Imagination XPKit Terms and Conditions

1. Acceptance of Terms and Conditions

By accepting a Customer Order (as defined in Section 2) and/or by using the XPKit Service, you, the Customer, acknowledge that (a) you agree to these Imagination XPKit Terms and Conditions (the "**Conditions**") and (b) the Customer Order and these Conditions shall form a binding contract (the "**Contract**") for the purchase of the XPKit Service by you from Imagination. We have the right to revise and amend these Conditions without prior notice. We will notify you of any changes to these Conditions via the Imagination Website. You agree to refer back to these Conditions regularly. Your acceptance of any Customer Order and/or use, or continued use, of the XPKit Service following our posting of any such changes shall mean that you accept such changes to these Conditions.

2. Definitions and interpretation

In these Conditions, the following words and expressions have the following meanings:

"**Business Day**" shall mean a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

"**Confidential Information**" shall mean information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Section 9.5;

"**Customer**" shall mean the person or company to whom the Customer Order is addressed;

"**Customer Material**" shall mean all materials and information and data inputted by the Customer, or Imagination on the Customer's behalf or by the Customer's Customers or visitors for the purpose of using the XPKit Service or facilitating the Customer's use of the XPKit Service and including: (i) any content to the extent it comprises text, images or media which have been supplied by the Customer; (ii) any content to the extent it comprises works in which the Customer has intellectual property rights, including rights in trademarks or product designs; (iii) data and inputs provided by the Customer's Customer or visitors provided as part of the Customer's use of the XPKit Service; and (iv) any content as prepared by Imagination specifically and exclusively for the Customer;

"**Customer Order**" shall mean a customer order form issued by Imagination in the form prescribed by Imagination and/or any agreed statement of work document setting out requisite details of the XPKit Service;

"**Customer Personal Data**" shall mean any Personal Data comprised in the Customer Material;

"**Customer Project**" shall be as set out in the Customer Order;

"**Customer Site**" shall be as set out in the Customer Order; "Effective Date" shall mean the Order Date of the Customer Order;

"**Insolvency Event**" shall mean in relation to a relevant party, where: (i) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; (ii) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation with one or more other companies or a solvent reconstruction; (ii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up; (iv) an application is made to court, or an order is made, for the appointment of an administrator over the relevant party (being a company or limited liability partnership), or a notice of intention to appoint an administrator is given or an administrator is appointed, over the relevant party (being a company or limited liability partnership); (v) the holder of a qualifying floating charge over the assets of the relevant party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver; (vi) a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets; (vii) a creditor or encumbrancer of the relevant party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; (viii) (being a company or limited liability partnership) it is struck off the register of companies; and/or (ix) it is subject to any analogous event under the law of any jurisdiction;

"**Imagination**" shall mean the Imagination company identified in the Customer Order and/or any Imagination affiliate involved in the

provision of the XPKit Service;

"**IPRs**" shall mean all intellectual property rights including patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of such rights;

"**XPKit Service**" shall mean the interactive experience system powered by the XPKit Software, designed for consumers visiting retail, experience and events environments, delivered as a Cloud Service or as on Onsite Service as set out in the Service Description;

"**XPKit Software**" shall mean the proprietary computer software which powers the XPKit Service;

"**Imagination Website**" shall mean https://imagination.com/terms-conditions;

"**Normal Business Hours**" means between 09.30am and 5.30pm on a Business Day;

"**Personal Data**" shall mean any information relating to an identified or identifiable natural person;

"**Service Fees**" means the fees payable by the Customer to Imagination for the XPKit Service, as set out in the Customer Order;

"**Service Description**" shall mean the specification of the XPKit Service to be provided as set out in the Customer Order;

"**Term**" shall be as set out in the Customer Order;

"**UK Data Protection Laws**" shall mean any privacy or data protection laws that apply in the UK, including the Data Protection Act 2018 and the UK General Data Protection Regulation or any amending or superseding legislation applicable in the UK; and

"**Virus**" shall mean anything or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by rearranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

2.1. Clause, section and/or paragraph headings shall not affect the interpretation of these Conditions.

2.2. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

2.3. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

2.4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2.5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

2.6. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Contract.

2.7. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Contract under that statute or statutory provision.

2.8. A reference to writing or written includes faxes but not email.

2.9. References to sections are to the sections of these Conditions.

3. Commencement and duration

The Contract shall, unless otherwise terminated as provided in Section 12, commence on the Effective Date and shall continue until terminated by a party giving to the other not less than thirty (30 days') notice.

