

**INDEPENDENT CONTRACTOR AGREEMENT**

**Hirobe Limited**

AND

**[insert name of Contractor]**

DRAFT

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## INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is made on [insert date] (“Effective Date”)

### BETWEEN

- (1) Hirobe Limited, a company incorporated in England and Wales under company number 11524239 and whose registered office is at Trent House, 234 Victoria Road, Stoke on Trent, Staffordshire, ST42LW, United Kingdom (“Agency”); and
- (2) [insert name of Contractor], a company incorporated in [insert state of registration] under company number [insert company registration number] and whose registered office is at [insert registered office address] (“Contractor”)

each a party and together the parties to this Agreement.

### BACKGROUND

- (A) **WHEREAS** Contractor is an Independent Contractor, in good standing, providing services to its customers.
- (B) **WHEREAS** Agency is in the business of sourcing, introducing and supplying the services of Independent Contractors to fulfil its clients' requirements.
- (C) **WHEREAS** Contractor agrees to provide and deliver the Services to Agency's Client as set forth in these Terms and the Project Schedule which is attached hereto and made a part hereof.

**NOW THEREFORE**, in consideration of the foregoing and the mutual representations, warranties, covenants, and agreement set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

#### 1. DEFINITIONS

1.1 In this Agreement:

<b>“Acceptance”</b>	means the written acknowledgement by the Client that the Project Services, Milestones, or Deliverables meet the agreed Acceptance Criteria and “Accepted” and “Accept” shall be construed accordingly;
<b>“Acceptance Criteria”</b>	means the criteria set out in a Project Schedule which must be met in order for Acceptance to be achieved;
<b>“Agreement”</b>	means the terms and conditions set out herein (“Terms”) together with any schedules, exhibits, appendices or annexes attached hereto;
<b>“AOR”</b>	means a third party organization appointed by Agency to act as agent of record;
<b>“Applicable Law”</b>	means all applicable state and federal laws, local laws, regulations, regulatory, codes, requirements and mandatory codes of practice, as amended and in force from time to time;
<b>“Business Day”</b>	means a day other than a Saturday, Sunday or federal or public holiday;
<b>“Client”</b>	means the person, firm or corporate body named in the Project Schedule together with any subsidiary or third party, who receives the Services, or intends to receive the Services, of the Contractor during the Project pursuant to this Agreement;
<b>“Currency”</b>	means US Dollars (USD) unless otherwise stated in Project Schedule;
<b>“Contract Year”</b>	means a period of twelve (12) months commencing on the Effective Date and/or each anniversary of the Effective Date;

<b>“Data Protection Laws”</b>	means any applicable state, federal, provincial, foreign or international laws or regulations either in effect or that come into effect during the term of this Agreement relating to the Processing of Personal Information;
<b>“Deliverables”</b>	means the deliverables described in a Project Schedule;
<b>“Independent Contractor”</b>	means a self-employed person or entity who is operating as an economically independent contractor and who have confirmed to Agency that they are operating as a business (which means they are legally and financially responsible to their clients and/or customers for the services they provide);
<b>“Losses”</b>	means all losses, liabilities, damages, costs, expenses, fines, punitive damages, penalties or interest, whether direct, indirect, special or consequential (including, without limitation, any economic loss or other loss of profits, business or goodwill, management time and reasonable legal fees) and charges, including such items arising out of or resulting from actions, proceedings, claims and demands including attorneys fees;
<b>“Milestone”</b>	means an objective or goal set out in a Project Schedule which triggers a payment of fees or obligation;
<b>“Personal Information”</b>	means any information relating to an identified or identifiable natural person that is Processed in connection with the Services and includes “personal data” as defined under the General Data Protection Regulation (EU) 2016/679 (“GDPR”) and “personal information” as defined under the California Consumer Privacy Act of 2018, Cal. Civ. Code Sections 1798.100-1798.199 (“CCPA”);
<b>“Process” and “Processing”</b>	means to perform any operation or set of operations on Personal Information or sets of Personal Information, such as collecting, recording, organizing, structuring, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying, as described under Data Protection Laws;
<b>“Project”</b>	means the period during which the Independent Contractor provides Services as set out in the Project Schedule;
<b>“Project Schedule”</b>	means the schedule agreed between Agency and Contractor for each Project containing the particulars of the Project and Services as detailed in Exhibit A or as otherwise agreed between the parties;
<b>“Representative”</b>	means the employee, contractor personnel or sub-contractor of Contractor, specified in the Project Schedule and any other staff, personnel, employees sub-contractors, or substitutes who render Services on behalf of Contractor;
<b>“Restricted Period”</b>	means the six month period immediately following the end (howsoever arising) of the Project;
<b>“Sales Tax”</b>	means federal, state, provincial and local taxes, any applicable sales, use, property, VAT/GST, ad valorem, value added taxes, due on any fee or amount payable under this Agreement as applicable; and
<b>“Services”</b>	means the services to be performed by Representative on behalf of Contractor for the benefit of Client pursuant to this Agreement and as described in the Project Schedule.

## 2. THE AGREEMENT

- 2.1 Contractor agrees that it has accepted the terms of this Agreement where Representative commences the Project with Agency in relation to performing Services for Client, whether or not this Agreement has been signed.

