



Parties:

**You, (“the Supplier”) are onboarding online and, on behalf of yourself and any of your affiliates, are entering into a Framework Purchasing Agreement (this agreement) with Surman Brands, a trading name of the following entities:**

**Tlam Limited** incorporated and registered in England and Wales (CRN: 06514852) at Third Floor, The Library Building, Sun Street, Tewkesbury, GL20 5NX; *a subsidiary of Tlam Group Limited, and*

**Tlam Technologies** incorporated and registered in England and Wales (CRN: 08908265) at Third Floor, The Library Building, Sun Street, Tewkesbury, GL20 5NX; *also a subsidiary of*

**Tlam Group Limited** incorporated and registered in England and Wales with company number 11863257 whose registered office is at Third Floor, The Library Building, Tewkesbury, Gloucestershire, England, GL20 5NX; *and*

Other subsidiaries and affiliates of Tlam Group Limited; *including*

SH Retail Investments (T/A The Nook Cheltenham) incorporated and registered in England and Wales (CRN: 12760398) at Third Floor, The Library Building, Sun Street, Tewkesbury, GL20 5NX

**(the Nook Cheltenham (SH Retail Investments Ltd) Client, Tlam Ltd Client, Tlam Tech Client and Mushroombiz® Client, together, ‘the Clients’ each a ‘Client’).**

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**(each Supplier providing a Service further to a Project Order Form being “the Relevant Client” or “the Supplier” (as the context establishes)).**

#### Background:

- A. The Supplier is in the business of providing the Available Marketing & Media Services.
- B. The Client wishes to access the Available Services and to appoint a Supplier to provide some or all the Available Marketing & Media Services (each, a Service) to it and its affiliates under this agreement.
- C. When a Client or any of its affiliates requests Services from the Supplier, and the relevant Supplier is able to provide such Services, the relevant parties will enter into a separate Project Order in accordance with this agreement.
- D. Each Project Order will incorporate the terms set out in within the Project Order and in this agreement, establishing a separate legal contract, and will prevail.

#### 1. Interpretations and Definitions

The definitions and rules of interpretation that apply in this agreement, and any Project Order are set out below:

##### 1.1 Definitions

- 1.1.1 **Affiliate:** in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.
- 1.1.2 **Agreement Commencement Date:** The date of execution of this agreement.
- 1.1.3 **Available Marketing & Media Services:** the Services, including without limitation any Deliverables, which the Supplier is willing and able to provide to the Client and the Client Affiliates as set out in the relevant Project Order.
- 1.1.4 **Base Exchange Rate:** the Exchange Rate on the Effective Date of this Agreement (or another specified base date) which is used as the reference point for all future adjustments.
- 1.1.5 **Base Price:** The “Base Price” means the price payable by the Buyer for the Goods/Services as stated in the relevant Purchase Order, calculated in the Supplier’s functional currency, before any foreign exchange adjustments.
- 1.1.6 **Brand:** any trading name, legal company name, domain name, service mark, trade mark registered or unregistered that is used by the Client or any Client Party Affiliate.

**SURMAN —  
— BRANDS.**

Third Floor, The Library Building,  
Sun Street, Tewkesbury,  
England, UK  
GL20 5NZ