4. XPKit Service

4.1. The Customer may from time to time request Imagination to provide an XPKit Service. When the terms for the provision of the XPKit Service have been agreed, Imagination shall issue a customer order form and/or the parties shall agree to a statement of work document setting out all requisite details of the XPKit Service.

4.2. The Service Description stated in the Customer Order shall set out the XPKit Service that Imagination has agreed to provide to the Customer which may be:

4.2.1 Cloud: The Customer will be able to utilise the content and functionality of the XPKit Service, and to display the same at the Customer Site stated in the Customer Order, via an internet connection.

4.2.2 Onsite: The Customer is licensed to run a copy of the XPKit Software on its equipment at the Customer Site, together with synchronisation of the Customer Material and Customer Material with the Cloud XPKit Service.

4.3. Subject to the Customer paying the Service Fee in accordance with Section 6 and the other terms and conditions herein, Imagination shall,

during the Term stated in the Customer Order, provide the XPKit Service to the Customer during the Term solely for the Customer Project stated in the Customer Order at the Customer Site.

4.4. In the case of an "**onsite**" Service, the XPKit Service includes a non-exclusive, non-transferable right to use the XPKit Software at the Customer Site for the purpose only of receiving the XPKit Service.

4.5. Imagination will not provide any hosting or support services in connection with the XPKit Service, unless otherwise agreed between the parties.

4.6. The rights provided under this Section 4 are granted to the Customer only, and shall not be considered granted to any affiliate, subsidiary or holding company of the Customer, unless expressly stated in the Service Description.

5. Imagination's obligations

5.1. Imagination undertakes that:
   5.1.1 the XPKit Service to be provided will materially correspond to the Service Description; and
   5.1.2 Imagination shall use commercially reasonable endeavours to make the Cloud XPKit Service available 24 hours a day, seven days a week, except for:
      5.1.2.1 planned maintenance carried out during the maintenance window of 10.00 p.m. to 2.00 a.m. UK time; and
      5.1.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that Imagination has used reasonable endeavours to give the Customer at least one Business Days' notice in advance.

5.2. The undertaking at Section 5.1 shall not apply to the extent of any non-conformance which is caused by use of the XPKit Service contrary to Imagination's instructions, or modification or alteration of the XPKit Service by any party other than Imagination or Imagination's duly authorised contractors or agents. If the XPKit Service does not conform with the foregoing undertaking, Imagination 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 sole and exclusive remedy for any breach of the undertaking set out in Section 5.1. Notwithstanding the foregoing, Imagination:
   5.2.1 does not warrant that the Customer's use of the XPKit Service will be uninterrupted or error-free; or that the XPKit Service, Documentation and/or the information obtained by the Customer through the XPKit Service will meet the Customer's requirements; and
   5.2.2 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, and the Customer acknowledges that the XPKit Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

5.3. Imagination warrants that it has maintained and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

6. Customer's obligations

6.1. The Customer shall:
   6.1.1 provide Imagination with:
      6.1.1.1 all necessary co-operation in relation to the Contract; and
      6.1.1.2 all necessary access to such information as may be required by Imagination,
      in order to provide the XPKit Service, including but not limited to Customer Material security access information and configuration services. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Imagination may adjust any agreed timetable or delivery schedule as reasonably necessary;
   6.1.2 comply with all applicable laws and regulations with respect to its activities under the Contract;
   6.1.3 obtain and shall maintain all necessary licences, consents, and permissions necessary for Imagination, its contractors and agents to perform their obligations under the Contract, including without limitation the XPKit Service;
   6.1.4 use all reasonable endeavours to prevent any unauthorised access to, or use of, the XPKit Service and/or the Software and, in the event of any such unauthorised access or use, promptly notify Imagination;
   6.1.5 ensure that its network and systems comply with the relevant specifications provided by Imagination from time to time; and

6.1.6 be solely responsible for procuring and maintaining all network connections and telecommunications links from its systems to connect with the Cloud XPKit Service, contracting (via Imagination or otherwise) for hosting of the XPKit Service and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

6.2. The Customer shall not access, store, distribute or transmit any material, as part of the Customer Material or otherwise, during the course of its use of the XPKit Service which:

6.2.1 contains any Virus;

6.2.2 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

6.2.3 facilitates illegal activity;

6.2.4 depicts sexually explicit images;

6.2.5 promotes unlawful violence;

6.2.6 is discriminatory based on race, gender, colour, religious belief, sexual orientation or disability; or

6.2.7 is otherwise illegal or causes damage or injury to any person or property.

