**Please read these Terms carefully, as they set out our and your legal rights and obligations in relation to our services.**

1. **Definitions and interpretation**
   1. In the Agreement:

**“Agency”**  means Haarty Hanks Limited having its office at Jubilee Centre 10-12 Lombard Road, Wimbledon, London SW19 3TZ;

**“Agreed Scope of Works”**  means the proposal document issued by the Agency detailing the scope of the Services and other matters relating to the Agreement;

**“Affiliate”**  means a company, firm or individual that Controls, is Controlled by, or is under common Control with the relevant company, firm or individual;

**“Agreement”**  means the agreement between the Agency and the Client incorporating our Services and Terms, Schedule 1 Agreed Scope of Works, any further Schedules and any amendments to it from time to time;

**“Business Day”**  means any week day, other than a bank or public holiday in England;

**“Business Hours”**  means between 09:00 and 17:00 GMT on a Business Day;

“**Confidential Information”**  means any information supplied (whether supplied in writing, orally or otherwise) by one party to the other party marked as “confidential”, described as “confidential” or reasonably understood to be confidential;

**“Client‘s data”** is understood as data processed by the Agency on behalf of the Client within the framework of the performance of the Services agreed to.

“**Content Development”** means any and all information, text, data, graphics, photographs, hyperlinks, artwork, trade dress, video, video games and software, that may be supplied by the Agency under this Agreement, and as may be further described in Schedule 1 - Agreed Scope of Works;

**“Control”**  means the legal power to control (directly or indirectly) the management of an entity (and “Controlled” will be construed accordingly);

**“Client”**  is a person, persons, business or organisation using any of the services provided by the Agency;

**“Data Processor”** is the company that performs data processing at the request of a data controller. Thus, the Agency acts as a data processor and the Client defines the purpose and the means of the processing. The Agency may also use secondary processors (“sub-processors”) to carry out data processing on its behalf.

**“Data Protection Laws”** means: (a) in relation to the Client all data protection and/or privacy laws, principles and agreements and all electronic marketing laws, principles and agreements applicable to the country (and state where applicable) in which the Client is located and all countries (and states where applicable) in which recipients of emails sent via the Services are located; (b) in relation to the Agency all data protection and/or privacy laws, principles and agreements and all electronic marketing laws, principles and agreements applicable to the country (or state where applicable) in which the Agency is located;

**“Discounted Fees”** means the amounts payable by the Client to the Agency which s reduced and discounted. However if the Client breaches or defaults on any of terms of this agreement then the Client will be liable for the full Fees, as may be further described and calculated in accordance with Schedule 1 - Agreed Scope of Works;

**“Effective Date”** means the date when the Agency sends to the Client its written confirmation that the Agreement is agreed, following the Client’s acceptance of the Proposal and these Web Marketing Terms;

**“Force Majeure Event”**  means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

**“Intellectual Property Rights”**  means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the “intellectual property rights” referred to above include copyright and related rights, moral rights, database rights, confidential information, trade secrets, know-how, business names, trade names, domain names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

**"Material"**  means written documentation and content, verbal, electronic and other information, databases, computer software, Software, designs, drawings, pictures or other images (whether still or moving), the Site, sounds or any other record of any information in any form belonging to Wired Marketing but for the avoidance of doubt does not include material belonging to the Client

**“Minimum Term”**  means the period defined starting on the Effective Date;

**“Monthly Service”** is our standard payment plan and we will take a payment each month whilst the client is signed up to this Agreement;

**“Personal Data”**  has the meaning given to it in the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council

**“Project Fees”**  means the amounts payable by the Client to the Agency under or in relation to the Agreement (not including expenses), as may be further described and calculated in accordance with Schedule 1 - Agreed Scope of Works;

**“Rate”** means the Agency’s monthly fee as specified in Schedule 1 – Agreed Scope of Works and as updated at any time after the end of the Minimum Term by the Agency giving at least 30 days written notice of the update to the Client;

**“Services”**  means all services provided to the Client, as detailed in Clause (3) and in Scedule 1 – Agreed Scope of works;

**“Term”**  means the term of the Agreement;

**“Year”**  means a period of 365 days (or 366 days if there is a 29 February during the relevant period) starting on the Effective Date or on any anniversary of contract start date.

