



Brainlabs terms of business

INTERPRETATION

1.1 In the Agreement, the following definitions apply:

Agreement: means these general terms of business and the SOW entered into between the Parties.

Applicable Law: means all laws, regulatory requirements, directives, orders and codes of practice from time to time in any relevant jurisdiction applicable to the Services (or their provision or receipt);

Brainlabs Materials: means all IPR, software and technology (in object and source code form, including user interfaces, reporting dashboards, models, and documentation relating to them), knowhow, concepts, ideas, insights, forecasts, projections, methodologies, processes, algorithms developed by or on behalf of Brainlabs, its subcontractors or licensors;

Brainlabs Tech: means any specific Brainlabs Materials (if any) identified in the SOW which are provided to the Client in connection with the Services but for which payment is payable by the Client in addition to the Fees;

Brainlabs Tech Fees: means the compensation payable to Brainlabs for the Brainlabs Tech as set out set out in the SOW;

Business Day: means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

Campaigns: means any advertising campaigns built, managed and/or operated by Brainlabs for and on behalf of the Client in connection with the provision of the Services, but excluding the Brainlabs Materials.

Charges: means the Fees, Expenses, Brainlabs Tech Fees, the Third Party Expenses and any other amount due to Brainlabs under this Agreement;

Client Data: the data provided by the Client to Brainlabs or input by the Client into any system or interface provide or procured by Brainlabs in performance of the Services, for use in the delivery of the Services or for facilitating the Client's use of the Services;

Client Personal Data: Client Data that constitutes Personal Data, as defined in Clause 10, that is Processed by Brainlabs on behalf of Client to perform the Services;

Client Materials: means all IPRs concepts, ideas, methodologies, processes, techniques, algorithms, advertisements or materials of the Client which have been developed independently of this Agreement and provided to Brainlabs or any of its subcontractors by or on behalf of the Client in connection with this Agreement;

Confidential Information: means any information of a Party or its Group Company that has been designated by a Party as confidential (whether or not is marked "confidential") or which by its nature ought reasonably to be considered confidential, including information that relates to the business, affairs, operations, inventions, processes, budgets, pricing, product information, software, specifications, strategies, trade secrets, technical or commercial know-how, clients, personnel and suppliers, findings, data or analysis of that Party or its Group Company, but shall not include information which (i) at the time of receipt by the other Party is in the public domain, (ii) subsequently comes into the public domain through no fault of the other Party or its Representatives, (iii) is lawfully received by the other Party from a third party on an unrestricted basis; and/or (iv) is already known to the other Party before receipt under this Agreement. For purposes of this Agreement, Client Personal Data shall not constitute Confidential Information;

Data Protection Legislation: means any applicable laws and regulations in any relevant jurisdiction relating to the use or Processing of Personal Data;

Deliverables: means any materials which are to be provided by, or Campaigns to be arranged by, Brainlabs as specified in the SOW, but excluding any Brainlabs Materials;

Effective Date: means the effective date specified in the SOW;

Expenses: means expenses incurred in the provision of the Services including but not limited to travel, accommodation, subsistence and other related expenses incurred by Brainlabs each month as agreed in the SOW;

Fees: means the compensation payable to Brainlabs for the Services as set out in the the SOW, including (without limitation) the Monthly Fees;

Group Company: means a Party, any corporate body of which a Party is a subsidiary (as defined by s.1159 of the Companies Act 2006 of the Parliament of UK), any other subsidiary of such corporate body and any subsidiary of a Party and "Group" shall be construed accordingly;

Initial Term: means, unless otherwise specified in the SOW, the period of 12 months from and including the Effective Date;

IPR: means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, moral rights, goodwill and the right to sue for passing off, rights in designs, database rights, rights in computer software and source code, rights to use, and protect the confidentiality of, Confidential Information, know-how, trade secrets and all other intellectual or industrial property rights, in each case whether registered or unregistered and including all applications and 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;

Media Spend: means the total amount that is spent by or on behalf of the Client and its Group with third parties for the purchase of media in connection with (i) the Campaigns; or (ii) any platform licence granted pursuant to a SOW;