- 2.2 Agency hereby engages Contractor, and Contractor hereby accepts such engagement, as an Independent Contractor to provide the Services on the terms set forth in this Agreement.
- 2.3 In the event of any conflict between these Terms and the Project Schedule, these Terms will take precedence save where expressly provided for within these Terms, or where special terms/conditions or variations are expressly stated within the Project Schedule.
- 2.4 In this Agreement:
- 2.4.1 any reference to this Agreement or to any other document include any permitted variation or amendment to this Agreement or such other document;
  - 2.4.2 the use of the singular includes the plural and vice versa and words denoting any gender will include a reference to each other gender;
  - 2.4.3 clause and exhibit headings and the use of bold type are included for ease of reference only and will not affect the construction or interpretation of any provision of this Agreement;
  - 2.4.4 any reference to any statute, statutory instrument, order, regulation or other similar instrument will be construed as including references to any statutory modification, consideration or re-enactment of that provision (whether before or after the date of this Agreement) for the time being in force including all instruments, orders or regulations then in force and made under or deriving validity from it; and
  - 2.4.5 any phrase introduced by the terms 'include', 'including', 'in particular' or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms.

### **3. SERVICES TO BE PERFORMED**

- 3.1 Contractor and Agency shall agree the terms of the Project Schedule, specifying the identity of Client, the fee payable by Agency, the identity of the Representative, description of the Services, such Expenses as may be agreed, any notice period (if any) and any other relevant information.

### **4. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

- 4.1 Contractor warrants to Agency that:
- 4.1.1 by entering into and performing its obligations under this Agreement it will not be in breach of any obligations it owes to a third party;
  - 4.1.2 it will pay the Representative only into a nominated US bank account;
  - 4.1.3 where required as stated within the Project Schedule, the Representative(s) has/have the necessary skills, experience, training, qualifications and any other authorizations which Client considers are necessary, or which are required by law or by any professional body to provide Services for the period of the Project and Contractor shall, on request, provide proof of compliance with this clause 4.1.3;
  - 4.1.4 all statements, whether oral or written, made by it and by Representative and documentation Contractor/Representative provides, in relation to this Agreement and the performance of Services hereunder, are true and accurate and will be kept up to date;
  - 4.1.5 Representative has valid and subsisting leave to work, live and remain lawfully in the United States for the duration of the Project and Contractor shall provide proof of identity and eligibility for Representative as applicable, (including completion of a valid I-9 Form) in accordance with all applicable immigration laws and regulations including the Immigration Reform and Control Act;
  - 4.1.6 should Contractor utilize any H-1B visa holders as personnel during the Project, Contractor shall employ such H-1B visa holders as W-2 employees. Contractor understands that neither Agency nor AOR is responsible for any applicable federal, state, or local W-2 employment responsibilities and obligations associated with the H-1B visa holder personnel of Contractor, including payments related to the H-1B visa holder's visa application process;
  - 4.1.7 the Services will be performed with a high degree of professional skill and care;
  - 4.1.8 Representative shall follow all applicable rules and procedures of Client relevant to Independent Contractors and the delivery of Services including but not limited to complying with all third-party access rules and procedures communicated to the Contractor in writing by the Client, including

- those related to safety, security, and confidentiality and will act in a professional manner at all times when at the premises at which Services are to be performed;
- 4.1.9 it shall, in relation to Services, and shall ensure that Representative shall, adhere to all Applicable Laws and maintain all licenses, permits, and registrations required to perform the Services;
  - 4.1.10 Client will receive good and valid title to all Work Product, free and clear of all encumbrances and liens of any kind and all Work Product is and shall be Contractor's original work (except for material in the public domain or provided by the Client) and does not and will not violate or infringe upon the intellectual property right or any other right whatsoever of any person, firm, corporation, or other entity; and
  - 4.1.11 is a legitimately registered corporation, limited liability company, or other corporate structure, and in good standing. Contractor shall continue to maintain its corporate tax status under federal, state, and local laws for the duration of the Project.

## **5. OBLIGATIONS OF CONTRACTOR**

- 5.1 The Contractor agrees on its own part and on behalf of the Representative that it will:
- 5.1.1 notify Agency if it becomes insolvent, is unable to pay its debts, ceases to trade, is adjudicated or declared bankrupt in accordance with the US Bankruptcy Code or equivalent applicable legislation or codes, enters into any composition with creditors generally, is wound up or any step is taken towards any of these events;
  - 5.1.2 insure at its own cost any such necessary equipment as is reasonable for the performance of Services and ensure that any computer equipment and associated software which it provides for the purpose of providing Services contains up-to-date anti-virus protection;
  - 5.1.3 not make any copy, abstract, summary or précis of the whole or any part of any document or other material belonging to Client except when required to do so in the course of its duties under the Project in which event any such item will belong to Client or Agency as appropriate;
  - 5.1.4 not engage in any conduct detrimental to the interests of Agency, AOR (if any) or Client which includes any conduct that may bring Agency or Client into disrepute;
  - 5.1.5 comply with any statutory or other reasonable rules or obligations applicable to independent contractors including but not limited to those relating to health and safety, site security and IT usage and security during the Project and to take all reasonable steps to safeguard its own safety, the safety of Representative and the safety of any other person who may be affected by its actions during the Project;
  - 5.1.6 notify the Agency as soon as possible if Representative is unable or unwilling for any reason to undertake Services during the course of a Project, whether due to ill health or otherwise;
  - 5.1.7 provide Client and/or Agency with any progress reports as may be requested from time to time;
  - 5.1.8 if applicable, ensure that Representative will obtain the signature/electronic approval of an authorized representative of Client on a timesheet in a format provided by Agency and submit timesheets to Agency, in accordance with Agency's procedure, and no later than within one (1) month of the period to which they relate or as otherwise directed in writing by Agency. Contractor warrants and represents that the hours Representative records on the timesheet are true and accurate. Failure to deliver and obtain Client signature/electronic approval of timesheets and in accordance with this clause 5.1.8 or any such procedure which the Client may implement may delay payment;
  - 5.1.9 at the end of the Project, or on request, will procure that Representative return to Agency or to Client all property of Client including, but not limited to, all equipment, documents (including copies) and other such materials, security passes, electronic storage devices and keys; and
  - 5.1.10 promptly, upon request, provide evidence relating to the construction and operations of Contractor and details of the Representative's status/engagement or any other information in order to assist Agency to comply with its statutory, contractual and legal obligations.