* 1. In the Agreement, a reference to a statute or statutory provision includes a reference to:

1. that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
2. any subordinate legislation made under that statute or statutory provision.
   1. The Clause headings do not affect the interpretation of the Agreement.
   2. The ejusdem generis rule is not intended to be used in the interpretation of the Agreement; it follows that a general concept or category utilised in the Agreement will not be limited by any specific examples or instances utilised in relation to such a concept or category.
3. **Term**

2.1 This Agreement shall continue for 12 months (the “Minimum Term”) from the Effective Date. It shall continue for the Minimum Term and thereafter shall automatically renew for a further 12-month term (the “Renewal Term”) on the end of the Minimum Term until one party gives the other party written notice to terminate in accordance with clause [16].

1. **Services**
   1. From the Effective Date, the Agency will via platform solutions provide to the Client Email Marketing and as may be further described in Schedule 1 - Agreed Scope of Works.
2. **Relationship**

4.1 The Agency acts as a data processor on behalf of the Client and undertakes to respect the obligations. In this context, it is specified that:

1. The Client can request their distribution lists at any time by contacting the Agency.
2. Personal data contained in the distribution lists may only be disclosed to third parties in the following cases:
   1. with the authorisation of the Client certifying that the data subject have themselves authorised this disclosure;
   2. at the request of the competent legal authorities, on judicial requisition, or in the context of a legal dispute. If the Agency is required to make such transfers outside of the EU under the applicable law, it undertakes to immediately inform the Client of this legal obligation before the processing, unless the applicable law prohibits such information for reasons of public interest.
3. **Clients Responsibilities**
   1. The Client shall promptly provide to the Agency.
   2. The Client will be responsible for the content of emails the Agency sends to the Client‘s distribution lists in the context of the Agency‘s performance of this Agreement.
   3. The Client will be responsible for obtaining suitable licences of third party software which are required for the full use of the Services.
   4. Client authorises The Agency use of all Client logos, trademarks, product images, website images and any creative assets required to fulfil this Agreement.
   5. Client shall ensure that any addresses and associated personal information provided by or on behalf of the Client to the Agency for use in connection with any Email Marketing Services has been collected in accordance with applicable law, and that the use of such information by the Agency is in accordance with this Agreement and the Client’s instruction will not breach any applicable law.
   6. Client must promptly, following receipt of a written request from the Agency to do so, provide written feedback to the Agency concerning the Agency’s proposals, plans, designs and/or preparatory materials relating to the Deliverables and made available to the Client with that written request.
4. **Project Fee and payment**
   1. All fees are non-refundable.
   2. The Client will pay to the Agency the Project Fees in respect of the Services, which will be equal to:
5. the monthly fee as outlined in the Schedule 1 - Agreed Scope of Works; plus
6. any expenses incurred bythe Agency in providing the Services that go beyond that incorporated in the monthly fee as outlined in the Schedule 1 - Agreed Scope of Works, (which expenses will be passed).
   1. The Agency will issue invoices to the Client in respect of Charges for the Services monthly in advance unless outlined otherwise in the contract terms.
   2. The Client will pay the Charges to the Agency within 7 days of entering into this agreement and subsequent payments being on the same day of each month.
   3. All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise.
   4. Charges must be paid by direct debit, standing order or bank transfer (using such payment details as are notified by the Agency to the Client from time to time).
   5. If the Client does not pay any amount properly due to the Agency under or in connection with the Agreement, the Agency may:

(a) charge the Client interest on the overdue amount at 8% per annum above the base rate of Bank of England (which interest will accrue daily from the due date until the date of actual payment and be compounded quarterly); or

(b) claim interest and statutory compensation from the Client pursuant to the Late Payment of Commercial Debts (Interest) Act 1998;

(c) issue written demands for all sums due, each such demand will be chargeable to the Client for a fee of £50 plus VAT;

(d) all of the Client’s project will be suspended until all overdue sums are paid;

(e) all outstanding sums (including interest and charges set out above) will be deducted from the Client’s credit/debit card. The client hereby authorises such deductions;

(f) refer all outstanding debts to a debt collection agency thus incurring an additional surcharge of 15% plus VAT. This surcharge together with all other charges and legal fees incurred will be the responsibility of the Client and will be legally enforceable.

