

**Terms and Conditions for the Purchase of Goods and Services**

<b>Supplier</b>	<b>Whistlejacket London</b> whose company number is <b>09021526</b> and registered office is <b>6th Floor Charlotte Building, 17 Gresse Street, London, United Kingdom, W1T 1QL</b>
<b>Commencement Date</b>	15th January 2025
<b>Duration</b>	3 years with the option to extend for 12 months subject to earlier termination under Clause 16 of the Terms for the Supply of Goods and Services
<b>Summary Description of the Goods and/or Services, any Service Levels and timescales for performance</b>	The provision of a range of creative graphic design and associated services for the delivery of a range of marketing projects on behalf of the Corporation.  Full details of the goods and services can be found in Appendix 2.
<b>Deliverables (if any)</b>	A range of marketing assets provided as digital or printed files.
<b>Goods and/or Services</b>	Creative and design services.
<b>Goods and/or Services Delivery Date</b>	Individual delivery dates to be agreed at point of works requested.
<b>Goods and/or Services Delivery Location</b>	Digital assets to be provided online, predominantly via email. Where relevant, primary delivery address is to The Observatory, Castle Hill Drive, Ebbsfleet, DA10 1EE.
<b>Goods and/or Services Warranty Period</b>	N/A
<b>Goods and/or Services Liquidated Damages</b>	50% per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 100% per cent of the total price of the Goods if undelivered.
<b>Charges and Payment Terms</b>	When issuing any invoice to Ebbsfleet, the Supplier must: <ul style="list-style-type: none"> <li>Quote the EDC Purchase Order on the invoice</li> <li>Send the invoice by email to: [REDACTED]</li> </ul>
<b>Liability Limits</b>	Ebbsfleet: 100% of the Charges paid and payable under this Contract  Supplier: £5 million per any single event or series of connected events
<b>Insurance</b>	Employers Liability insurance: limit of at least £5 million per claim/occurrence  Public and Products Liability insurance: limit of at least £5 million per claim/occurrence and at least £5 million in the annual aggregate for Products liability  Professional Indemnity insurance: limit of at least £1 million per claim.
<b>Termination Activities (if any)</b>	Notice of termination will be provided by either party with a minimum of 3-day notice for services. Upon termination, all outstanding works will

	require completion and access to any relevant data or files passed to Ebbsfleet Development Corporation.
<b>Notice Provisions – Contact Details</b>	Ebbsfleet: [REDACTED] Supplier: [REDACTED]
<b>Appendices</b>	Appendix 1 – Terms for the Supply of Goods and Services Appendix 2 – Goods / Services Specification Appendix 3 – Social Value

We acknowledge and agree that this term sheet and the attached appendices form the contract between us for the supply of the above Goods and Services ("**Contract**"). We each agree to be bound by this Contract, even if the Goods and/or Services are provided without signing this Contract.

[REDACTED]

For and on behalf of **EBBSFLEET DEVELOPMENT CORPORATION**

Name: [REDACTED]

Position: Chief Executive Officer

Date: 13.01.2025

[REDACTED]

For and on behalf of **WHISTLEJACKET LONDON**

Name: [REDACTED]

Position: Founding Partner

Date: 16.12.24

## APPENDIX 1 - TERMS FOR THE SUPPLY OF GOODS AND SERVICES

1.	<b>INTERPRETATION</b>		authority and applicable to a Party;
1.1	The following definitions and rules of interpretation apply in these Terms:-		
	<b>"Agreement"</b>	means these terms, together with the Term Sheet and any appendices referred to in the Term Sheet;	<b>"Deliverables"</b> means all documents, products and materials developed by the Supplier or its representatives in performing the Services, in any form or media;
	<b>"Applicable Law"</b>	means all applicable laws, legislation, statutory instruments, regulations and codes from time to time in force;	<b>"Ebbsfleet"</b> means EBBSFLEET DEVELOPMENT CORPORATION an urban development corporation established by the Ebbsfleet Development Corporation (Area and Constitution) Order 2015 whose office is at The Observatory, Castle Hill Drive, Castle Hill, Ebbsfleet, Kent, DA10 1EE
	<b>"Bribery Laws"</b>	means the Bribery Act 2010 and associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all other applicable United Kingdom laws, legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent laws in any other relevant jurisdiction;	<b>"Ebbsfleet Materials"</b> means any material, data or other information owned by Ebbsfleet and provided to the Supplier either pursuant to the Agreement or prior to the Commencement Date;
	<b>"Business Day"</b>	any day other than a Saturday, a Sunday or a bank or public holiday in England;	<b>"Ebbsfleet Policies"</b> means the policies of Ebbsfleet which relate to the performance of the Agreement from time to time;
	<b>"Charges"</b>	means the charges payable by Ebbsfleet for the supply of the Goods and Services as set out in the Term Sheet;	<b>"Environmental Information Regulations"</b> means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
	<b>"Commencement Date"</b>	means the date set out in the Term Sheet;	
	<b>"Data Protection Laws"</b>	means all legislation and regulatory requirements in force from time to time in the UK relating to the processing of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018, (ii) the UK GDPR, (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), and (iv) any successor UK legislation, as well as the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory	<b>"FOIA"</b> means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
			<b>"GDPR"</b> means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and repealing Directive