## **6. PAYMENT**

- 6.1 Subject to clause 6.3, 6.6 and 6.7, Agency will pay Contractor for Services (or will instruct the AOR to make payment) in the Currency for undisputed invoices submitted by Contractor in accordance with the fees specified in the Project Schedule.
- 6.2 Payments will be made to Contractor by Agency (or its nominated AOR) within thirty (30) days of receipt of a valid invoice or as otherwise specified in the Project Schedule. Invoices must be received by Agency no later than three (3) months following the period to which it relates (or as otherwise directed by Agency) and for the avoidance of doubt, Agency shall not be obliged to pay invoices received after that period has expired.
- 6.3 Contractor will provide Agency or AOR (as applicable) with their federal employer identification number (“FEIN”) tax identification number for their corporate entity and a completed W-9 form.
- 6.4 Unless agreed otherwise between the parties in writing, if Contractor or Representative is unwilling or unable for any reason (whether in respect of vacation, illness or absence for any other reason) to provide Services during the Project then no fee will be due or payable by Agency or AOR (as applicable) to Contractor for any period during which Services are not provided.
- 6.5 Whenever a sum of money is recoverable from or payable by Contractor in relation to an overpayment, for any sum that Contractor is liable to pay to Agency in respect of any breach of this Agreement, or from an indemnity given in this Agreement, Agency may deduct that sum from any sum then due or which at any later time becomes due to Contractor under this Agreement.
- 6.6 For the avoidance of doubt, Agency shall not pay any fees to Contractor unless an invoice has been properly submitted by Contractor in accordance with clauses 6.1 and 6.3 above and until Client or Agency (as applicable) has authorised payment of such fees or confirmed acceptance of the Services in accordance with any Acceptance Criteria set out in the Project Schedule.

## **7. EXPENSES**

- 7.1 Unless agreed otherwise between the parties in writing, the Contractor shall be responsible for any expenses (including but not limited to, automobile, truck, and other travel expenses, vehicle maintenance and repair costs, vehicle and other license fees and permits, insurance premiums, road, fuel, and other taxes, fines, radio or cell phone, meals, hotel or other expenses) incurred by the Contractor while performing Services under this Agreement. For the avoidance of doubt, the Agency and Client shall not be liable for any expenses incurred by the Contractor unless these have been expressly agreed in writing in advance of such expenses being incurred.

## **8. VEHICLES AND EQUIPMENT**

- 8.1 Unless otherwise agreed in writing, the Contractor shall at its sole cost be responsible for providing and maintaining all vehicles, equipment, tools, and materials used to provide the Services as required under this Agreement.

## **9. CONTRACTOR STATUS**

- 9.1 Contractor is an Independent Contractor, and neither Contractor nor Representative are, or shall be deemed, Client's or the Agency's employees. In its capacity as an Independent Contractor, Contractor agrees and represents, as follows:
- 9.1.1 Contractor has the right to perform services for third parties during the term of this Agreement provided there is no conflict of interest, or detriment to the supply of the Services;
- 9.1.2 Contractor has the sole right to control and direct the means, manner, and method by which the Services required by this Agreement will be performed. Contractor shall select the routes taken, starting and quitting times, days of work, and order the work is performed;
- 9.1.3 Contractor has the right to hire assistants as sub-contractors or to use employees to provide the Services required by this Agreement;
- 9.1.4 Representative shall not be required to wear any uniforms provided by Client;
- 9.1.5 The Services required by this Agreement shall be performed by Contractor or Representative and Client shall not hire, supervise, or pay any assistants to help Contractor;

- 9.1.6 Neither Contractor nor Representative shall receive any training from Client in the professional skills necessary to perform the Services required by this Agreement;
- 9.1.7 Contractor shall have reasonable autonomy in relation to determining the method of performance of the Services pursuant to a Project but Agency shall require the Contractor to provide the Services in a manner necessary for the proper performance of the Services provided that in doing so the Contractor shall cooperate with the Client;
- 9.1.8 Contractor may provide the Services, or the Contractor may perform the work pursuant to a Project, at such times and on such days as the Contractor shall decide, subject to the Contractor providing the Services or performing the work, on such days and at such times as are necessary for the proper performance of the Services; and
- 9.1.9 Contractor may, if the Contractor determines that to do so would result in the most efficient performance of the Services, enlist additional staff in the performance of the Services or may provide substitute staff (including a substitute project manager) or sub-contract all or part of the Services, subject to Agency and the Client being reasonably satisfied that such additional or substitute staff or any such sub-contractors have the required skills, qualifications, licenses, security clearance, resources and personnel to provide the Services to the required standard.