Process, and inflections thereof, means any operation or set of operations performed on Personal Data;

Parties: means the relevant Brainlabs entity and Client as identified in the SOW (each being a "Party");

Renewal Term: means, unless otherwise specified in the SOW, a period of 12 months immediately after the end of the Initial Term or each subsequent Renewal Term;

Representatives: means officers, employees, consultants, agents, subcontractors and advisers;

Services: means the Services to be supplied by Brainlabs under this Agreement as set out in the SOW, which includes the provision of any Deliverables;

SOW: means the scope of work that incorporates by reference these general terms of business, and sets out details of the Services;

SOW Effective Date: means the start date of the SOW, as set out in the SOW;

Special Conditions: means any terms identified as special conditions in the SOW;

Subprocessor means any third party appointed by or on behalf of Brainlabs to Process Client Personal Data;

Term: means term of this Agreement as set out in clause 2.1;

Third Party Expenses: means any other third party fees, costs and expenses (including, without limitation, where applicable, Media Spend and any surcharges applied in connection with industry taxes) incurred by Brainlabs in relation to the provision of the Services, including those set out in the SOW;

Third Party Terms: means the terms and conditions applicable to any third party website, platform or media service which either (i) the Client receives access to in connection with the Services or (ii) the Client requires Brainlabs to use in provision of the Services, including but not limited to any set out in the SOW or in another document or website provided by Brainlabs to the Client.

1.2 In the Agreement, the following rules apply: (i) a person includes a legal person (such as a limited company) as well as a natural person; (ii) a reference to a Party includes its successors or permitted assigns; (iii) 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; (iv) the words "include" and "including" shall be construed without limitation; and (v) a reference to "in writing" or "written" includes email.

2. COMMENCEMENT, DURATION AND SOWs

2.1 Unless otherwise stated in the SOW, this Agreement shall commence on the Effective Date and shall continue for the Initial Term and the Renewal Term unless and until terminated by either party in accordance with clause 12.

3. WARRANTIES AND DISCLAIMERS

3.1 Each Party warrants and represents on an ongoing basis that: (i) it has the full right, power and authority to enter into and perform its obligations under the Agreement; and (ii) the SOW is executed by its duly authorized representative.

3.2 Brainlabs represents and warrants that it will provide the Service under this Agreement in a professional and workmanlike manner substantially consistent with general industry standards and in compliance with applicable laws, rules and regulations.

3.3 EXCEPT AS EXPRESSLY PROVIDED IN THIS CLAUSE 3, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS IS," AND BRAINLABS MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. BRAINLABS DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICE SHALL BE UNINTERRUPTED OR ERROR-FREE. BRAINLABS MAKES NO REPRESENTATION, WARRANTY, GUARANTEE, OR PROMISE THAT THE SERVICES WILL MEET CLIENT'S REQUIREMENTS OR ACHIEVE ANY PARTICULAR RESULT, AND CLIENT IS RESPONSIBLE FOR USING ITS OWN JUDGEMENT AND PRIOR REVIEW BEFORE USE OF ANY RESULTS OF SERVICES.

4. SUPPLY OF SERVICES

4.1 Brainlabs shall perform the Services and deliver the Deliverables to the Client, in accordance with this Agreement and shall use reasonable efforts to ensure that they are performed and delivered in compliance with Applicable Law.

4.2 In performing its obligations under the Agreement, Brainlabs will exercise the care and skill which would reasonably be expected to be exercised by a professional operator engaged in the same type of undertaking under the same circumstances and shall perform such Services in accordance with the dates specified in the SOW. Time shall not be of the essence in relation to the Services and such dates.

4.3 Brainlabs will use its reasonable efforts to ensure (but is unable to guarantee) that any software that it uses in the provision of the Services will operate without error and not introduce any virus or malware into the Client's systems or technology.

4.4 Brainlabs shall have the right to make any changes to the Services which it deems necessary in order to comply with any Applicable Law or rules, or which it considers will not materially impact the nature or quality of the Services. Brainlabs shall notify the Client if it makes any such changes which will materially impact the Client.