6.8 The Agency will:

(a) collect and collate evidence of all expenses;

(b) retain such records and evidence during the Term and for a period of 3 month following the end of the Term; and

(c) supply such records and evidence to the Client within 30 Business Days following receipt of a written request to do so.

6.9 If the Agency has discounted fees to the Client and the Client breaches or defaults any part of this agreement the Agency will pursue the full fee prior to any discount given to the Client.

1. **Legality**
   1. Without prejudice to the generality of Clause [9.1], the Client warrants that any list (including any email marketing list) provided by the Client, or on behalf of the Client, to the Agency will have been collected and collated in accordance with all applicable laws and regulations, and that the use of any such list by the Agency for the purposes of the Services [in accordance with the instructions of the Client] will not:
2. breach any applicable laws (including the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, and the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council);
3. infringe any third party’s legal rights; or
4. give rise to any cause of action whether against the Agency, the Client, or any other person.
   1. Where the Agency reasonably suspects that there has been a breach of the provisions of this Clause [7], the Agency may suspend any or all of the Services and/or the Client’s access to any or all Services while it investigates the matter.
   2. Any breach by the Client of this Clause [7] will be deemed to be a material breach of the Agreement.
   3. The Client hereby indemnifies and undertakes to keep indemnified the Agency against any and all liabilities, damages, losses, expenses and costs (including legal expenses and amounts paid in settlement of any claim or legal action) arising, directly or indirectly, out of any breach [or alleged breach] by the Client of this Clause [6].
5. **Intellectual Property Rights**
   1. The Client warrants that they have the right to use all Client Materials supplied by them to the Agency and that, where applicable, all necessary permissions and rights have been obtained. The Client (or the applicable licensors, as appropriate) shall retain ownership of all Client Materials and all Intellectual Property Rights subsisting therein at all times.
   2. The Agency warrants that they have the right to use all Agency  Materials supplied by them as part of the Email Marketing Campaign and that, where applicable, all necessary permissions and rights have been obtained.
   3. The Client shall indemnify the Agency against all damages, losses, and expenses arising out of any claims or proceedings brought by a third party for the infringement of the third party’s Intellectual Property Rights by any part of the Client Materials provided that the Agency;
      1. promptly notifies the Client in writing of the claim or proceedings;
      2. makes no admissions or settlements without the Client’s prior written consent;
      3. provides the Client with all information and assistance that the Client may reasonably require; and
      4. gives the Client sole authority to defend or settle the claim or proceedings.
6. **Data protection**
   1. The Client warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to the Agency under the Agreement, and that the processing of that Personal Data by the Agency and or Platform provider for the purposes of and in accordance with the terms of the Agreement will not breach any applicable laws (including the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council).
   2. Where the Agency provides services to the Client as a data processor on their behalf, it will ensure that it complies with the specific requirements for data processors relating to the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council.
   3. In the context of the Email Marketing Services provided to the Client, the Agency via the Platform provider is required to carry out personal data processing operations on behalf of the Client. This processing is carried out for the duration of the contractual relationship between the Agency and the Client. The processing carried out by Agency via the platform on behalf of the Client is described below:
7. Storage of contact lists
8. Sending messages by email or SMS, whether automated or not
9. Retention and analysis of email deliverability data
10. Retargeting display
11. Collection of unsubscriptions and the Client information affected
12. Collection of consents (in the event that the Agency retrieve contact data from the Client site)
    1. The Agency warrants that:

(a) it will act only on instructions from the Client in relation to the processing of any Personal Data performed by the Agency on behalf of the Client; and

(b) it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by the Agency on behalf of the Client.

9.5 The Agency confirms that the platform offers sufficient guarantees as to the implementation of appropriate technical and organizational measures so that the processing meets the requirements of the GDPR and ensures the protection of the data subject’s rights, and undertakes to respect the following obligations:

1. The Agency undertakes to process personal data only for the purposes of performing the Services in accordance with the Client‘s instructions. Thus, Agency agrees not to concede, rent, transfer or otherwise communicate to another person, all or part of the personal data, even free of charge, and not to use the personal data for purposes other than those provided in this Agreement. In the event that Agency considers that an instruction given by the Client constitutes a violation of an applicable law, the Agency will immediately inform the Client.
2. Confidentiality and security – The Agency guarantees the confidentiality of personal data processed in connection with the Services. As such, it ensures
   1. that personal data is communicated only to persons who need to know it,
   2. that these persons are aware of the Client’s instructions and undertake to process the personal data entrusted to them only in strict compliance with the instructions and for no other purpose,
   3. that they are subject to an appropriate contractual or legal obligation of confidentiality, and
   4. that they receive the necessary training in the field of data protection.