**10. BUSINESS LICENSES, PERMITS, AND CERTIFICATES**

- 10.1 Contractor represents and warrants that Contractor and Representative will comply with all federal, state, local laws and Applicable Laws requiring drivers and other licenses, business permits, and certificates required to carry out the Services to be performed under this Agreement.

**11. STATE AND FEDERAL TAXES**

- 11.1 Subject to Contractor maintaining its classification status as an Independent Contractor, Agency will not withhold FICA (Social Security and Medicare taxes) from Contractor's payments or make FICA payments on Contractor's behalf, make state or federal unemployment compensation contributions on Contractor's behalf, or withhold state or federal income tax from Contractor's payments.
- 11.2 Contractor acknowledges that it will receive an IRS Form 1099-NEC from the Agency or AOR, and that it shall be solely responsible on its behalf and on behalf of Representative for the correct payment of all federal, state, local tax, Sales Tax, social security and similar charges and other withholding deductions, government payments and all other applicable tax obligations payable in respect of the Services.

**12. FRINGE BENEFITS**

- 12.1 Contractor acknowledges that neither Contractor nor Contractor's Representatives are eligible to participate in any vacation, group medical or life insurance, disability, profit sharing or retirement benefits, or any other fringe benefits or benefit plans offered by the Client, AOR or Agency to their employees, and neither the Client, AOR or Agency will not be responsible for withholding or paying any income, payroll, social security, or other federal, state, or local taxes, making any insurance contributions, including for unemployment or disability, or obtaining workers' compensation insurance on Contractor's behalf. Contractor shall be responsible for and shall indemnify and hold harmless the Agency against any Losses incurred by Agency arising out of all such taxes or contributions, including penalties and interest. Any persons employed or engaged by Contractor in connection with the performance of the Services shall be Contractor's employees or contractors and Contractor shall be fully responsible for them and indemnify and hold harmless Agency against any claims made by or on behalf of any such employee or contractor arising out of the Services.

**13. UNEMPLOYMENT COMPENSATION**

- 13.1 Neither Agency, Client nor AOR (if applicable) shall make state or federal unemployment compensation payments on behalf of Contractor or Contractor's Representatives. Contractor will not be entitled to these benefits in connection with Services performed under this Agreement.

**14. INSURANCE**

- 14.1 Contractor acknowledges that neither Agency, Client or AOR (if applicable) shall obtain any insurance coverage for Contractor and Contractor's Representatives.



- 14.2 If Contractor hires employees to perform Services under this Agreement, Contractor warrants that it shall provide them with workers' compensation insurance to the extent required by law and shall provide Agency or Client, upon request, with a certificate of workers' compensation insurance before the employees commence the Services.
- 14.3 The Contractor shall obtain the following insurance coverage and maintain it during the entire term of this Agreement:
- 14.3.1 Comprehensive or commercial general liability insurance coverage in the minimum amount of \$1,000,000 each occurrence, \$2,000,000 general aggregate, \$2,000,000 Products/Completed Operations aggregate including coverage for bodily injury, personal injury, broad form property damage, contractual liability, products/completed operations, Independent Contractor's coverage, and cross-liability;
  - 14.3.2 Professional Liability (Errors & Omissions) insurance coverage in the minimum amount of [\$1,000,000 per occurrence];
  - 14.3.3 Workers' Compensation insurance coverage in the minimum amount of no less than applicable limits as required by law;
  - 14.3.4 Employers Liability insurance coverage in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 in the aggregate;
  - 14.3.5 Fidelity/crime bond insurance coverage in the minimum amount of \$1,000,000 per occurrence to cover losses caused by dishonesty, disappearance and destruction, computer theft, and funds transfer fraud; and
  - 14.3.6 Automobile liability insurance in the minimum amount of \$1,000,000 with a combined single limit per occurrence for bodily injury and property damage for each vehicle used in the performance of this Agreement including owned, non-owned (for example, owned by Contractor's employees), leased, or hired vehicles.
- 14.4 Before commencing the Services, Contractor shall provide Agency and AOR with Certificates of Insurance for the policies described in clause 14.3.
- 14.5 Agency shall be named as an additional insured on each policy described in clause 14.3 and shall provide proof of compliance with this obligation upon request by Agency. All such policies shall include a waiver of subrogation clause and shall contain no cross-suits exclusion or similar exclusion that excludes claims brought by one insured against another insured under the policy.