4.5 In the event that Brainlabs is unable to obtain adequate credit insurance on existing terms in respect of the Client's payment obligations under this Agreement, Brainlabs shall be entitled to: (i) request such other reasonable security from the Client, including but not limited to the provision of a guarantee from a third party of acceptable standing; or (ii) require a deposit equivalent to 100% of the Client's anticipated obligations for the following month. The Client is not under an obligation to agree to such proposals, but Brainlabs shall be entitled to suspend and/or terminate the provision of the Services until such time as the requirements set out in this clause are met to its reasonable satisfaction.

5. CLIENT'S OBLIGATIONS

5.1 The Client shall:

5.1.1 promptly provide Brainlabs with full and clear instructions as to its requirements for the Services and Deliverables and such information, assistance and



Brainlabs terms of business

materials as Brainlabs may reasonably require (including providing any purchase order numbers that Brainlabs requires for the purpose of any invoice as far in advance as possible);

5.1.2 ensure that all information, data and materials it provides to Brainlabs are complete and accurate and promptly notify Brainlabs if this is no longer the case for any previously provided information, data and materials;

5.1.3 cooperate with Brainlabs in all matters relating to the Services (including promptly signing off on Deliverables, plans and changes submitted by Brainlabs for approval, and providing Brainlabs with administrative access to any agreed media or third party platforms as agreed in advance);

5.1.4 obtain and maintain all necessary licenses, permissions and consents which may be required to enable Brainlabs to provide the Services;

5.1.5 comply with any applicable Third Party Terms; and

5.1.6 use its reasonable efforts to ensure (but is unable to guarantee) that: (i) any software to which it gives access to Brainlabs in connection with Brainlabs' provision of the Services will operate without error; and (ii) it shall not introduce any virus or malware into Brainlabs' systems or technology or the systems or technology of any third party's systems used in connection with the Services.

5.2 If Brainlabs' performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Client or failure by the Client to perform any applicable obligation under this Agreement, then:

5.2.1 Brainlabs shall not be responsible for any failure or delay to carry out its own obligations under this Agreement; and

5.2.2 Brainlabs shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Brainlabs' failure or delay to perform any of its obligations.

6. CHARGES AND PAYMENT

6.1 In consideration of the provision of the Services by Brainlabs, the Client shall pay the Charges. Time for such payment shall always be of the essence.

6.2 Unless otherwise set out in the SOW, Brainlabs shall invoice the Client for all Charges monthly in arrears.

6.3 Unless otherwise set out in the SOW or expressly agreed in writing by the Parties, the Client shall pay each invoice submitted by Brainlabs:

6.3.1 within thirty (30) days of the date of the invoice; and

6.3.2 in full and in cleared funds to the Brainlabs nominated account for the Client (as provided by Brainlabs in writing, and to be expressly checked by Client via telephone call with a known point of contact at Brainlabs immediately prior to the first payment to that account) by ACH or wire transfer only.

6.4 All Charges payable by the Client under the Agreement are exclusive of value added tax, or any locally applicable equivalent sales tax or levies payable as a result of providing the Services. The Client shall pay any such tax arising from Brainlabs' provision of the Services on receipt of a valid invoice from Brainlabs as and when due.

6.5 If a Party fails to make any payment due under the Agreement by the due date for payment, then interest on the overdue amount shall accrue on a daily basis from the due date until the payment date (whether before or after judgement) at the rate of two per cent (2%) per annum above Barclays Bank PLC's base rate from time to time, or if lower, the maximum interest rate permitted under Applicable Law.

6.6 Without limiting its other rights or remedies, Brainlabs may suspend (in whole or in part) the provision of the Services if any of its invoices remain unpaid in full more than 14 days after the due date for payment, until such time as they are paid in full together with any interest which is payable under 6.5.

6.7 The Client shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

6.8 The Client shall be solely liable for the payment of any Third Party Expenses agreed in advance by the Parties. For the avoidance of doubt the Client shall pay all Media Spend directly to the relevant third parties, unless otherwise agreed in the SOW.