- 1.1.7 **Brand Equity:** is a proprietary measurement of the value of any Brand owned or licensed to the Client or Client Party Affiliate that is calculated by valuing the cost of rebrand, engagement loss, length of use, formal registration and other secondary metrics.
- 1.1.8 **Brand Guidelines:** Instructions on how to use our brands at <https://www.surmanbrands.co/brand-guidelines/>.
- 1.1.9 **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.1.10 **Business Opportunity:** Any and all opportunities, prospects, ventures, transactions, arrangements, or potential commercial activities of whatever nature that:
- (a) relate to or fall within the business activities, services, or areas of commercial interest of the Client, including but not limited to: the advertised services of Tlam Group Limited Tlam Limited and the Mushroombiz® brand, Tlam Technologies and the Rendr platform, SH Retail Investments Ltd and any marketing, media, PR, TV, radio, podcasting, streaming, production or publishing opportunities of any of the Client's or any Client Party's employees, subcontractors, consultants and executive officers or any related services;
  - (b) involve or may involve clients, customers, prospects, or third parties who are or may be interested in the services provided by or capable of being provided by the Client;
  - (c) relate to contracts, projects, commissions, partnerships, joint ventures, acquisitions, investments, or other commercial arrangements that the Client is or may be capable of undertaking, performing, or participating in;
  - (d) concern the provision of services similar to, complementary to, or competitive with those offered by the Client;
  - (e) involve the use of skills, expertise, knowledge, contacts, or resources that the Independent Contractor has acquired, developed, or utilised during the course of or in connection with the Engagement;
  - (f) arise from or are connected to relationships, contacts, or information obtained by the Independent Contractor during the Engagement or through the Independent Contractor's association with the Client;
  - (g) (would, if pursued, potentially generate revenue, profit, or other commercial benefit that could reasonably be expected to be of interest to the Client given its current or anticipated business activities;
- whether such opportunities are identified, discovered, or become known to the Independent Contractor directly or indirectly, and whether they arise during the Engagement or become apparent after its commencement, and regardless of whether such opportunities are immediately viable or require further development or investigation to become commercially viable.
- For the avoidance of doubt, Business Opportunities shall include opportunities that may only become apparent or viable through further enquiry, development, or the passage of time.
- 1.1.11 **Cap:** the maximum percentage increase in the Base Price allowed because of adverse foreign exchange movements. For the purposes of this Agreement, such an increase shall not exceed 4% above the Base Price.
- 1.1.12 **Capacity:** Any role, position, function, or manner of engagement whether as director, officer, employee, worker, consultant, independent contractor, adviser, agent, partner, member, shareholder, investor, or in any other capacity whatsoever, whether paid or unpaid, and whether involving active participation, passive investment, or any other form of involvement or interest. This includes any direct or indirect engagement, participation, or financial interest in any business, entity, venture, or commercial activity through any legal structure or arrangement.
- 1.1.13 **Charges:** the charges and fees set out in the relevant Project Order.
- 1.1.14 **control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
- 1.1.15 **Client Affiliate:** An Affiliate of the Client.
- 1.1.16 **Client Party Affiliate:** An Affiliate of the Client Party.
- 1.1.17 **Client Party Background IPRs:** all Intellectual Property Rights in the Client Party Materials
- 1.1.18 **Client Party Manager:** such person as notified by the Client Party to the Supplier via the Project Order Form and is authorised to sign off on Supplier works and Deliverables.
- 1.1.19 **Client Party Materials:** all materials, equipment and tools, drawings, specifications and data supplied by the Client Party to the Supplier.
- 1.1.20 **Collar:** the maximum percentage decrease in the Base Price allowed because of favourable foreign exchange movements. Accordingly, the Price payable shall not be reduced by more than 9% below the Base Price.
- 1.1.21 **Confidential Information:** any and all information, data, materials, knowledge, trade secrets, and intellectual property of whatever nature and in whatever form (whether oral, written, electronic, visual, or otherwise) that is disclosed by or on behalf of the Company or which comes to the knowledge of the Recipient in connection with this Agreement, including but not limited to:
- (a) all technical, commercial, financial, and business information, including without limitation: marketing strategies, plans, campaigns, and materials; client lists, contact details, and customer information; supplier information and relationships; pricing structures, profit margins, and financial data; business plans, forecasts, and strategic

- initiatives; sales data, market research, and analytics; advertising concepts, creative materials, and brand strategies; proprietary methodologies, processes, and know-how; software, algorithms, and technical specifications; databases and compilations of information; personnel information and organizational structures;
- (b) all information relating to actual or potential clients, customers, suppliers, partners, or third parties, including their identities, requirements, preferences, and commercial arrangements;
  - (c) all intellectual property rights and proprietary information, whether or not registered or capable of registration, including inventions, discoveries, innovations, improvements, developments, and modifications;
  - (d) any information derived from, based upon, or incorporating any of the foregoing information;
  - (e) the existence and terms of this Agreement and any negotiations relating thereto;

whether or not such information is marked, designated, or otherwise identified as confidential, and whether or not the Recipient knew or ought reasonably to have known that such information was confidential in nature.

For the avoidance of doubt, information shall be deemed confidential regardless of whether it was disclosed intentionally or inadvertently, and regardless of the medium through which it was communicated or the circumstances of its disclosure.