The Agency undertakes to implement the appropriate technical and organizational measures in order to preserve the confidentiality and security of personal data and, in particular, to prevent it from being distorted, damaged or communicated to unauthorised third parties, and more generally, to protect personal data against accidental or unlawful destruction, accidental loss, alteration, unauthorised dissemination or access, as well as against any form of unlawful processing, it being specified that these measures must ensure, taking into account best practice and the costs associated with their implementation, a level of security appropriate to the risks presented by the processing and the nature of the data to be protected and, more generally, in order to guarantee a level of security of personal data appropriate to the risk.

1. Notification of violations of personal data - In the event of an accidental or unlawful breach of security resulting in the destruction, loss, alteration, unauthorised disclosure of, or unauthorised access to, personal data processed by the Agency or the platform provider, the Agency undertakes to immediately notify the Client within 72 hours of the detection of the incident. In such circumstances, and in consultation with the Client, the Agency undertakes to put in place the necessary data protection measures and to limit any negative effects on the data subjects. The Agency undertakes to provide the Client with all reasonable information and assistance to enable them to comply with its obligations to notify the data protection authorities and, where applicable, the data subjects.
2. Client support – The Agency undertakes, as far as possible, to assist the Client‘s in fulfilling its own obligations. Thus, Agency shall:
3. take charge of the requests to unsubscribe from distribution lists on behalf of the Client;
4. respond promptly to any request from the Client concerning the personal data processed, in order to enable the Client to take into account, within the time limits set, any potential requests from data subjects (right of access, right of rectification, right of destruction, etc.), and more generally to take into account the nature of the processing and help the Client through appropriate technical and organisational measures to comply with their obligation to respond to requests submitted by the data subjects with a view to exercising their rights;
5. forward to the Client, on receipt, requests from the data subjects to exercise their rights;
6. assist and collaborate with the Client in order to guarantee compliance with its obligations, in accordance with the applicable regulations on the matter, and in particular help the Client to ensure the security of personal data, to comply with its obligations in the event of a security breach and to assist the Client in carrying out any measures necessary prior to processing, such as the implementation of an impact analysis.
7. undertakes to provide the Client with all the information and documents necessary to demonstrate compliance with the obligations set out in the Agreement.
8. On request by the Client the Agency will audit and inspect the platform provider‘s data processing activities of the Client‘s data, such audits may take place no more than once (1) per contract year. In all cases, the Client must give the Agency a minimum notice of fifteen (15) days. The audit will be limited to the personal data processing activities performed by the Platform provider on behalf of the Client and additional fees will be payable fornthe Audit. The Agency undertakes to communicate all supporting documentation proving the compliance of the processing with the Client’s instructions by the Platform provider, and that the appropriate security measures have indeed been put in place.
9. **Sub-processing**
   1. The Client is informed, and expressly accepts, that the Agency may have recourse to sub-processors within the context of the Services, who will have access/process the personal data entrusted by the Client on their behalf.
   2. The Client is made aware that some of these sub-processors are located in countries outside the European Union, including in the United States, and, as such, the Client expressly authorises the Agency to transfer personal data outside the European Union. The Agency undertakes to put in place all the necessary guarantees in order to supervise these transfers in compliance with the applicable rules.
   3. In this context, the Client shall expressly mandate the Agency to sign, in its name and on its behalf, standard contractual clauses ” data controller to data processor ” with the sub-processors (see the standard clauses of the European Commission at the following address :<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010D0087&from=EN> ).
   4. When the Agency uses sub-processors to carry out specific processing activities on behalf of or on the instructions of the Client, the same data protection obligations as those laid down in the Agreement are imposed contractually on the sub-processors, in particular with regard to providing sufficient guarantees as to the implementation of the appropriate technical and organisational measures.
   5. The Agency will ensure that sub-processors provide sufficient guarantees to ensure that the processing meets the requirements of the GDPR. If the sub-processors do not fulfil their data protection obligations, it is recalled by the Agency.
10. **Warranties**
    1. The Client warrants to the Agency that it has the legal right and authority to enter into and perform its obligations under the Agreement. The signatory to this Agreement warrants that he/she has the authority to commit the Client to this Agreement.
    2. The Client acknowledges that:
11. that they have not and will not, by assignment to a third party or by any other means, do anything likely to compromise the use of intellectual and industrial property rights;
12. that they have not nor will not introduce into their campaigns any sequence, reproduction or reminiscence likely to infringe on the rights of third parties;
13. that no litigation or proceedings are pending or about to be brought in relation to the intellectual property rights.