6.9 Brainlabs may increase Fees on an annual basis with effect from each anniversary of the date of this Agreement: (i) in line with the percentage increase in the Consumer Prices Index in the preceding 12-month period; and/or (ii) as otherwise determined by Brainlabs. If any increases are made in accordance with (iii) then the Client shall have the right to reject any such increases within 30 days of the proposal made by Brainlabs and, if it does so, Brainlabs may terminate this Agreement on 30 days written notice to the Client.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The Parties acknowledge that there shall be no change in the ownership of IPR in the Client Materials, the Brainlabs Materials and any other materials as a result of the Agreement, nor does this Agreement assign, transfer or license any IPR of Brainlabs or its licensors (including any IPR in any work, material, technology or software used, developed or created as part of the provision of the Services) unless expressly stated in the SOW.

7.2 If the nature of the Services requires the IPR rights to be treated differently from the position set out in clause 7.1 then the Parties may mutually to agree any such rights in the SOW.

7.3 Brainlabs hereby grants to the Client a non-exclusive, royalty free, non-transferable license during the Term to use the Brainlabs Materials provided to the Client under each SOW solely in connection with the Client's receipt of the Services.

7.4 Except as expressly permitted by Brainlabs in the SOW or as expressly provided for by Applicable Law, the Client shall not use, copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source of any Brainlabs Materials or any other software provided or developed as part of the Services.

7.5 Brainlabs warrants that:

7.5.1 it is the sole legal and beneficial owner of, and owns all the rights and interests in, or is otherwise entitled to use and license to the Client, the Brainlabs Materials; and

7.5.2 the Client's use of the Brainlabs Materials as set out in clause 7.3 (and in accordance with Brainlabs' instructions) will not infringe the IPRs of any third party and will not constitute a breach of Applicable Law.

7.6 The Client grants Brainlabs a royalty free, non-exclusive, sub-licensable, irrevocable right to:

7.6.1 during the Term use the Client Materials to the extent necessary for Brainlabs to provide the Services; and

7.6.2 during and after the Term, use any statistical data (in aggregated form), learnings or knowhow originating from the Services or the Client Materials (to the extent not already Brainlabs Materials) for the purposes of developing or improving Brainlabs' products and/or services; and

7.6.3 unless otherwise agreed in writing, during and after the Term, use the Client's name and logo for the purposes of identifying the Client as a client of Brainlabs in pitch and proposal documents and on Brainlabs' website. Any other use by Brainlabs beyond this shall be subject to the Client's prior approval.

7.7 The Client warrants that:

7.7.1 it is the sole legal and beneficial owner of, and owns all the rights and interests in, or is otherwise entitled to use and license to Brainlabs, the Client Materials;

7.7.2 Brainlabs' use of the Client Materials as set out in clause 7.6 (and in accordance with the Client's instructions) will not infringe the IPR of any third party and will not constitute a breach of Applicable Law; and

7.7.3 it is entitled to grant Brainlabs access to the Client's user accounts with such third party platforms as may be necessary for Brainlabs to perform the Services.

7.8 The Client acknowledges that the provision of certain Services by Brainlabs and receipt of such Services by the Client may rely on third party IPR. Brainlabs shall use reasonable endeavors (but makes no guarantees that it will be able) to procure license terms from the relevant third party sufficient for Brainlabs to provide the Services, including where applicable the right to sub-license such IPR to the Client or for the Client to enter into separate license terms with the third party. In the event that Brainlabs is not able to procure such license terms, the Parties shall make the necessary amendments to the SOW to reflect this.

8. CONFIDENTIALITY

8.1 Each Party shall keep in strict confidence all Confidential Information of the other Party and shall not (i) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement ("Permitted Purpose") or (ii) disclose such Confidential Information to any third party except as expressly permitted by this clause or as otherwise agreed by the Parties in writing. A Party may only disclose the other Party's Confidential Information to those of its Representatives who need to know it for the Permitted Purpose provided that (i) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; (ii) it procures that those Representatives are bound by confidentiality restrictions which ensure materially the same level of confidentiality in respect of the Confidential Information as this Agreement; and (iii) it is responsible for the actions or omissions of such Representatives in relation to the Confidential Information as if they were actions or omissions of that Party.