- 1.1.22 **Deemed Employment:** an engagement to which Chapter 10 of Part 2 of the Incomes Tax Act 2003 applies.
- 1.1.23 **Default Fees:** The prevailing day or hourly rate charged by the Consultant in regular market conditions.
- 1.1.24 **Deliverables:** all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form, including, without limitation, computer programs, data, reports and specifications (including drafts). For the avoidance of doubt, title in such shall reside with the Client unless specified in a relevant Purchase Order, and shall be Foreground IPR.
- 1.1.25 **Engagement:** the course of the contractual relationship between parties set out in a Project Order Form
- 1.1.26 **Foreground IPRs:** all Intellectual Property Rights in the Deliverables, other than Supplier Background IPRs.
- 1.1.27 **Independent Contractor/ Contractor:** A person delivering services personally to the Client that is not an employee of the Client or any Client Party Affiliate.
- 1.1.28 **Insurance Policies:** Any insurance policies procured by the Supplier that are required by the Client as set out in the relevant Project Order Form.
- 1.1.29 **Introductions:** the provision to the Client of the name and contact details of a Prospective Client or the arrangement of a meeting between the Supplier and a Prospective Client with the prior consent of the Prospective Client. "Introduce", "Introduces" and "Introduced" shall be construed accordingly
- 1.1.30 **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual 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.
- 1.1.31 **Mandatory Policies:** the Client Party's business policies and codes, as amended from time to time. Including, without limitation, Modern Slavery and Human Trafficking Policy, Corporate and Social Responsibility Policy, Anti-Bribery and Anti-Corruption Policy, Ethics Policy, Security Policy.
- 1.1.32 **PAC Rewards Scheme:** our internal program for providing remuneration to relevant stakeholders throughout TGL, TGL subsidiaries and TGL Affiliates.
- 1.1.33 **Project Order:** a purchase order form for the provision of Services by the Supplier to the Client or Client Affiliate agreed in accordance with this agreement.
- 1.1.34 **Promotions and Key Offerings:** any product or service offered by the Client that may or may not have a promotional element to it, that an RIA may interact with through any of the marketing or sales activities of the Client or Client Party Affiliate.
- 1.1.35 **Prospective Client:** a person or entity with whom the Client has not previously had a contractual relationship for the provision of the Client's Promotions and Key Offerings.
- 1.1.36 **Representative:** the person authorised to represent the Client, Client Party, Client Affiliate, Supplier, Supplier Affiliate, Supplier Party Affiliate.
- 1.1.37 **RIA Participant:** a person or company that has registered with Surman Brands to promote, refer, share tracking links or create content to promote and market Promotions and Key Offerings.
- 1.1.38 **Services:** the services, including without limitation any Deliverables as set out in the relevant Project Order and more generally sales, marketing, media and publishing services.
- 1.1.39 **Supplier Affiliate:** An Affiliate of the Supplier.
- 1.1.40 **Supplier Party Affiliate:** An Affiliate of the Supplier Party.

- 1.1.41 **Supplier Background IPRs:** all Intellectual Property Rights that are owned by or licensed to the Supplier and which are or have been developed independently of this Project Order in each case either subsisting in the Deliverables or otherwise necessary or desirable to enable a Client Party to receive and use the Services.
- 1.1.42 **Supplier Manager** such person as notified by the Supplier to the Client Party from time to time.
- 1.1.43 **Supplier Party Materials:** all materials, equipment and tools, drawings, specifications and data supplied by the Client Party to the Supplier.
- 1.1.44 **TUPE:** The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/46) (as amended).

Clause, schedule and paragraph headings shall not affect the interpretation of this platform agreement or any Project Order.

## 1.2 Interpretation:

- 1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 The Schedules form part of this platform agreement and shall have effect as if set out in full in the body of this platform agreement. Any reference to this platform agreement includes the Schedules.
- 1.2.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.4 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:
  - 1.2.4.1 another person (or its nominee) by way of security or in connection with the taking of security; or its nominee.
- 1.2.5 For the purposes of determining whether a limited liability partnership is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be construed so that: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.2.6 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.2.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.2.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.2.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time.
- 1.2.10 A reference to writing or written includes email.
- 1.2.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.2.12 A reference to this platform agreement or to any other agreement or document is a reference to this platform agreement or such other agreement or document, in each case as varied from time to time.
- 1.2.13 References to clauses and Schedules are to the clauses and Schedules of this platform agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.2.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. Ordering Services and Supplier and Client Obligations

2.1 This agreement governs the framework relationship between the parties. Further Service-orientated terms are set out in the relevant Project Orders

2.2 The Client and/or Client Affiliates (a Client Party) can order Services from the Supplier by a separate Project Order. The Client shall procure compliance of any Client Affiliate with the terms herein.

2.3 Each Project Order shall be entered into by the Client Party and the Supplier and forms a separate contract between its signatories. The Supplier shall provide the Services from the date this Project Order comes into force in accordance with the terms herein. The relevant Supplier shall be solely responsible and liable to provide the relevant Project Order to the relevant Client party (only).