<b>"Greenhouse Gases (GHGs)"</b>	95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016; means the natural and anthropogenic gases which trap thermal radiation in the earth's atmosphere and are specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC), as may be amended from time to time, each expressed as a total in units of carbon dioxide equivalent (CO <sub>2</sub> e);		case whether registered or unregistered and including any applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, the foregoing and all similar or equivalent rights which subsist or will subsist now or in the future anywhere in the world;
<b>"Goods Delivery Date"</b>	means the delivery date set out in the Term Sheet;	<b>"Liquidated Damages"</b>	means liquidated damages payable for late delivery as set out in the Term Sheet (if any);
<b>"Goods Delivery Location"</b>	means the delivery location set out in the Term Sheet;	<b>"MSA"</b>	means the Modern Slavery Act 2015 and/or any similar or equivalent Applicable Law in any other relevant jurisdiction;
<b>"Goods Specification"</b>	means the specification for the Goods set out at Appendix 2 to the Term Sheet, including any related designs, plans and drawings;	<b>"MSA Offence"</b>	has the meaning given in Clause 11.1;
<b>"Goods"</b>	means the goods set out in the Term Sheet;	<b>"Net Zero Target"</b>	means the goal of achieving by 2030 a balance between a party's emissions and removals of GHGs aligned with the three goals set out in Articles 2.1 and 4.1 of the UNFCCC's Paris Agreement;
<b>"Group"</b>	means any company which is for the time being a subsidiary or the holding company of a Party, and any subsidiary of such holding company, "subsidiary" and "holding company" both being as defined in section 1159 of the Companies Act 2006;	<b>"Party"</b>	means each of Ebbsfleet and the Supplier (and together, Ebbsfleet and the Supplier are the "Parties");
<b>"Information"</b>	has the meaning given under section 84 of the FOIA;	<b>"Regulator"</b>	means any court, governmental body or regulatory or supervisory authority having authority over all or any part of the Goods or Services being provided under the Agreement, Ebbsfleet or any member of Ebbsfleet's Group;
<b>"Intellectual Property Rights"</b>	means copyright and related rights, patents, trademarks, service marks, business names and domain names, design rights, rights in get-up, goodwill and the right to sue for passing off, database rights, semiconductor typography rights, trade secrets, rights to use and protect the confidentiality of confidential information (including know-how) and all other intellectual property rights, in each	<b>"Reporting Standard"</b>	means: (a) in relation to Scope 1, 2 and 3 Emissions of organisations and supply chains, The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard, Revised Edition 2015 (including the Scope 2 Guidance and Scope 3 Supplement), as updated from time to time; and (b) in relation to the Scope 1, 2 and 3 Emissions of