8.2 The confidentiality obligations set forth in clause 8.1 will not apply to any information that (i) is at the time of disclosure or becomes generally available to the public through no fault of the receiving Party; (ii) is lawfully provided to the receiving Party by a third party free of any confidentiality duties or obligations; (iii) was already known to the receiving Party at the time of disclosure free of any confidentiality duties or obligations; or (iv) was independently developed by employees and contractors of the receiving Party. A Party may also disclose such of the other Party's Confidential Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction, subject to giving the other Party, to the extent permitted by law, as much advanced notice of such disclosure as reasonably practicable.

8.3 This clause 8 shall survive termination of the Agreement. For clarity, nothing in this clause shall prevent Brainlabs from making an announcement that it has a commercial agreement with the Client or from identifying the Client in any case study that Brainlabs produces in relation to Brainlabs' delivery of the Services.

9. CHANGES

9.1 In the event that the Client notifies Brainlabs of its desire to change the Services or the way they are delivered (including as a result of a change in Applicable Law), then Brainlabs shall use reasonable efforts to provide the Client with a proposal document in the form of a variation to the SOW, which shall include any changes to the Charges as necessary. Any changes to the Services shall only become effective if, and once, the variation to the SOW is agreed by both Parties in writing.

10. DATA PROTECTION

10.1 Each Party agrees that, in the performance of its respective obligations under this Agreement, it shall comply with the provisions of the Data Protection Legislation. Where used in this clause 10, the expressions "Personal Data", "Processor", "Controller", "Data Subject", "Personal Data Breach", "sell" and "share" shall bear their respective meanings referred to in the Data Protection Legislation. For purposes of this Agreement, "Personal Data" shall include "Personal Information" as defined under Data Protection Legislation; "Processor" shall include "Service Provider" under Data Protection Legislation; and "Controller" shall include "Business" under Data Protection Legislation.

10.2 Each Party acknowledges and agrees that with regard to the Processing of Client Personal Data under this Agreement, the Client is the Controller and Brainlabs is the Processor, unless expressly stated otherwise in the SOW. Such Processing shall be in respect of the types of Personal Data, categories of Data Subjects, nature and purposes, and duration as set out in the SOW.

10.3 In connection with the Processing of Client Personal Data referred to at 10.2, Brainlabs agrees, solely if and to the extent required by Data Protection Legislation that:

10.3.1 Brainlabs shall use, disclose, and otherwise Process the Client Personal Data only for the limited and specified purposes as described in the SOW, unless obligated to do otherwise by Data Protection Legislation. In such case, Brainlabs will inform Client of that legal requirement before the Processing unless legally prohibited from doing so, and will also inform Client of any determination made by Brainlabs that it can no longer meet its obligations under the Data Protection Legislation (in which case Client may take reasonable and appropriate steps to stop and remediate unauthorized use of Client Personal Data);

10.3.2 Without limiting the foregoing, Brainlabs shall not (a) Process the Client Personal Data in a manner inconsistent with Brainlabs's role as Processor (b) Process Client Personal Data outside of the direct business relationship between Brainlabs and Client; or (c) combine the Client Personal Data received pursuant to the SOW with Personal Data (i) received from or on behalf of another person, or (ii) collected from Brainlabs's own interaction with any consumer to whom such Client Personal Data pertains, except, in each case (i) and (ii), as permitted by Data Protection Legislation and/or this Agreement;



Brainlabs terms of business

10.3.3 Brainlabs shall comply with all applicable obligations under the Data Protection Legislation and shall provide the same level of privacy protection to Client Personal Data as is required by the Data Protection Legislation;

10.3.4 Brainlabs agrees that Client may take reasonable and appropriate steps to help to ensure that Brainlabs's use of Client Personal Data is consistent with Client's obligations under the Data Protection Legislation;