2.4 The Client Party shall: **a)** co-operate with the Supplier in all matters relating to the Services and appoint the Client Party' Manager in relation to the Project Order, who shall have the authority contractually to bind the Client on matters relating to the Services; and **b )** provide such information as the Supplier may reasonably request and the Client Party considers reasonably necessary, in order to carry out the Services in a timely manner.

2.5 The Client and the Client Party warrants to the Supplier and ensures it complies with the following items of primary legislation:

- The Data Protection Act 2018
- The Copyright Designs and Patents Act 1988
- Bribery Act 2010
- Economic Crime and Corporate Transparency Act 2023
- Computer Misuse Act 1990
- Defamation Act 2013
- The Modern Slavery Act 2015
- Late Payments of Commercial Debts (Interest) Act 1998

2.5 In supplying the Services, the Supplier shall: **a)** perform the Services with the level of care, skill and diligence in accordance with good practice in the Supplier's industry, profession or trade; **b)** co-operate with the Client Party in all matters relating to the Services, and comply with all reasonable instructions of the Client Party; and **c)** use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that it fulfils its obligations under the Project Order.

2.6 Unless otherwise agreed in a Project Order, procure the relevant Materials required to deliver the Deliverables in a timely manner at the Supplier's expense.

2.7 If the Supplier's performance of its obligations under a Project Order is prevented or delayed by any act or omission of the Client Party, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Client Party that arise directly or indirectly from such prevention or delay.

### 3. Supplier Warranties & Clawback

3.1 The Supplier is appointed by the Client for their expertise and ability to fulfil their obligations under 2.5 and in providing the relevant Available Marketing & Media Services, the Supplier recognises that it must deliver the Deliverables in full and pursuant to the Fees set out in the Purchase Order and clause 5 of this agreement.

3.2 Delivery of the Deliverables is of the essence and for duration of the term of the Project Oder and 12 months from the expiry of each Project Order the Supplier, its employees, executive, subcontractors and affiliates warrant that:

3.2.1 It complies at all times with the following items of primary legislation:

- The Data Protection Act 2018
- The Copyright Designs and Patents Act 1988
- Bribery Act 2010
- Economic Crime and Corporate Transparency Act 2023
- Computer Misuse Act 1990
- Defamation Act 2013
- The Modern Slavery Act 2015
- Late Payments of Commercial Debts (Interest) Act 1998

3.2.2 It shall adhere to its obligations set out in 2.5 and ensure full, accurate and effective delivery of the Deliverables in each Project Order;

- 3.2.3 The Supplier shall use reasonable endeavours uphold the reputation and good standing of the Client and its brands, trademarks, service marks, patents, inventions, design, talent and other intellectual property owned or licensed to the Client;
- 3.2.4 It shall not misrepresent the client in any of the Deliverables that would harm the Client in any way and particularly in relation to 3.2.2;
- 3.2.5 It shall adhere to the Intellectual Property provisions in this agreement and any derivative License Grant Forms entered between the Client and the Supplier;
- 3.2.6 It shall not breach the solicitation clauses of clause 12 nor approach any key employees, subcontractors or clients of the Client where solicitation provisions are not clear without the notifying the Client in advance;
- 3.2.7 It shall not act as an agent to any key employee, subcontractor or executive of the Client in any capacity.
- 3.2.8 It shall continue performing the contract in good faith whilst any of the warranties in this Clause 3.2 are breached or are breached and in the process of rectification or remedy.
- 3.2.9 It shall, subject to clause 6, ensure that their policies are up to date and available to remedy any warranty or defects in the Deliverables and where any defect is not insurable, ensure that the Supplier complies with the liability provisions in this agreement.
- 3.3 Where the Supplier is required to rectify any warranty, it shall rectify them at its own expense and should any defects or shortcomings in the Warranties or Deliverables not be remedied, the Client is entitled to clawback or set off its own expenses against any outstanding or future invoices during the term of each Project Order.
- 3.4 For the avoidance of doubt, time shall not be of the essence in respect of this Agreement or any Project Order.

#### 4. Commencement and Duration

This agreement shall commence on the day all parties have agreed and accepted these terms (the Agreement Commencement Date) and shall continue, unless terminated earlier in accordance with the Termination clause.