**15. INDEMNIFICATION AND LIMITATION OF LIABILITY**

- 15.1 IN NO EVENT SHALL AGENCY BE LIABLE FOR PUNITIVE DAMAGES, LOSS OF PROFIT, LOSS OF GOODWILL OR ANY INDIRECT, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES SUFFERED BY THE CONTRACTOR UNDER THIS AGREEMENT WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PROVISIONS OF THIS CLAUSE 15 SHALL SURVIVE TERMINATION OF THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, THE AGENCY DOES NOT EXCLUDE LIABILITY FOR DEATH OR PERSONAL INJURY ARISING FROM ITS OWN NEGLIGENCE, WILLFUL OR GROSS NEGLIGENCE, FRAUD OR FOR ANY OTHER LOSS WHICH IT IS NOT PERMITTED TO EXCLUDE UNDER APPLICABLE LAW.
- 15.2 SUBJECT TO CLAUSE 15.1, THE MAXIMUM LIABILITY OF THE AGENCY TO THE CONTRACTOR IN ANY ONE CONTRACT YEAR SHALL BE LIMITED IN THE AGGREGATE TO ONE HUNDRED AND TWENTY PERCENT (120%) OF THE FEES PAID OR PAYABLE BY THE AGENCY TO THE CONTRACTOR IN THE LAST CONTRACT YEAR (OR PART THEREOF AS THE CASE MAY BE) OF THIS AGREEMENT PRIOR TO THE CAUSE OF ACTION GIVING RISE TO THE RELEVANT CLAIM OR SERIES OF CLAIMS.
- 15.3 THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE AGENCY AGAINST ANY LOSSES INCURRED BY THE AGENCY, THE CLIENT OR THE AOR ARISING OUT OR RESULTING FROM: A) BODILY INJURY, DEATH OR ANY PERSON OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY ARISING FROM CONTRACTOR'S ACTS OR OMISSIONS, AND B) CONTRACTOR'S BREACH OF ANY REPRESENTATION, WARRANTY OR OBLIGATION UNDER THIS AGREEMENT AND C) CONTRACTOR'S NEGLIGENCE, WILLFUL MISCONDUCT, RECKLESS OR WRONGFUL ACTS IN RELATION TO THE SERVICES INCLUDING BUT NOT LIMITED TO, HOSTILE,

DISCRIMINATORY OR UNSAFE WORK ENVIRONMENTS FOR CONTRACTOR'S REPRESENTATIVES. THE AGENCY MAY SATISFY ANY SUCH INDEMNITY (IN WHOLE OR IN PART) BY WAY OF DEDUCTION OF ANY PAYMENT DUE TO CONTRACTOR.

**16. TERM AND TERMINATION OF AGREEMENT**

- 16.1 This agreement will become effective on the Effective Date and will terminate on the earlier of: the date Contractor completes the Services required by the Agreement to the satisfaction of the Client, the date specified in the Project Schedule, the date mutually agreed between the parties, the date terminated by either party in accordance with clause 16.3 below or the date the Agency terminates the Agreement as provided in clause 16.2 below. Any extension of the term will be subject to mutual written agreement between the parties.
- 16.2 Notwithstanding the provisions of clause 16.1, Agency may terminate this Agreement, effective immediately upon giving written notice where:
- 16.2.1 there is any breach of the Agreement by Contractor which is, in the reasonable opinion of Agency or Client, incapable of remedy; or
  - 16.2.2 Contractor commits any other material, serious or repeated breach of the Agreement which is, in the reasonable opinion of Agency or Client, capable of remedy and which is not remedied within thirty (30) days after receiving written notice of the breach requiring the breach to be remedied within such period; or
  - 16.2.3 Contractor becomes insolvent, is unable to pay its debts, ceases to trade, is adjudicated or declared bankrupt in accordance with the US Bankruptcy Code or equivalent applicable legislation or codes, enters into any composition with creditors generally, is wound up or any step is taken towards any of these events; or
  - 16.2.4 Contractor is prevented by the imposition of relevant sanctions from performing the Agreement or the performance of the Agreement is illegal by reason of the imposition of relevant sanctions.
- 16.3 Either may terminate this Agreement without cause upon 30 days written notice to the other party to this Agreement. In the event of termination pursuant to this clause, the Agency shall pay Independent Contractor on a pro-rata basis any fees then due and payable for any Services completed up to and including the date of such termination.
- 16.4 Upon expiration or termination of this Agreement for any reason, or at any other time upon the Agency's written request, Contractor shall within 5 Business Days after such expiration or termination:
- 16.4.1 deliver to the Client all Deliverables (whether complete or incomplete) and all materials, equipment, and other property provided to the Contractor by the Client;
  - 16.4.2 deliver to the Client all tangible documents and other media, including any copies containing, reflecting, incorporating, or based on the Confidential Information;
  - 16.4.3 permanently erase all of the Confidential Information from its computer systems; and
  - 16.4.4 certify in writing to the Agency that it has complied with the requirements of this clause 16.4.
- 16.5 Any termination of the Agreement however caused shall not affect:
- 16.5.1 any rights or liabilities accrued before the time of termination; or
  - 16.5.2 the continuance in force of any provision of the Agreement which expressly or by implication is intended to come into or continue in force after termination.

**17. RESTRICTIVE COVENANT**

- 17.1 For the duration of the Project and the Restricted Period, Contractor shall procure that Representative will not, whether directly or indirectly through any contractor, partnership or person, solicit nor enter into any contract with Client or with any third party introduced to Representative by Client with whom Representative had material contact with during the Project, to provide any services of the same or a similar nature as Services.
- 17.2 Clause 17.1 shall not apply should Agency provide prior written consent to such engagement or supply. The parties acknowledge that such consent may be withheld at Agency's absolute discretion or granted subject to any conditions Agency may wish to impose.