6.3. The Customer undertakes that it will not:

6.3.1 use the XPKit Service except for the Customer Project and at the Customer Site;

6.3.2 access all or any part of the XPKit Service in order to build a product or service which competes with the XPKit Service and/or the Software;

6.3.3 use the XPKit Service to provide services to third parties, without prior written consent;

6.3.4 subject to Section 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the XPKit Service available to any third party, without prior written consent; or

6.3.5 attempt to obtain, or assist third parties in obtaining, access to the XPKit Service, other than as provided under this Section 6.

6.4. Imagination reserves the right, without liability or prejudice to its other rights against the Customer, to suspend the XPKit Service in whole or in part in relation to any use of the XPKit Service that breaches the provisions of Sections 6.2 or 6.3.

6.5. Where the Customer is licensed to use the XPKit Software as part of the Onsite XPKit Service, the Customer shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under the Contract:

6.5.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the XPKit Software (as applicable) in any form or media or by any means; or

6.5.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the XPKit Software.

7. Service Fees and payment

7.1. The Customer shall pay the Service Fees to Imagination for the XPKit Service in accordance with this Section 6 and as set out in the Customer Order.

7.2. The cost of hosting the Customer Material as support is not included within the Service Fees.

7.3. Imagination shall be entitled to increase the Service Fees with effect from 12 months after the Effective Date and thereafter no more than once in any 12-month period.

7.4. All amounts and fees stated or referred to in the Contract:

7.4.1 shall be payable in pounds sterling;

7.4.2 are, subject to Section 12.4.2, non-cancellable and non-refundable; and

7.4.3 are exclusive of Value Added Tax, which shall be added to Imagination's invoice(s) at the appropriate rate.

7.5. If Imagination has not received payment after the due date, and without prejudice to any other rights and remedies of Imagination:

7.5.1 Imagination may serve notice to the Customer, and without liability to the Customer, disable the Customer's access to all or part of the XPKit Service and Imagination shall be under no obligation to provide any or all of the XPKit Service while the invoice(s) concerned remain unpaid; and

7.5.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of HSBC Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8. Customer Material and Data Protection

8.1. The Customer shall own all right, title and interest in and to all of the Customer Material and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Material.

8.2. As part of the XPKit Service, Imagination will hold a copy of all Customer Material. The

Customer Material will be treated by Imagination as Confidential Information in accordance with Section 9.

8.3. Imagination will maintain a back-up of the Customer Material with reasonable frequency. In the event of any deletion of or from, or corruption to, Customer Material, the Customer's sole and exclusive remedy shall be for Imagination to use reasonable commercial endeavours to restore the lost or damaged Customer Material from the latest back-up of such Customer Material maintained by Imagination in accordance with the archiving procedure. Imagination shall not be responsible for any loss, destruction, alteration or disclosure of Customer Material caused by any third party (except those third parties subcontracted by Imagination to perform services related to Customer Material maintenance and back-up).

8.4. Unless otherwise agreed in the Customer Order, Imagination will delete any Customer Personal Data from the XPKit Service (including any back-up) within one month of input, except as set out in Section 8.6.

8.5. If Imagination processes any Personal Data on the Customer's behalf when performing its obligations under the Contract, the parties record their intention that the Customer shall be the data controller and Imagination shall be a data processor under UK Data Protection Laws, and in any such case:

(A) the Customer:
(i) is responsible for determining what Customer Personal Data is collected and processed by Imagination (via XPKit or otherwise), and that its collection, use and processing by the Customer, and by XPKit on the Customer's behalf, complies with all local laws and regulations;
(ii) acknowledges and agrees that the Customer Personal Data may be transferred or stored outside the EEA or the country where the Customer is located, and may be processed by third party subprocessors of Imagination in order for Imagination to carry out its obligations under the Contract, including its obligations in respect of the XPKit service;
(iii) shall ensure that the Customer is entitled to transfer the relevant Customer Personal Data to Imagination, and to Imagination's subprocessors so that Imagination and its subprocessors may lawfully use and process the Customer Personal Data in accordance with the Contract on the Customer's behalf; and
(iv) shall ensure that the relevant data subjects have been informed of, and have given their consent to, such use, processing, and transfer of their Personal Data as required by all applicable data protection legislation;