#### 5. Fees

- 5.1 We always seek to be fair and open as regards the fees we agree. In every Project Order, the following Charges information must be set out:
  - a) Base Price
  - b) Currency
  - c) Base Price of Materials to be paid for by the Client.
- 5.2 **Additional Payment Terms:** Where the Supplier has payment terms that are not covered by the provisions of this Clause 5, the Client and the Supplier shall detail them including references to Supplier fee schedules in the Project Order Form referencing an addition or amendment to the terms and the unaffected provisions in this Clause 5 shall remain in force.
- 5.3 **Transparency Obligation:** The Supplier agrees to be fully transparent with all pricing associated with the goods or services provided under this agreement. The Supplier shall itemise all costs in their Quotes and invoices to the Client, clearly detailing the cost of each item or service provided, including but not limited to materials, labour, transportation, and any additional charges or fees. This transparency obligation is essential to ensure that the Client is fully informed of all costs associated with the purchase.

- 5.4 **Inflationary Cost Control:** The Supplier agrees that any inflationary costs or price adjustments within a 6-month period from the date of the original Quote shall not exceed 3% of the price set out in the original Quote. Any proposed price adjustments beyond this limit must be agreed upon in writing by the Client prior to implementation.
- 5.5 **Review and Adjustment:** The Supplier must notify the Client of any potential inflationary cost increases in writing at least 30 days before the intended implementation of such increases. The Client reserves the right to review and, if necessary, negotiate any such proposed increases. If the Supplier fails to notify the Client within the specified time frame, the Supplier forfeits the right to impose the proposed increase.
- 5.6 **Itemisation of Invoices:** All invoices submitted by the Supplier shall clearly itemise the costs associated with each component of the goods or services provided. This includes but is not limited to, a breakdown of costs for each item or service, any applicable taxes, duties, and any other charges. The Client reserves the right to dispute any invoice that does not meet these itemisation requirements.
- 5.7 **Audit Rights:** The Client shall have the right to audit the Supplier's pricing and cost calculations to ensure compliance with this clause. The Supplier agrees to provide access to relevant records and documentation upon the Client's reasonable request to verify the accuracy of invoicing and pricing.
- 5.8 **Excessive Costs in Contract Administration:** The Supplier recognises that the Client's obligations in this agreement relate only to the clauses and their meanings and subject to Clause 18 (Entire Agreement), and where the Client is required to expend excessive resources to complete any form of Supplier onboarding, excessive time relating to the Client's staff when accounting, bookkeeping and reconciliation of invoices, the Client shall have the right to recover reasonable expenses for the duration of the engagement with the Supplier.
- 5.9 **Transaction Costs:** All transaction costs associated with payment of invoices for the services rendered under this agreement shall be borne by the Supplier with the exception of Project Orders where the base price is not in pounds sterling.
- 5.10 **Where the base price is in a currency other than GBP or Pounds Sterling:**

## Adjustment Mechanism

### a. Review Date

Adjustments to the Base Price based on fluctuations in the Exchange Rate shall be reviewed on the quarterly anniversary (the "Review Dates"). Each review shall consider the percentage change in the Exchange Rate from the Base Exchange Rate to the Exchange Rate published on the applicable Review Date.

### b. Calculation of the Preliminary Adjustment

On each Review Date, the following calculation shall be performed:

$$\text{Preliminary Adjustment (\%)} = \left( \frac{\text{Exchange Rate on Review Date}}{\text{Base Exchange Rate}} \right) \times 100\%$$

#### i. Application of the Cap:

If the Preliminary Adjustment indicates an adverse movement (i.e. a depreciation of the Buyer's Currency relative to the Supplier's Currency) that exceeds the Cap, then the adjustment applied shall be limited to the Cap percentage.

#### ii. Application of the Collar:

If the Preliminary Adjustment indicates a favourable movement (i.e. an appreciation of the Buyer's Currency relative to the Supplier's Currency) beyond the Collar, then the adjustment applied shall be limited to the Collar percentage.

#### iii. Intermediate Adjustments:



If the Preliminary Adjustment lies between the limits of the Collar and the Cap, then the Base Price shall be adjusted by the full percentage change indicated by the Preliminary Adjustment.

### c. Adjusted Price Calculation

The Adjusted Price for the period commencing on the relevant Review Date shall be determined by applying the permitted adjustment percentage to the Base Price. In formulaic terms:

$$\text{Adjusted Price} = \text{Base Price} \times (1 + \text{Permitted Adjustment Percentage})$$

## Notification and Documentation

### a. Notice of Adjustment:

Within 10 business days following each Review Date, the Supplier shall deliver written notification to the Buyer setting out:

- The Base Exchange Rate and the Exchange Rate on the Review Date;
- The calculation of the Preliminary Adjustment; and
- The application of the Cap or Collar, if applicable, resulting in the final Permitted Adjustment Percentage.