10.3.5 Brainlabs shall not "sell" or "share" Client Personal Data;

10.3.6 The Client generally authorizes Brainlabs to appoint Subprocessors in accordance with this clause 10.3.6 and authorises the engagement of the Subprocessors listed at <https://www.brainlabsdigital.com/subprocessors> ("Subprocessor Site") as at the Effective Date. In addition, the Client agrees that Brainlabs may engage other members of the Brainlabs' group of companies to Process Client Personal Data, acting as Subprocessors. When Brainlabs engages a Subprocessor after the Effective Date, Brainlabs will notify Client by updating the Subprocessor Site or by other written means at least 15 days before such Subprocessor processes Personal Data under this Agreement. If the Client reasonably objects to such engagement in a written notice to Brainlabs within 15 days of being notified of the engagement, the Client and Brainlabs shall work together in good faith to consider a mutually acceptable resolution to the objection. If the Parties are unable to reach a mutually acceptable resolution within a reasonable timeframe, the Client may, as its sole and exclusive remedy, terminate the Agreement by providing written notice to Brainlabs in accordance with the Agreement. Brainlabs shall require Subprocessors to enter a written contract no less protective of Client Personal Data than this Agreement;

10.3.7 Brainlabs shall take steps to ensure the Brainlabs personnel who is authorized to have access to the Client Personal Data are committed to confidentiality or are under an appropriate statutory obligation of confidentiality when processing the Client Personal Data;

10.3.8 taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the Processing, Brainlabs shall implement technical and organisational measures and procedures to ensure a level of security for the Client Personal Data appropriate to the risk;

10.3.9 Brainlabs shall inform the Client without undue delay upon becoming aware of any Personal Data Breach;

10.3.10 at the Client's expense and subject to clause 10.3.13 in relation to audits, Brainlabs shall provide to the Client and any governmental or regulatory body or authority with responsibility for monitoring or enforcing compliance with the Data Protection Legislation, information and assistance reasonably necessary to demonstrate or ensure compliance with the obligations in this clause 10 and/or the Data Protection Legislation;

10.3.11 during normal business hours and on reasonable prior notice and at the Client's expense, Brainlabs shall permit the Client or its representatives to access any relevant premises, personnel or records of Brainlabs required to audit compliance with the provisions of this clause 10 related to Client Personal Data. Such audits and inspections shall; (i) be no longer than reasonably necessary and in any event no longer than 10 consecutive business days (except where required by law or a competent regulator); and (ii) be limited to once per year of the contract, unless an audit or inspection is required by a competent regulator;

10.3.12 Brainlabs shall notify the Client as soon as reasonably practicable if it receives a request from a Data Subject to exercise his or her rights under the Data Protection Legislation in relation to that Data Subject's Personal Data; and

10.3.13 Brainlabs shall provide the Client with reasonable co-operation and assistance in relation to any request made by a Data Subject to exercise its rights under the Data Protection Legislation in relation to that Data Subject's Personal Data provided that the Client shall be responsible for Brainlabs' reasonable costs and expenses arising from such co-operation and assistance.

10.4 If either Party receives any complaint, notice or communication which relates directly or indirectly to the Processing of Client Personal Data by the other Party or to either Party's compliance with the Data Protection Legislation, it shall as soon as reasonably practicable notify the other Party and it shall provide the other Party with commercially reasonable co-operation and assistance in relation to any such complaint, notice or communication.

10.5 Brainlabs may disclose Client Data to its advisers, auditors or other third parties as reasonably required in connection with the performance of its obligations under this Agreement or as required by law.

10.6 In connection with any Client Data, the Client hereby represents and warrants that: (i) any Personal Data that the Client provides or makes available to Brainlabs was, is, and will be collected and maintained in accordance with applicable Data Protection Legislation; (ii) the Client has provided all required notices and obtained all necessary rights, releases, and permissions to provide or make available such Client Data to Brainlabs; and (iii) the collection, use, disclosure and other Processing of such information does not violate any laws or rights of any third party, including without limitation any IPR, rights of privacy, or rights of publicity, and is not inconsistent with the terms of any applicable privacy policies. Brainlabs takes no responsibility and assumes no liability for any Client Data that the Client or any other user or third party provides, posts, publishes or transmits in relation to Services.