(B) Imagination:
(i) will comply with the relevant obligations on data processors under UK Data Protection Laws;
(ii) shall process the Customer Personal Data only in accordance with the terms of the Contract for the purpose of delivering the Services, including the XPKit service, and in accordance with any lawful instructions reasonably given by the Customer to Imagination from time to time;
(iii) shall only permit employees or sub-contractors who are under binding obligations of confidentiality to have access to the Customer Personal Data;
(iv) taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of processing, and the information available to Imagination, shall:
a. take appropriate technical and organisational measures against unauthorised or unlawful processing of the Customer Personal Data or its accidental loss, destruction or damage;
b. assist the Customer in responding to requests for exercising the data subjects' rights;
c. assist the Customer, where appropriate, in notifying any Personal Data breach to any relevant supervisory authority and/or the data subjects; and
d. assist the Customer, where appropriate, in completing a data protection impact assessment;
(v) shall only engage a subprocessor to process the Customer Personal Data with prior written consent of the Customer, and on the same obligations as set out herein;
(vi) shall keep appropriate records of processing activities undertaken in relation to Customer Personal Data;
(vii) shall, at the choice of the Customer, delete or return the Customer Personal Data after the end of the provision of the Services;
(viii) notify the Customer of any breach of security relating to the Customer Personal Data without undue delay, and provide such information about the breach as the Customer may reasonably require, including measures taken to address the breach; and
(ix) subject to the Customer paying Imagination's reasonable costs in doing so, shall provide such information as the Customer may reasonably require and, upon no less than 28 days' notice, and no more than once per year, permit the

Customer or its representatives to inspect Imagination's facility in order to enable the Customer to verify Imagination's compliance with these terms, subject to any limitations or conditions that Imagination may reasonably specify in order to protect confidential information, other Personal Data and the affairs of its other customers.

8.6. Notwithstanding the above, Imagination will be entitled to use Customer Material which has been stripped of any information which may enable (with or without other information) Imagination or any other person to identify any individual or group of individuals, for statistical purposes and to monitor usage of the XPKit System.

9. Proprietary rights

9.1. The Customer acknowledges and agrees that Imagination and/or its licensors own all IPRs in the XPKit Service. Except as expressly stated herein, the Contract does not grant the Customer any rights to, or in, IPRs in respect of the XPKit Service.

9.2. Nothing in the Contract requires Imagination to provide the XPKit Software in anything other than machine readable encoded format.

9.3. Imagination confirms that it has all the IPRs in relation to the XPKit Service that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.

9.4. The Customer grants to Imagination and its subcontractors a limited licence to use any IPRs which subsist in the Customer Material which are required to enable Imagination to provide the Services and as otherwise required in order to comply with the terms of the Contract.

9.5. Imagination acknowledges and agrees that the Customer and/or its licensors own all IPRs in the Customer Material. Except as expressly stated herein, the Contract does not grant Imagination any rights to, or in, IPRs in respect of the Customer Material.

9.6. The Customer confirms that it has all the rights in relation to the Customer Material that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.

10. Confidentiality

10.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:

10.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

10.1.2 was in the other party's lawful possession before the disclosure;

10.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

10.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

10.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party or use the other's Confidential Information for any purpose other than the implementation of the Contract.

10.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.

10.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

10.5. The Customer acknowledges that details of the XPKit Service constitute Imagination's Confidential Information.

10.6. Imagination acknowledges that the Customer Material is the Confidential Information of the Customer.

10.7. Neither party shall make, or permit any person to make, any public announcement concerning the Contract without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

10.8. The above provisions of this Section 10 shall survive termination of the Contract, however arising.

11. Indemnity

11.1. The Customer shall defend, indemnify and hold harmless Imagination against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the XPKit Service, including the use of any Customer Material, provided that:

11.1.1 the Customer is given prompt notice of any such claim;

11.1.2 Imagination provides reasonable co-operation to the Customer in the

defence and settlement of such claim, at the Customer's expense; and

11.1.3 the Customer is given sole authority to defend or settle the claim.