### b. Right to Verification:

Both parties shall be entitled to review and verify the exchange rate data from the agreed financial source being xe.com.

5.11 **Clawback:** Where the Supplier cannot or is not willing to rectify any defects to the warranties set in clause 3.2, the Client is entitled to clawback Charges paid or outstanding Charges on any Supplier invoices and will be agreed by both parties in writing.

## 6 Limitation of Liability and Insurance

6.1 The restrictions on liability in this clause apply to every liability arising under or in connection with this agreement, including, but not limited to, liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

6.2 Nothing in this agreement shall limit or exclude the Suppliers' or the Client's liability for:

- **a)** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- **b)** fraud or fraudulent misrepresentation; or
- **c)** breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

6.3 Subject to clause 6.2 (Liabilities which cannot legally be limited, **a)** neither party to this agreement shall have any liability to the other party for any indirect or consequential loss arising under or in connection with this framework purchasing agreement; and **b)** each parties' total liability arising under or in connection with this agreement shall be limited to the value of the relevant Purchase Order

6.4 Notwithstanding the above, the parties agree to the limitation of liability provisions in any Project Order in relation to the Services.

6.5 The Supplier shall be jointly and severally liable for the performance of any Supplier Affiliate under any Project Order (entered by such Supplier Affiliate).



- 6.6 The Supplier is required to state the relevant insurance policies it has in place in the Project Order Form and in the event a Supplier does not have the appropriate Insurance policy, the Client may request that a policy is entered into prior to the Commencement Date.
- 6.7 Subject to clauses 6.2 and 6.3, the Suppliers total aggregate liability to the Client under or in connection with this Project Order shall not exceed the Fees paid for the Services by the Client during the 12 months preceding the date on which the claim arose.

## 7. Data Protection

7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. For the avoidance of doubt, and per the Interpretation provision herein, Data Protection Legislation and this clause shall be amended and/or supplemented (*mutatis mutandis*) (from time to time), by any same or similar provisions coming into effect upon the United Kingdom's exit from the European Union (Brexit).

7.2 Unless otherwise stated in a Project Order, or as the relevant Service requires, the parties acknowledge that for the purposes of the Data Protection Legislation, the Client Party is the controller, and the Supplier is the processor. Where the relevant Project Order, or the prevailing law requires it, in some circumstances the Supplier shall be the controller or shall be joint controller with the Client or Client Affiliate. The Supplier is required to provide to the Client, its privacy policies and procedures.

7.3 Without prejudice to the generality of the above, the relevant party (as the case may be) (for the remainder of this clause, the party, the relevant party, the other party), will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this agreement.

7.4 Without prejudice to the generality of the above, the party, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:

**a)** process that personal data only on the documented written instructions of the other party (as the case may be) (which, for the Supplier, are set out in our policy (Processing, personal data and data subjects)), unless the relevant party is required by Applicable Laws to otherwise process that personal data. Where the relevant party is relying on the laws of a member of the European Union or European Union Law as the basis for processing personal data, the relevant party shall promptly the other party of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the relevant party from so notifying the other party;

**b)** ensure that it has in place appropriate technical and organisational measures, or protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

**c)** without prejudice to any confidentiality provisions, ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

**d)** not transfer any personal data outside of the European Economic Area unless the prior written consent of the other party (unless it has been obtained and the following conditions are fulfilled:

**e)** the relevant party ) has provided appropriate safeguards in relation to the transfer;

**f)** the data subject has enforceable rights and effective legal remedies;

**g)** the relevant party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

**h)** the relevant party complies with reasonable instructions notified to it in advance by the other party with respect to the processing of the personal data;

- i)** assist the relevant party in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- j)** notify the other party without undue delay on becoming aware of a personal data breach;
- k)** at the written direction of the other party, delete or return personal data and copies to the other party on termination or expiry of the agreement unless required by Applicable Law to store the personal data; and
- l)** maintain complete and accurate records and information to demonstrate its compliance with the terms herein and allow for reasonable audits by other party by a then designated auditor of such records and information and immediately inform the other party, an instruction infringes the Data Protection Legislation.

7.5 The party consents to the other party appointing a third-party processor(s) of personal data under this agreement. The relevant party confirms that it has entered or will enter with the third-party processor which the other party confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the relevant party and the other party, the relevant party shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause.