## 18. CONFIDENTIALITY

- 18.1 Contractor acknowledges that it will have access to information that is treated as confidential and proprietary by the Contractor, including, without limitation, trade secrets, technology, and information pertaining to business operations and strategies, customers, pricing, marketing, finances, sourcing, personnel, operations of the Client, its affiliates, or their suppliers or customers, in each case whether spoken, written, printed, electronic, or in any other form or medium (collectively, the “**Confidential Information**”). Any Confidential Information that Contractor accesses or develops in connection with the Services, including but not limited to any Work Product, shall be subject to the terms and conditions of this clause. Contractor agrees to treat all Confidential Information as strictly confidential, not to disclose Confidential Information or permit it to be disclosed, in whole or part, to any third party without the prior written consent of the Client or Agency in each instance, and not to use any Confidential Information for any purpose except as required in the performance of the Services. Contractor shall notify the Agency immediately in the event Contractor becomes aware of any loss or disclosure of any Confidential Information.
- 18.2 Confidential Information shall not include information that: (a) is or becomes generally available to the public other than through Contractor breach of this Agreement; or (b) is communicated to Contractor by a third party that had no confidentiality obligations with respect to such information.
- 18.3 Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by Applicable Law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency, provided that the disclosure does not exceed the extent of disclosure required by such law, regulation, or order. Contractor agrees to provide written notice of any such order to an authorized officer of the Agency immediately upon receiving such order.
- 18.4 Notice of Immunity Under the Defend Trade Secrets Act of 2016 (“**DTSA**”): Notwithstanding any other provision of this Agreement, Contractor will not be held criminally or civilly liable under any federal or state trade secret law for any disclosure of a trade secret that:
- 18.4.1 is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; or
  - 18.4.2 solely for the purpose of reporting or investigating a suspected violation of law; or
  - 18.4.3 is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding.
- 18.5 If the Contractor files a lawsuit for retaliation by the Agency for reporting a suspected violation of law, Contractor may disclose the Agency’s trade secrets to Contractor attorney and use the trade secret information in the court proceeding if Contractor:
- 18.5.1 files any document containing the trade secret under seal; and
  - 18.5.2 does not disclose the trade secret, except pursuant to court order.

## 19. PROPRIETARY INFORMATION

- 19.1 All results and proceeds of the Services performed under this Agreement, including but not limited to the Deliverables and all other writings, technology, inventions, discoveries, processes, techniques, methods, ideas, concepts, research, proposals, and materials, and all other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, modified, conceived, or reduced to practice in the course of performing the Services, or other work performed in connection with the Services or this Agreement (collectively “**Work Product**”), and all patents, copyrights, trademarks (together with the goodwill symbolized thereby), trade secrets, know-how, and other confidential or proprietary information, and other intellectual property rights (collectively “**Intellectual Property Rights**”) therein, shall be owned exclusively by the Client. Contractor acknowledges and agrees that any and all Work Product that may qualify as “work made for hire” as defined in the Copyright Act of 1976 (17 U.S.C. § 101) is hereby deemed “work made for hire” for the Client and all copyrights therein shall automatically and immediately vest in the Client. To the extent that any Work Product does not constitute “work made for hire”, Contractor hereby irrevocably assigns to the Client and its successors and assigns, for no additional consideration, Contractor’s entire right, title, and interest in and to such Work Product and all Intellectual Property Rights therein, including the right to sue, counterclaim, and recover for all past, present, and future infringement, misappropriation, or dilution thereof.
- 19.2 To the extent any copyrights are assigned, Contractor hereby irrevocably waive in favor of the Client, to the extent permitted by Applicable Law, any and all claims Contractor may now or hereafter have in any

- jurisdiction to all rights of paternity or attribution, integrity, disclosure, and withdrawal and any other rights that may be known as “moral rights” in relation to all Work Product to which the assigned copyrights apply.
- 19.3 Contractor will make full and prompt written disclosure to the Client of any inventions or processes, as such terms are defined in 35 U.S.C. § 100, that form part of the Work Product, whether or not such inventions or processes are patentable or protected as trade secrets. Contractor shall not disclose to any third party the nature or details of any such inventions or processes without the prior written consent of the Client. Any patent application for or application for registration of any Intellectual Property Rights in any Work Product that Contractor may file during the term of this Agreement or at any time thereafter will belong to the Client and Contractor hereby irrevocably assigns to the Client, for no additional consideration, Contractor’s entire right, title, and interest in and to such application, all Intellectual Property Rights disclosed or claimed therein, and any patent or registration issuing or resulting therefrom.
- 19.4 Upon the reasonable request of the Client or Agency, during and after the Term, Contractor shall promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, and provide such further cooperation, as may be reasonably necessary to assist the Client to apply for, prosecute, register, maintain, perfect, record, or enforce its rights in any Work Product and all Intellectual Property Rights therein. In the event the Client is unable, after reasonable effort, to obtain Contractor’s signature on any such documents, Contractor hereby irrevocably designates and appoints the Client as Contractor agent and attorney-in-fact, to act for and on Contractor’s behalf solely to execute and file any such application or other document and do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights, or other intellectual property protection related to the Work Product with the same legal force and effect as if Contractor had executed them. Contractor agrees that this power of attorney is coupled with an interest.
- 19.5 Notwithstanding clause 19.1, to the extent that any of Contractor pre-existing materials identified in the Project Schedule are incorporated in or combined with any Deliverable or otherwise necessary for the use or exploitation of any Work Product, Contractor hereby grants to the Client an irrevocable, worldwide, perpetual, royalty-free, non-exclusive license to use, publish, reproduce, perform, display, distribute modify, prepare derivative works based upon, make, have made, sell, offer to sell, import, and otherwise exploit such preexisting materials and derivative works thereof. The Client may assign, transfer, and sublicense such rights to others without Contractor approval and at no cost to Client.
- 19.6 As between Contractor and the Client, the Client is, and will remain, the sole and exclusive owner of all right, title, and interest in and to any documents, specifications, data, know-how, methodologies, software, and other materials provided to Contractor by the Client (“**Client Materials**”), and all Intellectual Property Rights therein. Contractor has no right or license to reproduce or use any Client Materials except solely during the term of this Agreement to the extent necessary to perform Contractor’s obligations under this Agreement. All other rights in and to the Client Materials are expressly reserved by the Client. Contractor acknowledges that it has no right or license to use the Client’s trademarks, service marks, trade names, logos, symbols, or brand names without Client’s express consent.
- 19.7 Contractor shall require each of Contractor’s Representatives to execute written agreements containing obligations of confidentiality and non-use and assignment of inventions and other work product consistent with the provisions of this clause 19 prior to such Representative providing any Services under this Agreement.
- 20. ASSIGNMENT**
- 20.1 Contractor may not assign any rights or delegate any of its duties under this Agreement without Agency’s prior written approval.
- 21. EQUAL OPPORTUNITIES**
- 21.1 It shall be the policy of both the Agency and the Client to provide equal opportunity without regard to race, color, religion, sex, national origin, age, handicap or veteran status. Neither party shall discriminate based on race, color, creed, gender, gender identity, sex, age, national origin, religion, handicap, sexual orientation, marital status, veteran status or any other basis prohibited by Applicable Law as regards the selection, engagement and treatment of the Representative, Client’s staff, Agency’s staff or any third parties.