11. LIMITATION OF LIABILITY

11.1 TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY OR PROCUREMENT OF SUBSTITUTE SERVICES, ANY BUSINESS INTERRUPTION, IMPACT OF LOST OR DAMAGED DATA OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

11.2 TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID OR PAYABLE TO BRAINLABS IN CONNECTION WITH THE SERVICES DURING THE TWELVE (12) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL BRAINLABS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY RELATED TO THE ACTS OR

OMISSIONS OF ANY THIRD PARTY. NOTHING IN THIS AGREEMENT WILL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF A PARTY OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY OR THE CLIENT'S PAYMENT OBLIGATIONS.

11.3 The Parties agree that the limitations of liability set forth in this clause 11 (Limitation of Liability) will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The Parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the Parties.

11.4 This clause 11 shall survive termination of the Agreement.

12. TERMINATION

12.1 Unless otherwise stated in the SOW, either Party may terminate this Agreement by giving notice to the other Party no less than 90 days before the end of the Initial Term or a Renewal Term (as applicable).

12.2 Without limiting its other rights or remedies, and with immediate effect by giving written notice to the other Party:

12.2.1 either Party may terminate this Agreement if the other Party commits a material breach of the Agreement which is not capable of remedy or which is capable of remedy but is not remedied within 30 days of the breaching Party receiving a notice of the breach (or 7 days in the event of non-payment of an overdue invoice);

12.2.2 Brainlabs may terminate this Agreement if it terminates any other agreement with the Client pursuant to a right in such other agreement which is materially similar to that set out at clause 12.2.1 to this Agreement; and

12.2.3 either Party may terminate this Agreement if the other Party: passes a resolution for or is the subject of a petition for winding up (other than for the purposes of a solvent amalgamation or reconstruction); has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; ceases to carry on business; or has any event occur to it in a jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause.

13. CONSEQUENCES OF TERMINATION

13.1 On termination or expiry of the Agreement:

13.1.1 the Client shall immediately pay to Brainlabs all of Brainlabs' outstanding Charges, including without limitation all unpaid invoices (and interest where applicable) and, upon invoice by Brainlabs, all Charges for Services supplied up to the date of termination or, if later, the end of any transition period;

13.1.2 each Party shall, on request by the other Party, either return or destroy all materials and documents in their possession belonging to the other Party that it has no rights to retain under the Agreement;

13.1.3 the accrued rights, remedies, obligations and liabilities of the Parties as of the date of termination shall be unaffected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and

13.1.4 clauses which expressly or by implication survive termination shall continue in full force and effect.

14. NON SOLICITATION

14.1 Neither Party shall (except with the prior written consent 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 that Party during the term of the Agreement or for a further period of 12 months after the termination of the Agreement, other than by means of a national advertising or recruitment campaign open to all comers and not specifically targeted at any of the staff of the other Party.

15. FORCE MAJEURE

15.1 For the purposes of the Agreement, "Force Majeure Event" means an event beyond the reasonable control of either Party including but not limited to strikes, lock-outs or other industrial disputes, terrorist or DDOS attacks, sanctions, failure of a utility service, transport network or IT systems (including internet connectivity and software failure), act of God, outbreak of viral pandemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

15.2 Except for the Client's payment obligations, neither Party shall be liable to the other for any delay or failure to perform its obligations under the Agreement as a result of a Force Majeure Event.

15.3 If the Force Majeure Event prevents Brainlabs from providing any of the Services for more than 2 months, the Parties shall act in good faith (for a period of a further 2 months) to find a solution to provide such Services to the Client. After such time, either Party shall, without limiting its other rights or remedies, have the right to terminate the Agreement immediately by giving written notice to the other Party.