7.6 Any party may, at any time on not less than 30 days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## 8 Termination

8.1 Without affecting any other right or remedy available to it, any party may terminate this agreement with immediate effect by giving written notice to the other party if:

- **a)** the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- **b)** the other party repeatedly breaches any of the terms of this platform agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- **c)** the other party 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 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- **d)** the other party 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 its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- **e)** the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- **f)** a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- **g)** an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- **h)** the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- **i)** a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- **j)** a creditor or encumbrancer of the other 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 the other party's assets and such attachment or process is not discharged within 14 days;
- **k)** any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned herein (inclusive);
- **l)** the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- **m)** the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or
- **n)** there is a change of control of the other party.

8.2 For the purposes of clause, 'material' breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from: a substantial portion of this agreement; over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

## 9. Survival

9.1 On termination (or expiry) of this agreement, howsoever arising, each Project Order then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such, unless terminated earlier in accordance with the terms of such Project Order.

9.2 The termination of any Project Order shall not affect any other Project Order or this agreement.

9.3 On termination of this agreement, the following clauses shall continue in force: (Interpretation), (Client Obligations), (Supplier Warranties & Clawback) (Limitation of Liability and Insurance), (Data Protection), (Survival), (Intellectual Property), (Title to Materials), (Confidentiality), (Governing law), (Non-Solicitation), (Disputes, Governing Law and Jurisdiction), and which, by their very nature, would survive and continue in force. For the avoidance of doubt, such clauses shall continue to be incorporated into the terms and conditions of any continuing Project Order.

9.4 Termination of this agreement shall not affect 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 breaches of the agreement which existed at or before the date of termination.

## 10. Confidentiality

10.1 Each party undertakes that it shall not at any time, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, clients or supplier of the other party or any member of the group of companies to which the other party belongs, except as permitted herein.

10.2 Each party may disclose the other party's confidential information:

to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement.

10.3 Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause, and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.4 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## 11. Intellectual Property

11.1 The relevant Supplier and its licensors shall retain ownership of all Supplier Background IPRs. The relevant Client Party and its licensors shall retain ownership of all Client Party Background IPRs. The Client shall have title over and own absolutely all Foreground IPRs in the Deliverables.

11.2 Subject to such specification in a Project Order or an IP Licensing Grant From, the Client may grant the Supplier, a licence to any relevant Deliverable and/or Foreground IPR, subject to our Framework Licensing Agreement.

11.3 With the exception of Clause 11.4, the relevant Supplier Party shall not sub-license, assign or otherwise transfer the rights granted above to other Supplier Affiliates and Suppliers without the prior permission of the Client;

11.4 For the purposes of delivering the Deliverables the Supplier is granted a non-exclusive, world-wide, paid up and royalty free license to grant sub licenses of any Foreground IPR of Client Background IPR to its subcontractors, suppliers, and other third parties engaged in connection with the provision of the Services, provided that such sublicences are granted only to the extent necessary for the performance of those services and subject to confidentiality obligations no less protective than those set out in this agreement.

11.5 The Supplier Party grants the Client a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any relevant Background IPRs for the term of the Project Order solely for the purpose of providing the relevant Service.

11.6 The Supplier Party shall, promptly at the Client's request, do (or procure the doing of) all such further acts and things and execute (or procure the execution of) all such other documents as the Client may from time to time require for the purpose of securing the full benefit of this agreement or any Project Order, including all rights, title and interest in and to the Foreground IPRs

11.7 The Supplier Party shall obtain waivers of any moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provision in any jurisdiction. Such waivers shall be in favour of the Client and its licensees, sub-licensees, assignees and successors in title to the Deliverables.

11.8 The Client shall indemnify the Supplier Party against all liabilities suffered or incurred by the Supplier Party arising out of or in connection with any claim brought against the Supplier Party for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services.

11.9 The Supplier Party shall have no claim herein, to the extent any third-party IP infringement arises from: **a)** any modification of the Deliverables, Supplier Background IPRs, Foreground IPRs or Services, other than by or on behalf of the Client; or **b)** compliance with the Supplier Party's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Client shall notify the Supplier Party if it knows or suspects that compliance with such specification or instruction may result in infringement.

