Brainlabs Terms of Business

1. INTERPRETATION

1.1 In the Agreement, the following definitions apply:

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 a 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 applicable 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 9, 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 including: (a) EU Regulation 2016/679 (**"GDPR"**); (b) GDPR as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the **"UK GDPR"**); (c) any laws or regulations ratifying, implementing, adopting, supplementing or replacing the GDPR; (d) in the UK, the Data Protection Act 2018; (e) any laws and regulations implementing or made pursuant to EU Directive 2002/58/EC (as amended by 2009/136/EC); (f) the Personal Data Protection Act (No. 26 of 2012) of Singapore; and (g) in the UK, the Privacy and Electronic Communications (EC Directive) Regulations 2003; in each case, as updated, amended or replaced from time to time;

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

Effective Date: means the date that that this Agreement is entered into by the Parties;

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 applicable SOW;

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

Group Company: means a Party, any corporate body of which a Party is a subsidiary, any other subsidiary of such corporate body and any subsidiary of a Party and **"Group"** shall be construed accordingly;

Initial Term: means 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, rights in get-up, 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, 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 the Campaigns and/or (ii) any platform licence granted pursuant to an SOW.;

Renewal Term: means 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 relevant SOW(s), which includes the provision of any Deliverables;

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

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

Third Party Terms: means the terms and conditions applicable to any 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 an 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 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 11.

2.2 The Client and Brainlabs may agree to enter into SOWs for the supply of certain Services by the Brainlabs by each signing a SOW. Each SOW shall be governed by the terms of this MSA and subject to the order of precedence set out in clause 16.14.

2.3 Brainlabs shall not be obliged to perform any work or services for or on behalf of the Client until a SOW has been signed by both the Client and the applicable Brainlabs entity.

2.4 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 each SOW; and (ii) this Agreement and each SOW is executed by its duly authorized representative.

2.5 All other warranties, conditions and other terms implied by law are, to the fullest extent permitted by law, excluded from this Agreement.

3. SUPPLY OF SERVICES

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

3.2 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 applicable SOW. Time shall not be of the essence in relation to the Services and such dates.

3.3 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.

3.4 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.

3.5 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.

4. CLIENT'S OBLIGATIONS

4.1 The Client shall:

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

4.1.2 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;

4.1.3 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);

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

4.1.5 comply with any applicable Third Party Terms; and

4.1.6 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.

4.2 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 ("**Client Default**"), then:

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

4.2.2 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.

5. **CHARGES AND PAYMENT**

5.1 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.

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

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

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

5.3.2 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.

5.4 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.

5.5 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 judgment) at the rate of two per cent (2%) per annum above HSBC Bank PLC's base rate from time to time.

5.6 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 5.5.

5.7 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).

5.8 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 applicable SOW.

5.9 Brainlabs may increase the 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 UK 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 (ii) 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.

6. **INTELLECTUAL PROPERTY RIGHTS**

6.1 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 licence 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 an SOW.

6.2 If the nature of the Services requires the IPR rights to be treated differently from the position set out in clause 6.1 then the Parties may mutually to agree any such rights in an SOW.

6.3 Brainlabs hereby grants to the Client a non-exclusive, royalty free, non-transferable licence 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.

6.4 Except as expressly permitted by Brainlabs in an 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.

6.5 Brainlabs warrants that:

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

6.6.2 the Client's use of the Brainlabs Materials as set out in clause 6.3 (and in accordance with Brainlabs' instructions) will not infringe the IPRs of any third party and will not constitute a breach of Applicable Law.

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

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

6.6.2 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

6.6.3 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.

6.7 The Client warrants that:

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

6.7.2 Brainlabs' use of the Client Materials as set out in clause 6.6 (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

6.7.3 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.

6.8 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 endeavours (but makes no guarantees that it will be able) to procure licence terms from the relevant third party sufficient for Brainlabs to provide the Services, including where applicable the right to sub-licence such IPR to the Client or for the Client to enter into separate licence terms with the third party. In the event that Brainlabs is not able to procure such licence terms, the Parties shall make the necessary amendments to the SOW to reflect this.

7. **CONFIDENTIALITY**

7.1 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.

7.2 The confidentiality obligations set forth in clause 7.1 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.

7.3 This clause 7 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.

8. **CHANGES**

8.1 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 relevant 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.

9. **DATA PROTECTION**

9.1 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 9, the expressions "Processing", "Personal Data", "Data Processor", "Data Controller", "Data Subject" and "Personal Data Breach" shall bear their respective meanings referred to in the Data Protection Legislation. A reference to an "Article" in this clause 9 is a reference to an article in the UK GDPR.

9.2 Each Party acknowledges and agrees that with regard to the Processing of Client Personal Data under this Agreement, the Client is the Data Controller and Brainlabs is the Data Processor, unless expressly stated otherwise in a 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 relevant SOW.

9.3 In connection with the Processing of Client Personal Data referred to at 9.2, Brainlabs agrees, solely if and to the extent required by Data Protection Legislation, that:

9.3.1 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);

9.3.2 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;

9.3.3 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;

Master Services Agreement

9.3.4   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;

9.3.5   the Client generally authorizes Brainlabs to appoint Subprocessors in accordance with this clause 9.3.5 and authorizes 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;

9.3.6   Brainlabs shall take steps to ensure the Brainlabs personnel who are authorised 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;

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

9.3.8   it shall not transfer, access or Process the Client Personal Data outside the UK or the European Economic Area unless the transfer is permitted by, and performed in accordance with, the Data Protection Legislation;

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

9.3.10   at the Client's expense and subject to clause 9.3.13 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 9 and/or the Data Protection Legislation;

9.3.11   during normal business hours, 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 9 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;

9.3.12   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

9.3.13   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.