14. that the Agency does not guarantee to the Client the economic, image or information returns that the latter may expect from under taking an Email Marketing Campaign.
    1. The Client acknowledges that the Agency can only act and provide services based on the information given by the Client and/or by its representatives.
    2. The Agency warrants to the Client:
15. that it has the legal right and authority to enter into and perform its obligations under the Agreement; and
16. that it will perform its obligations under the Agreement with reasonable care and skill.
    1. The Agency has ensured that the platform has taken all the necessary precautions to preserve the security of personal data and, in particular, to prevent it from being distorted or damaged or from unauthorised third parties having access to it. The Agency confirms the measures the platform will incorporate will include the following:
17. Multi-level firewall
18. Proven anti-virus and detection of intrusion attempts
19. Encrypted data transmission using SSL/https/VPN technology
20. Tier 3 and PCI DSS certified data centres
    1. The Agency confirms that if the platform transmits any data over unsecured communication channels this shall be subject to technical measures designed to make such data incomprehensible to any unauthorised person.
    2. All of the parties liabilities and obligations in respect of the subject matter of the Agreement are expressly set out in the terms of the Agreement. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.
21. **Use of Data**
    1. To enable the Agency to pursue its legitimate interests, in particular relating to risk management, and the evaluation of the quality of Client’ mailing lists (and, for example, to avoid the risks of spam, phishing or fraud), the Client are informed that the Agency and the Platform supplier reserves the right to transmit these lists and their content to third party providers domiciled outside the European Union, for the purpose of establishing a reliability score. Any transmission of this data will be carried out by the Agency or the Platform provider in compliance with applicable rules.
    2. The Client expressly accept that the behaviour of the recipients of these emails may be analysed by the Agency and or the Platform provider (tracking opening rates, click rates and bounce rates at the individual level) to improve its emailing campaigns.
    3. The following topics are prohibited for the email campaigns on the platform:
22. Weight loss
23. Exchange of currencies, fraudulent shares and stock market transactions
24. Home job offers making “get rich fast” promises, financial packages and pyramid schemes
25. Sexually explicit pornography or e-commerce
26. Remedies for erectile problems
27. Hiring solicitation
28. Lists of a political character (consular, government lists, etc.) containing addresses of individuals who have not given their explicit consent to receive communications from an identified advertiser. The fact that an email address was given to a Consulate or Embassy shall not be considered as proof of an undertaking to opt-in.
29. Initial Coin Offering (ICO)
    1. The following Email campaigns will only be validated by the platform under certain conditions:
30. Clairvoyance, fortune telling and astrology
31. Gambling and other money games
32. Dating services
33. Communications to contacts acquired from social networks like LinkedIn and Viadeo
34. **Limitations and exclusions of liability**
    1. Nothing in the Agreement will:
35. limit or exclude the liability of a party for death or personal injury resulting from negligence;
36. limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
37. limit any liability of a party in any way that is not permitted under applicable law; or
38. exclude any liability of a party that may not be excluded under applicable law.
    1. The limitations and exclusions of liability set out in this Clause 13 and elsewhere in the Agreement:
39. are subject to Clause 13.1;
40. govern all liabilities arising under the Agreement or in relation to the subject matter of the Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty; and
41. will limit and exclude the liability of the parties under the express indemnities set out in the Agreement.
    1. The Agency will not be liable to the Client or its subsidiaries or associates in respect of any loss, damage or corruption to;
42. software or hardware,
43. any data or database;
44. any business, contracts or commercial opportunities;
45. any profits, anticipated profits, revenues, anticipated savings, goodwill;
46. any special, indirect or consequential loss or damage.to income, share prices, use, production;
47. any arising out of a Force Majeure Event;
    1. The Agency or the platform will not be liable in any capacity whatsoever to the Client or its subsidiaries or associates in relation to third parties for any damage resulting from the sending of emails or SMSs on behalf of the Clients.
    2. Nothing in this Agreement shall limit or exclude either Party’s liability for death or personal injury caused by that Party’s negligence; fraud; any breach of the terms implied by Section 12 of the Sale of Goods Act 1979 or by Section 2 of the Supply of Goods and Services Act 1982; the deliberate or wilful misconduct of that Party, its employees, agents, or sub-contractors; or for any other form of liability which cannot be limited or excluded by law.
48. **Confidentiality**
    1. All fees, services, documents, recommendations, and reports are confidential.
    2. Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause 19.
    3. Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.
    4. The Confidential Information of a party may be disclosed by the other party to its employees and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.
    5. These obligations of confidentiality will not apply to Confidential Information that:
49. has been published or is known to the public (other than as a result of a breach of the Agreement);
50. is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
51. is required to be disclosed by law, or by an order (binding upon the relevant party) of a competent governmental authority, regulatory body or stock exchange.
52. **Publicity**