11.10 Liability under the indemnity herein is conditional on the relevant Supplier Party discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the Supplier Party which may reasonably be considered likely to give rise to a liability under this indemnity (IPRs Claim), the Supplier Party shall:

**a)** as soon as reasonably practicable, give written notice of the IPRs Claim to the Client, specifying the nature of the IPRs Claim in reasonable detail;

**b)** not make any admission of liability, agreement or compromise in relation to the IPRs Claim without the prior written consent of the Client (such consent not to be unreasonably conditioned, withheld or delayed) , provided that the Supplier Party may settle the IPRs Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Client, but without obtaining the Client's consent) if the Supplier Party reasonably believes that failure to settle the IPRs Claim would be prejudicial to it in any material respect;

**c)** give the Client and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Supplier Party, so as to enable the Client and its professional advisers to examine them and to take copies (at the Client's expense) for the purpose of assessing the IPRs Claim; and

d) subject to the Client providing security to the Supplier Party to the Supplier Party's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Client may reasonably request to avoid, dispute, compromise or defend the Claim.

## 12. Non-solicitation

12.1 Any Client Party shall not, without the prior written consent of the Supplier, at any time from the date of this agreement and within 12 months after the completion of the Services or expiry of a Project Order, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the relevant Supplier in the provision of the relevant Service. In addition, any consent given by the Supplier in accordance with above shall be subject to the Client Party paying to the Supplier an appropriate agreed sum prior to such transfer of employment.

12.2 Any Supplier Party shall not, without the prior written consent of the Client, at any time from the date of this agreement and within 12 months after the completion of the Services or expiry of a Project Order, solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the relevant Supplier in the provision of the relevant Service. In addition, any consent given by the Client in accordance with above shall be subject to the Supplier Party paying to the Client an appropriate agreed sum prior to such transfer of employment.

12.3 Any Supplier Party shall not, without the prior written consent of the Client, at any time from the date of this agreement and within 12 months after the completion of the Services or expiry of a Project Order, solicit talent management, marketing, talent or public relations services to any person who is, or has been, engaged as an employee, consultant or subcontractor of the relevant Supplier in the provision of the relevant Service. In addition, any consent given by the Client in accordance with above shall be subject to the Supplier Party paying to the Client an appropriate agreed sum prior to such transfer of employment.

12.4 The Client acknowledges that the Supplier operates in the same or a similar sector and provides services of a comparable nature to Surman Brands. Accordingly, the Client agrees that they shall not, during the term of this agreement and for a period of 12 months following its termination or expiry, use any confidential information, contacts, or know-how obtained through the Supplier in connection with this agreement to assist Surman Brands to compete unfairly with the Supplier or to offer services that are the same as or materially similar to those provided by the Supplier, to any third party who was introduced to the Client by the Supplier in the course of the Project Order.

## 13. Reputation Protection

The Client and the Supplier both agree that it shall not do or say anything, whether in public or private, that is intended or reasonably likely to damage the reputation or goodwill of the other party. The Client agrees to treat the Supplier and its personnel with respect and professionalism, and not to make or authorise any public statement or communication (including on social media or to third parties) that may reasonably be considered damaging to the Supplier's reputation or business interests, whether during the term of this agreement, the term of any Project Order or thereafter.

## 14. Force Majeure

Neither party shall be in breach of this agreement or any Project Order, nor liable for delay in performing, or failure to perform, any of its obligations thereunder if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

## 15. Variation

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

## 16. Waiver

A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy. A party that waives a right or remedy provided under this agreement or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

## 17. Rights and Remedies

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

## 18. Severance

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this agreement is deemed deleted the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.<sup>19</sup> Entire Agreement

This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## 20. Conflict

If there is an inconsistency between any of the provisions of this agreement and the provisions of any Project Order, the provisions of the Project Order shall prevail over this agreement.

## 21 Assignments

Unless where a relevant Supplier requires such in order to perform a Service, neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

## 22. No Partnership or Agency

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## 23 Third Party Rights

Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. The rights or the parties to rescind or vary this agreement are not subject to the consent of any person.

## 24 Notices

24.1 Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be:

- a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- b) sent by email to [rco@surmanbrands.co](mailto:rco@surmanbrands.co)
- c) Any notice or communication shall be deemed to have been received:
- d) if delivered by hand, at the time the notice is left at the proper address;
- e) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- f) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

24.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 25 Counterparts

This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. The executed signature page of a counterpart of this agreement by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed “wet-ink” counterpart of this agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other(s) with the “wet-ink” hard copy original(s) of their counterpart. No counterpart shall be effective until each party has provided to the other(s) at least one executed counterpart.

## 26 Disputes, Governing Law and Jurisdiction

If any dispute arises, the parties shall endeavour to resolve such disputes in good faith through negotiation. Failing resolution, the dispute shall be referred to mediation conducted in accordance with the rules of the Centre for Effective Dispute Resolution (CEDR) before any further proceedings, with costs for mediation to be shared equally unless otherwise agreed.

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.