16. ANTI-BRIBERY

Both Parties shall: (i) comply with all Applicable Laws relating to anti-money laundering and anti-corruption; and (ii) not engage in any activity, practice or conduct which would constitute an offence under such Applicable Laws.

17. GENERAL PROVISIONS

17.1 Neither Party may assign, transfer, charge or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) except that Brainlabs may without the consent of the Client assign or transfer the Agreement to any of its Group Companies.

17.2 Nothing in this Agreement shall prevent Brainlabs from appointing sub-contractors or agents in order to carry out its obligations under this Agreement provided that Brainlabs shall remain liable to the Client for the acts or omissions of such sub-contractors and agents.

17.3 If any provision or part-provision of the 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 the Agreement.

17.4 No failure or delay by a Party to enforce or exercise any right or remedy under this Agreement or by law shall be deemed to be a waiver of that or any other right or remedy, nor shall it operate so as to bar the enforcement or exercise of that or any



Brainlabs terms of business

other right or remedy at any time subsequently. Any waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.

17.5 A person who is not a party to this Agreement shall have no right to enforce any term of this Agreement, provided that any member of the Brainlabs Group shall be entitled to enforce its terms as if it were a party to it.

17.6 Each signed SOW which incorporates these general terms shall constitute a standalone Agreement. The Agreement constitutes the entire agreement between the Parties in respect of the Services set out in the SOW. Unless expressly agreed in writing by the Parties, the Agreement supersedes and terminates any previous arrangement, understanding or agreement relating to the identical Services between the Parties (whether written or oral). Each Party acknowledges that: (i) upon entering into this Agreement, it does not rely, and has not relied, upon any representation (whether negligent or innocent), statement or warranty made or agreed to by any person (whether a Party to this Agreement or not) except those expressly set out in this Agreement; and (ii) the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a claim for damages for breach of contract under this Agreement.

17.7 Except as expressly provided for under the Agreement, the rights and remedies are cumulative and are not exclusive of any other rights or remedies provided by law or otherwise.

17.8 Except as set out in this Agreement, no variation of this Agreement shall be effective unless it is agreed in writing and signed by both Parties.

17.9 Each Party shall execute such documents and take such steps as the other Party may reasonably require to fulfil the provisions of and to give to each Party the full benefit of this Agreement.

17.10 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture between the Parties, or to authorize either Party to act as agent for the other and neither Party shall have authority to act in the name of or on behalf of the other, or to enter into any commitment or make any representation or warranty or otherwise bind the other in any way.

17.11 Any notice given by one Party to another under this Agreement shall be in writing, delivered by hand, prepaid first class or special delivery post to the address given at the start of this Agreement (or such subsequent address communicated to the other Party) and marked for the attention of the relevant Party (and, for notices delivered to Brainlabs, marked for the attention of the Legal Department, with a copy emailed to legal@brainlabsdigital.com). Notices delivered by hand shall be deemed given on the day of receipt (unless received after 5.00 pm in which case they shall be deemed given on the next Business Day). Notices sent by prepaid first class post or special delivery shall be deemed to have been given two Business Days after the date of posting.

17.12 The SOW may be executed in any number of counterparts, which shall each constitute an original and together constitutes one agreement.

17.13 In the event of conflict or inconsistency between any of the parts of the Agreement, the conflict or inconsistency shall be resolved in the following order of precedence (the earlier taking precedence over the later): (i) the Special Conditions, if any; (ii) the SOW; (iii) these terms of business; and (iv) any other document incorporated into the Agreement by reference.

17.14 Subject to clauses 17.15, if there is a dispute between the Parties, before commencing any court or similar proceedings, the Parties will escalate the relevant dispute to a member of senior management for them to then discuss the issues in good faith with a view to resolving the dispute amicably.

17.15 This Agreement and any action related thereto will be governed and interpreted by and under the laws of the Province of Ontario and the laws of Canada applicable therein, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. The Parties hereby expressly consent to the exclusive personal jurisdiction and venue in the state and federal courts of the Province of Ontario for any lawsuit arising from or related to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.