9.4   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.

9.5   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.

9.6   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.

9.7   The following clauses 9(8) and 9(9) shall apply (in addition to any other Applicable Laws) in the event where the Personal Data Protection Act (No. 26 of 2012) of Singapore ("**PDPA**") applies. Further, where used in clauses 9(8) and 9(9), the expressions "Personal Data" and "Data Intermediary" shall bear their respective meanings referred to in the PDPA:

9.8   The Parties acknowledge that Brainlabs is acting as a Data Intermediary and shall process the Personal Data at all times as a Data Intermediary under the PDPA.

9.9   Insofar as Brainlabs receives any personal data from the Client pursuant to the performance of its obligations under this Agreement, the Client warrants and undertakes that the Client has obtained prior consent from the relevant individual for the disclosure of such personal data to Brainlabs, including the use of such personal data and for what purposes.

10.   **LIMITATION OF LIABILITY**

10.1   Nothing in the Agreement shall limit or exclude either Party's liability for:

10.1.1   death or personal injury caused by its negligence;

10.1.2   fraud or fraudulent misrepresentation;

10.1.3   the Client's payment obligations; and/or

10.1.4   anything else that cannot be limited or excluded by law.

10.2   Subject to clause 10.1, Brainlabs' total liability to the Client in respect of all losses arising under or in connection with the Agreement, whether in contract (including under any indemnity), tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the Monthly Fees paid or payable to Brainlabs under the applicable SOW in the 12 months immediately preceding the breach giving rise to the claim.

10.3   Subject to clause 10.1, neither Party shall be liable to the other Party for any:

10.3.1   loss of actual or anticipated income, revenue or profits, business, business opportunities, contracts, wasted expenditure or anticipated savings;

10.3.2   loss of goodwill or reputation;

10.3.3   loss of use;

10.3.4   loss or damage arising from loss, damage or corruption of any data;

10.3.5   fines, penalties or regulatory charges; and/or

10.3.6   any indirect, consequential or special loss or damage of any kind howsoever arising (including but not limited to pure economic loss, costs, damages or charges),

in each case arising directly or indirectly under or in connection with the Agreement.

10.4   This clause 10 shall survive termination of the Agreement.

11.   **TERMINATION**

11.1   Each SOW shall last for the duration set out in that SOW. Either Party may terminate an SOW prior to this in accordance with the termination provisions set out in this Agreement or in that SOW.

11.2   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).

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

11.3.1   either Party may terminate an SOW if the other Party commits a material breach of the Agreement in respect of that SOW 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);

11.3.2   Brainlabs may terminate this Agreement if its right to terminate an SOW arises under clause 11.3.1; and

11.3.3   either Party may terminate this Agreement or any SOW 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.

12.   **CONSEQUENCES OF TERMINATION**

12.1   Upon termination of the Agreement in accordance with clause 11.2, each SOW shall continue on the terms of this Agreement for such duration as set out in the SOW, unless terminated prior to this in accordance with the termination provisions set out in that SOW.

12.2   Subject to clause 12.1, on termination or expiry of the Agreement or an SOW:

12.2.1   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;

12.2.2   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;

12.2.3   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

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

12.3   In the event that the Agreement is terminated by Brainlabs for non-payment pursuant to clause 11.2.1 or its common law rights, the Client shall immediately pay as a debt an amount equal to the Charges which would otherwise have been due under the Agreement in respect of the remainder of the Initial Term or the then-current Renewal Term (as applicable) had the Agreement not been terminated.

13.   **NON SOLICITATION**

13.1   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.

14.   **FORCE MAJEURE**

14.1   For the purposes of the Agreement, **"Force Majeure Event"** means an event beyond the reasonable control of either Party including but not limited 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.

14.2   Save 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.

14.3   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

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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.

15. **ANTI-BRIBERY**

Both Parties shall: (i) comply with all Applicable Laws relating to anti-bribery and anti-corruption including the Bribery Act 2010 and the Criminal Finances Act 2017; and

(ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6, Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK or sections 45 or 46, Criminal Finances Act 2017.

16. **GENERAL PROVISIONS**

16.1   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.

16.2   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.

16.3   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.

16.4   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 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.

16.5   A person who is not a party to this Agreement shall have no right (whether under the Contracts (Rights of Third Parties) Act (Chapter 53B of Singapore) or any other applicable law) or otherwise to enforce any term of this Agreement, save that any member of the Brainlabs Group shall be entitled to enforce its terms as if it were a party to it.

16.6   The Agreement constitutes the entire agreement between the Parties and shall apply to govern all aspects of the relationship between them (including SOWs agreed in accordance with the Agreement at a later date). The Agreement supersedes and terminates any previous arrangement, understanding or agreement relating to the 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.

16.7   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.

16.8   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.

16.9   Each Party shall take reasonable steps to ensure that slavery and human trafficking (as defined in section 54, Modern Slavery Act 2015) is not taking place in any of its supply chains or in any part of its own business. Each Party shall notify the other Party immediately if it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.

16.10   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.

16.11   Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture between the Parties, or to authorise either Party to act as agent for the other and neither Party shall have authority to act in the name 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.

16.12   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.

16.13   This Agreement may be executed in any number of counterparts, which shall each constitute an original and together constitutes one agreement.

16.14   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) a SOW; (iii) the MSA; and (iv) any other document incorporated into the Agreement by reference.

16.15   Subject to clauses 16.16 and 16.17, 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.

16.16   The 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.

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