## **22. DATA PROTECTION**

- 22.1 The parties agree to comply with their obligations under Data Protection Laws.
- 22.2 The Contractor shall obtain explicit permission from its Representative(s) for the Agency, Client and AOR (if applicable) to Process Personal Information of its Representative(s) for purposes of fulfilling their obligations under this Agreement.
- 22.3 Contractor shall ensure that its Representatives understand, have received proper training for, and shall comply with their duties and responsibilities under the Data Protection Laws while providing Services under this Agreement and shall provide Client and Agency with reasonable assistance to enable Client and Agency to fulfil their obligations under Data Protection Laws.
- 22.4 Both parties shall comply with the other party's reasonable request to the right of access, right to rectification, restriction of Processing, erasure, data portability, objection to Processing or right to be removed from automated decision-making protocols, should such party be eligible.
- 22.5 In the event of a security breach which affects the other party's Personal Information, the party experiencing the breach shall take immediate corrective action to remedy any such deficiencies and any action pertaining to unauthorized disclosures as required under Applicable Law and Data Protection Laws and shall notify the other party without undue delay, no later than one (1) Business Day upon becoming aware of such breach and shall provide such party with sufficient information to meet any obligations to report or inform subjects of the breach.

## **23. NOTICES**

- 23.1 Any notice required to be given under this Agreement shall be delivered by hand, e-mail or certified/registered mail to the recipient at its address specified in below:
- 23.1.1 in the case of Agency, Hirobe Limited, [contracts@hirobe.io](mailto:contracts@hirobe.io); and
- 23.1.2 in the case of the Contractor, the last postal and/or e-mail address to which Agency has sent correspondence to the Contractor.
- 23.2 Notices will be deemed to have been received, if delivered by hand, at the time of delivery if delivered before 5.00pm (EST) on a Business Day or in any other case at 10.00am (EST) on the next Business Day after the day of delivery; or if sent by mail, 48 hours from the date of mailing or, in the case of mailing to or from a place overseas, seven (7) Business Days from the date of mailing; or if sent by e-mail, at the time of dispatch if dispatched on a Business Day before 5.00pm (EST) or in any other case at 10.00am (EST) on the next Business Day after the day of dispatch, unless the transmission report indicates a faulty or incomplete transmission or, within the relevant Business Day, the recipient informs the sender that the e-mail message was received in an incomplete or illegible form.

## **24. SEVERABILITY**

- 24.1 If any of the provisions of this Agreement shall be determined by any competent authority to be unenforceable to any extent, such provision shall, to that extent, be severed from the remaining terms, which shall continue to be valid to the fullest extent permitted by Applicable Laws.

## **25. RELATIONSHIP OF THE PARTIES**

- 25.1 The Contractor is an Independent Contractor and is not an employee, agent, partner, joint venture, or legal representative of the Agency. Nothing in this Agreement is intended to, or shall, operate to create a partnership or joint venture of any kind between the Agency and the Contractor, nor authorize either party to act as agent for the other. Neither party has the authority to act in the name or on behalf of, or otherwise bind, the other party in any way.

## **26. COMPLIANCE WITH LAWS AND ANTI-BRIBERY**

- 26.1 In performing their obligations under this Agreement, both parties shall comply with all Applicable Laws, including all applicable anti-bribery and anti-corruption laws (including, without limitation, the Foreign Corrupt Practices Act).
- 26.2 Contractor understands that Agency may report any criminal wrongdoing by Contractor that is in violation of any Applicable Law to the appropriate authorities, including, but not limited to, the Federal Bureau of

Investigation, Department of Justice, and Department of Homeland Security. Company will comply with all legal requests from authorities, including but not limited to, producing Contractor's personal data.