	projects, product and services, the GHG Protocol Product Life Cycle Accounting and Reporting Standard, as updated from time to time; or	1.3	If there is any conflict or inconsistency between the documents forming the Agreement, the documents shall have priority in the following order:-
	(c) such other standard as agreed by the parties from time to time in writing;		1.3.1 the Term Sheet;
			1.3.2 these Terms for the Supply of Goods and Services; and
			1.3.3 any other Appendix.
		2.	<b>SUPPLY OF SERVICES</b>
<b>"Request for Information"</b>	has the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply);	2.1	The Supplier shall, from the Commencement Date and for the duration of the Agreement, provide the Services in accordance with the Agreement.
<b>"Scope 1, 2 and 3 Emissions"</b>	means the three classifications of emissions of GHGs in the Reporting Standard;	2.2	The Supplier shall meet any performance dates for the Services specified in the Term Sheet and time for performance of the Services by the Supplier is of the essence.
<b>"Services"</b>	means the services set out in the Term Sheet;	2.3	In providing the Services, the Supplier shall:-
<b>"Supplier"</b>	means the supplier identified in the Term Sheet;	2.3.1	co-operate with Ebbsfleet and comply with all instructions of Ebbsfleet;
<b>"Supplier Personnel"</b>	means all employees, officers, staff, other workers, agents and consultants of the Supplier or the Supplier's Group and any of their subcontractors who are engaged in the supply of the Goods and/or Services from time to time;	2.3.2	perform the Services with reasonable care and skill in accordance with generally recognised commercial practices and standards in the industry for similar services;
		2.3.3	use personnel who are suitably skilled and experienced to perform tasks assigned to them;
		2.3.4	ensure that the Services and Deliverables conform with all descriptions and specifications set out in the Term Sheet and are fit for any purpose made known by Ebbsfleet;
		2.3.5	provide all equipment, tools and vehicles and such other items as are required to provide the Services;
<b>"Term Sheet"</b>	means the term sheet to which these terms for the supply of Goods and Services are appended and which sets out the project specific details; and	2.3.6	obtain and at all times maintain all necessary licences and consents to provide the Services, and comply with all Applicable Laws;
<b>"Total Emissions"</b>	means the sum of the Supplier's Scope 1, 2 and 3 Emissions, in each case arising out of the performance of its obligations under this Agreement during the relevant Reporting Period;	2.3.7	comply with all Ebbsfleet Policies, health and safety rules and regulations and any other security requirements which are notified to it by Ebbsfleet; and
<b>"Warranty Period"</b>	means the warranty period set out in the Term Sheet.	2.3.8	hold all Ebbsfleet Materials in safe custody at its own risk, maintain the Ebbsfleet Materials in good condition until returned to Ebbsfleet, and not dispose or use the Ebbsfleet Materials other than in accordance with Ebbsfleet's written instructions or authorisation.
1.2	Any reference to any statute, instrument, directive or statutory provision shall be construed as a reference to the same as from time to time amended, modified, replaced or re-enacted.	2.4	Title in all Deliverables shall pass to Ebbsfleet as and when paid for or delivered (whichever is earlier) save that risk in Deliverables which are being installed as part of the Services shall pass as and when the Deliverables are installed (where relevant) and/or under Ebbsfleet's control.

- 2.5 The Supplier warrants that the Deliverables shall, for a period of [12] months after they have been put into service/been used in the performance of the Services (whichever is later) conform in all respects with the agreed specification and the Agreement, be free from defects in materials and workmanship and also be fit for the Ebbsfleet purpose made known to the Supplier.
- 2.6 The Supplier warrants and represents on an ongoing basis that:-
- 2.6.1 the Services will be performed in such a way as not to cause any fault or malfunction in any systems or software of Ebbsfleet and so as not to cause any interruption to the business processes of Ebbsfleet (other than any agreed and unavoidable interruption which is required in order to perform the Services in accordance with the Agreement);
- 2.6.2 it will not introduce any viruses onto Ebbsfleet's systems while performing the Services; and
- 2.6.3 if any software is being provided to Ebbsfleet as part of the Services, that:-
- (a) the software and the media on which it is delivered will be free from viruses and other malicious code;
- (b) the media on which the software is delivered will be free from defects; and
- (c) it has not included or used any open source software or any libraries or code licensed from time to time under the General Public Licence (as those terms are defined by the Open Source Initiative or the Free Software Foundation) or anything similar in, or in the development of, the software, nor does the software operate in such a way that is it compiled with or linked to any of the foregoing.
- 3. SUPPLY OF GOODS**
- 3.1 The Supplier shall supply the Goods to Ebbsfleet in accordance with the Agreement.
- 3.2 The Supplier shall ensure that the Goods:-
- 3.2.1 correspond with their description and any applicable Goods Specification;
- 3.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier and/or made known to the Supplier by Ebbsfleet, expressly or by implication, and in this respect Ebbsfleet relies on the Supplier's skill and judgment;
- 3.2.3 be free from defects in design, materials and workmanship and remain so for the Warranty Period; and
- 3.2.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.3 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Goods.
- 3.4 Ebbsfleet shall have the right to inspect and test the Goods at any time before delivery.
- 3.5 If following such inspection or testing Ebbsfleet considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clause 3.1, Ebbsfleet shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.6 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Agreement, and Ebbsfleet shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 4. DELIVERY OF GOODS**
- 4.1 The Supplier shall ensure that:-
- 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
- 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date Ebbsfleet placed the order, the order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 The Supplier shall deliver the Goods:-
- 4.2.1 on the Goods Delivery Date and time shall be of the essence in this regard;
- 4.2.2 to the Goods Delivery Location, or such other location as instructed by Ebbsfleet before delivery; and
- 4.2.3 during Ebbsfleet's normal hours of business on a Business Day, or as instructed by Ebbsfleet,
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Goods Delivery Location.

