>	means each of the documents setting out the Services, Fees and other commercial and technical aspects of the agreed services between the Parties;
<b>“Data Protection Addendum” or “DPA”</b>	means the applicable data protection addendum which applies to personal data processed as part of the services agreed between the Parties which is attached to the relevant CO;
<b>“Data Protection Legislation”</b>	means, to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data;  means, to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Customer or Provider is subject, which relates to the protection of personal data;
<b>“Deliverable”</b>	means all copy, layouts, artwork, storyboards, scripts, presentations, drawings, documents, charts, graphics, photographs, films and/or other materials created or produced by or on behalf of Broden for the Customer in the course of providing the Services, on any media (whether any media exist at the Effective Date or are subsequently developed). The Deliverables shall include all items that are identified in the Agreement;
<b>“Digital Services” or “DS”</b>	Provision and placement of digital copy within the Broden services sites for communication to users;
<b>“Effective Date”</b>	means the commencement date of the first CO between Broden and the Customer;
<b>“EU GDPR”</b>	means the General Data Protection Regulation ((EU) 2016/679);

<b>“EU Law”</b>	means the law of the European Union or any member state of the European Union;
<b>“Fees”</b>	means the fees set out in the relevant CO and any other fees agreed by the Parties;
<b>“Force Majeure”</b>	means the following to the extent that they are outside the affected Party’s reasonable control: acts of God, fire, floods and natural disasters; acts of terrorism; strikes, lock-outs and labour disputes; civil commotion; riots and acts of war; delays, interruptions or failures of telecommunication networks or services or internet service providers; or interruption or failure of utility service;
<b>“Intellectual Property Rights”</b>	means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
<b>“Losses”</b>	means all losses, liabilities, fines, and reasonable costs (including reasonable legal fees actually incurred);
<b>“Services”</b>	means the services, including Digital Services and/or Connection Services to be provided by Broden to the Customer as set out in this Agreement and in the relevant CO (and any other services agreed by the Parties in writing);
<b>“Services Promotional Space”</b>	means the platforms offered by Broden that provides the opportunity for the Customer’s advertising, including the placement of: <ul style="list-style-type: none"> <li>(i) Digital Services; and/or</li> <li>(ii) the services necessary to allow the Customer to run Connection Services; and/or</li> <li>(iii) the services necessary to display Customer’s proprietary social content onto the placements;</li> </ul>
<b>“Standard Industry Practice”</b>	means the use of the standards, resources, practices, and methods, and exercising the due skill, care, diligence, attention and judgment, which would reasonably be expected from a

skilled, qualified and experienced person engaged in services which are the same as or similar to the Services;

**“Third-Party Materials”** means any materials (including software and data) owned or licensed by a third party, used or made available by Broden to the Customer or procured by the Customer directly in connection with the Services.

- 27.2 Where the context so admits or requires words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- 27.3 A reference to any Party shall include that Party's personal representatives, successors and permitted assigns. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 27.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 27.5 References to clauses are to the clauses of this Agreement. Writing or written includes e-mails, but not faxes.