15.1 We reserve the right to use the Client name and website address in the Agency’s promotional material unless a written request for confidentiality is provided by the Client.

**16. Termination**

* 1. Either party may terminate the Agreement by giving at least 30 days written notice to the other party, after the Minimum Term. By providing written notice to the other party during the Renewal Term either party may elect to terminate this Agreement upon (but not before) expiry of the Renewal Term. For the avoidance of doubt, parties are entitled to give written notice to terminate the agreement at any time within the Minimum Term or any subsequent Renewal Term, however termination will not occur until the end of the relevant Minimum Term or Renewal Term.
  2. Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:

1. commits any material breach of any term of the Agreement, and:
   1. the breach is not remediable; or
   2. the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or

(b) persistently breaches the terms of the Agreement.

16.3 Either party may terminate the Agreement immediately by giving written notice to the other party if:

(a) the other party:

1. is dissolved;
2. ceases to conduct all (or substantially all) of its business;
3. is or becomes unable to pay its debts as they fall due;
4. is or becomes insolvent or is declared insolvent; or
5. convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
6. an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
7. an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent Agency reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement);
8. (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
9. **Effects of termination**
   1. Upon termination all the provisions of the Agreement will cease to have effect, save that the following provisions of the Agreement will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 7.4, 6.6, 13, 14, 17 and 18.3 to 18.12.
   2. Termination of the Agreement will not affect either party’s accrued rights (including accrued rights to be paid) as at the date of termination.
   3. The Client will not be entitled to any refund of Fees on termination, and will not be released from any obligation to pay Fees to the Agency even if the Client did not exhaust the acquired mailing quotas.
10. **General**
    1. Any notice given under the Agreement must be in writing (whether or not described as “written notice” in the Agreement) and must be delivered personally, sent by pre-paid first class post or email, for the attention of the relevant person, and must be addressed to Jubilee Centre, 10-12 Lombard Road, Wimbledon, London, SW19 3TZ or email address given in the Proposal (or as notified by one party to the other in accordance with this Clause). Notices to the Client will be sent to the address provided when signing this Agreement.
    2. A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
11. where the notice is delivered personally, at the time of delivery;
12. where the notice is sent by post, 48 hours after posting; and
13. where the notice is sent by email, at the time of the transmission (providing the sending party retains written evidence of the transmission).
    1. No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.
    2. If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
    3. Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
    4. The Agreement together with the terms and conditions may not be varied except by a written document signed by or on behalf of each of the parties.
    5. The Agency may freely assign their rights and obligations under the Agreement without the other party’s consent to any Affiliate of the assigning party or any successor to all or substantial part of the business of the assigning party from time to time. Save as expressly provided in this Clause or elsewhere in the Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any rights or obligations under the Agreement.
    6. The Agency may subcontract any of its obligations under the Agreement to any third party.
    7. Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party’s power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.
    8. The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
    9. Subject to Clause 13.1:
14. the Agreement will constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter;
15. neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement; and
16. neither party will have any liability other than pursuant to the express terms of the Agreement.
    1. The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Agreement.
17. **Force Majeure**
    1. Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party.
    2. In the event that either Party to this Agreement cannot perform their obligations hereunder as a result of force majeure, the affected Party shall be entitled to a reasonable extension of the time for performing those obligations.
18. **No Waiver**
    1. No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.