- 26.3 Neither party will offer, give or agree to give to any employee or representative of Agency or Contractor or of Client or of any third party any gift, personal financial incentive or other consideration that could act or reasonably be perceived to act as an inducement or a reward for any act or failure to act connected to the performance of this Agreement or the arrangement of a Project.

**27. WAIVER**

- 27.1 Any waiver of this Agreement or of any covenant, condition, or agreement to be performed by a party under this Agreement shall (i) only be valid if the waiver is in writing and signed by an authorized representative of the party against which such waiver is sought to be enforced; and (ii) apply only to the specific covenant, condition or to be performed, the specific instance or specific breach thereof and not to any other instance or breach thereof or subsequent instance or breach.

**28. VARIATION**

- 28.1 No variation or alteration to this Agreement will be valid unless the details of such variation are agreed between the Agency and Contractor and set out in writing and signed by both parties.

**29. FORCE MAJEURE**

- 29.1 Neither party shall be liable to the other party for any delay or non-performance of its obligations under the Agreement resulting from causes beyond its reasonable control including acts of God, fire, flood, earthquake or other natural disaster, terrorist attack or civil commotion.

**30. SUCCESSORS AND ASSIGNS**

- 30.1 This Agreement is binding on and inures to the benefit of the parties and their respective successors and permitted assigns.

**31. COUNTERPARTS**

- 31.1 This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Clause 19, a signed copy of this Agreement delivered by email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**32. ENTIRE AGREEMENT**

- 32.1 This Agreement constitutes the entire agreement between the parties and unless otherwise agreed in writing by a member of the leadership team of the Agency, this Agreement shall prevail over any other terms of business put forward by the Contractor.

**33. CHOICE OF LAW, DISPUTE RESOLUTION AND WAIVER OF JURY TRIAL**

- 33.1 This This Agreement, including all documents and exhibits, schedules, attachments, and appendices attached to this Agreement and thereto, and all matters arising out of or relating to this Agreement, shall be governed by, and construed in accordance with, the laws of the State of New York, United States of America without giving effect to any conflict of laws provisions thereof .

- 33.2 In the event of any controversy or claim arising out of or relating to this Agreement, or the breach or termination thereof, including but not limited to services provided under this Agreement and any alleged violation of any federal, state, or local laws, regulation, common law, or public policy, whether sounding in contract, tort or statute, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach settlement within a period of sixty (60) days, then each party irrevocably agrees that any legal suit, action, or other proceeding to enforce the terms of this Agreement shall be instituted in the federal courts of the United States or the courts of the State of New York in each case located in the City of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

Service of process, summons, notice, or other document by certified mail to such party's address set forth herein shall be effective service of process for any legal suit, action, or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to venue of any legal suit, action, or other proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such legal suit, action, or other proceeding brought in any such court has been brought in an inconvenient forum.

- 33.3 In the event that any party institutes any legal suit, action, or other proceeding against the other party to enforce the covenants contained in this Agreement or obtain any other remedy in respect of any breach of this Agreement arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.
- 33.4 EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS DECIDED TO ENTER INTO THIS AGREEMENT IN CONSIDERATION OF, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS CLAUSE 33.4.

The signatures to this Agreement follow on the next page.

**IN WITNESS OF WHICH** the duly authorised executives of the parties have signed this Agreement on the date below.

**Agency Signature**

**Print Name**

**For and on behalf of Hirobe Limited**

**Date**

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**Contractor Signature**

**Print Name**

**For and on behalf of [insert name of Contractor]**

**Taxpayer Identification Number**

**Date**

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**EXHIBIT A - PROJECT SCHEDULE**

This Project Schedule is subject to and forms part of the Agreement. In the event of any conflict between the Terms and the Project Schedule, the Terms will take precedence save where expressly provided for within the Terms, or where special term/conditions or variations are expressly stated within this Project Schedule.

<b>Client Name</b>	
<b>Location where Services are to be performed/delivered</b>	
<b>Contractor Name (where applicable)</b>	
<b>Representative Name</b>	
<b>Project Start Date</b>	
<b>Project End Date</b>	
<b>Qualifications, Experience, Training, Professional Body, Authorizations Required</b>	
<b>Normal Hours/Days for Services to be provided</b>	
<b>Access provided by Client</b>	
<b>Notice period for Agency to terminate</b>	
<b>Notice period for Contractor to terminate</b>	
<b>Invoicing Frequency</b>	
<b>Invoicing Currency</b>	<b>USD</b>
<b>Specific Insurance Requirement</b>	
<b>AOR (if applicable)</b>	
<b>Contractor pre-existing IP (if applicable)</b>	
<b>Special Terms/Conditions</b>	
<b>Variations to Agreement</b>	

<b>Project Services (Statement of Work)</b>	
<b>Services to be provided</b>	
<b>Project Structure</b>	
<b>Milestones</b>	
<b>Deliverables</b>	
<b>Success Criteria</b>	
<b>Review Dates</b>	
<b>Expected Outputs</b>	
<b>Acceptance Criteria</b>	
<b>Scope Exclusion</b>	
<b>Client Dependencies</b>	
<b>Agency Key Contact</b>	
<b>Independent Contractor Key Contact</b>	
<b>Assumptions</b>	
<b>Change Control Process</b>	

Independent Contractor Fee for Project Services	
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