11.2. Imagination shall defend the Customer, its officers, directors and employees against any claim that the XPKit Service (but excluding any Customer Material) infringes any United Kingdom IPRs, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

11.2.1 Imagination is given prompt notice of any such claim;

11.2.2 the Customer provides reasonable co-operation to Imagination in the defence and settlement of such claim, at Imagination's expense; and

11.2.3 Imagination is given sole authority to defend or settle the claim.

11.3. In the defence or settlement of any claim, Imagination may procure the right for the Customer to continue using the XPKit Service, replace or modify the XPKit Service so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Contract on two Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

11.4. In no event shall Imagination, its employees, agents and subcontractors be liable to the Customer to the extent that the alleged infringement is based on:

11.4.1 a modification of the XPKit Service by anyone other than Imagination; or

11.4.2 the Customer's use of the XPKit Service in a manner contrary to the instructions given to the Customer by Imagination; or

11.4.3 the Customer's use of the XPKit Service after notice of the alleged or actual infringement from Imagination or any appropriate authority.

11.5. The foregoing and Section 12.4.2 state the Customer's sole and exclusive rights and remedies, and Imagination's (including Imagination's employees', agents' and subcontractors') entire obligations and liability, for infringement of any patent, copyright, trademark, database right or right of confidentiality.

12. Limitation of liability

12.1. This Section 12 sets out the entire financial liability of Imagination (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer:

12.1.1 arising under or in connection with the Contract (including its formation);

12.1.2 in respect of any use made by the Customer of the XPKit Service or any

part of it; and

12.1.3 in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

12.2. Except as expressly and specifically provided in the Contract:

12.2.1 The Customer assumes sole responsibility for results obtained from the use of the XPKit Service by the Customer, and for conclusions drawn from such use. Imagination shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Imagination by the Customer in connection with the XPKit Service, or any actions taken by Imagination at the Customer's direction;

12.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and

12.2.3 the XPKit Service is provided to the Customer on an "as is" basis.

12.3. Nothing in the Contract excludes the liability of Imagination:

12.3.1 for death or personal injury caused by Imagination's negligence; or

12.3.2 for fraud or fraudulent misrepresentation.

12.4. Subject to Sections 12.2 and 12.3:

12.4.1 Imagination shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and

12.4.2 Imagination's total aggregate liability in contract (including in respect of the indemnity at Section 11.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Service Fees paid during the 12 months immediately preceding the date on which the claim arose.

13. Termination

13.1. Imagination may terminate the Contract with immediate effect at any time by notice in writing

to the Customer if:

13.1.1   the Customer is in breach of any of Sections 6.2, 6.3 or 8.5;

13.1.2   the Customer fails to pay any amount due under the Contract within five Business Days of the due date;

13.1.3   the Customer is in material or persistent breach of any other provisions of the Contract and the breach, if capable of remedy, has not been remedied within 30 days after receipt by the Customer of notice requiring the breach to be remedied; or

13.1.4   the Customer suffers an Insolvency Event.

13.2.   On termination of the Contract for any reason:

13.2.1   except as set out in Section 8.6 all licences granted under the Contract shall immediately terminate;

13.2.2   each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party;

12.2.3   Imagination may destroy or otherwise dispose of any of the Customer Material in its possession unless Imagination receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Material. Imagination shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by Imagination in returning or disposing of Customer Material; and

12.2.4   any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination, shall not be affected or prejudiced.

14. Force majeure

14.1.   Imagination shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Imagination or any other party), failure of a utility service or transport or telecommunications network, act of God, epidemics and/or pandemics, 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, provided that the Customer is notified of such an event and its expected duration.

15. Variation

15.1.   No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16. Waiver

16.1.   No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. Rights and remedies

17.1.   Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

18. Severance

18.1.   If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

18.2.   If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

19. Entire agreement

19.1.   The Contract, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

19.2.   Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or

understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

20.   Assignment

20.1. The Customer shall not, without the prior written consent of Imagination (which it may give or withhold in its absolute discretion), assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

20.2. Imagination may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract except that the prior consent of the Customer will be required in relation any sub-contracting of Imagination's obligations in relation to personal data forming part of the Customer Material.

21.   No partnership or agency

21.1. Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22.   Third party rights

22.1. The Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

23.   Notices

23.1. Any notice required to be given under the Contract shall be in writing and shall be delivered by hand, sent by prepaid first-class post or recorded delivery post, or via email to the other party at its address set out in the Customer Order, or such other address as may have been notified by that party for such purposes.

23.2. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Normal Business Hours, at 9.30 a.m. on the first business day following delivery). A correctly addressed notice sent by prepaid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice delivered via email shall be deemed to be delivered immediately upon receipt.

24.   Governing Law and Jurisdiction

24.1. The Contract 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.

24.2. 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 the Contract or its subject matter or formation (including non-contractual disputes or claims).

Last updated: June 2021