- 4.4 The Supplier shall not deliver the Goods in instalments without Ebbsfleet's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Ebbsfleet to the remedies set out in Clause 5.1.
- 4.5 Title and risk in the Goods shall pass to Ebbsfleet on completion of delivery.
- 5. EBBSFLEET REMEDIES**
- 5.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date and/or in accordance with the Agreement, Ebbsfleet shall, without limiting its other rights or remedies, have one or more of the following rights:-
- 5.1.1 to terminate the Agreement with immediate effect by giving written notice to the Supplier and without liability to the Supplier;
- 5.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- 5.1.3 to recover from the Supplier any costs incurred by Ebbsfleet in obtaining substitute goods and/or services from a third party;
- 5.1.4 where Ebbsfleet has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
- 5.1.5 to be indemnified for any additional costs, loss or expenses incurred by Ebbsfleet which are in any way attributable to the Supplier's failure to meet such dates or otherwise comply with the Agreement.
- 5.2 Without prejudice to Clause 5.1, if the Goods are not delivered by the Goods Delivery Date, Ebbsfleet may, at its option, claim or deduct Liquidated Damages.
- 5.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in Clause 3, then, without limiting its other rights or remedies, Ebbsfleet shall have one or more of the following rights, whether or not it has accepted the Goods:-
- 5.3.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- 5.3.2 to terminate the Agreement with immediate effect by giving written notice to the Supplier;
- 5.3.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 5.3.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 5.3.5 to recover from the Supplier any expenditure incurred by Ebbsfleet in obtaining substitute goods from a third party; and
- 5.3.6 to be indemnified for any additional costs, loss or expenses incurred by Ebbsfleet arising from the Supplier's failure to supply Goods in accordance with Clause 3.
- 5.4 The Agreement shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 5.5 Ebbsfleet's rights under the Agreement are in addition to its rights and remedies implied by statute and common law.
- 6. EBBSFLEET'S OBLIGATIONS**
- Ebbsfleet shall provide the Supplier with reasonable access at reasonable times to those premises required for the performance of the Services and such assistance and information as the Supplier may reasonably request and Ebbsfleet considers reasonably necessary for the purpose of providing the Services.
- 7. CHARGES AND PAYMENT**
- 7.1 The Charges shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods and Services and shall be invoiced at the intervals set out in the Term Sheet. Each invoice shall include such supporting information required by Ebbsfleet to verify the accuracy of the invoice and comply with the invoicing requirements in the Term Sheet.
- 7.2 Unless stated otherwise in the Term Sheet, Ebbsfleet shall pay the undisputed invoiced amounts within 30 days of the date of an invoice properly raised in accordance any formalities set out in the Term Sheet.
- 7.3 If Ebbsfleet disputes any element of an invoice issued by the Supplier, the Supplier shall issue a credit note for that invoice and raise a revised invoice for the undisputed element. Ebbsfleet shall pay the revised invoice in accordance with the Agreement.
- 7.4 If Ebbsfleet fails to pay any undisputed amount due under the Agreement (other than due to a bona fide dispute as to payment), the Supplier shall have the right to charge interest on the overdue amount at the rate of 2% per cent per annum above the Bank of England base rate from time to time, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 7.5 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow Ebbsfleet to inspect such records at all reasonable times on request for the term of the

Agreement and six (6) years after its termination or expiry.

## 8. INTELLECTUAL PROPERTY RIGHTS

8.1 In respect of the Goods and the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Ebbsfleet, it will have full and unrestricted rights to sell and transfer all such items to Ebbsfleet.

8.2 The Supplier assigns (by way of both present and future rights) to Ebbsfleet, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the output of the Services (including any Deliverables) in each case with effect from their creation.

8.3 If the Supplier needs to use any of the Intellectual Property Rights assigned to Ebbsfleet in the performance of the Agreement and/or which belong to Ebbsfleet, Ebbsfleet grants to the Supplier a non-exclusive, non-transferable, royalty free and revocable licence to use such Intellectual Property Rights solely in order to perform the Agreement. Any licence granted under this Clause shall automatically terminate when the Agreement terminates/expires.

8.4 The Supplier shall procure irrevocable waivers of any moral rights in the output of the Services (including the Deliverables) to which any individual is now, or may be at any future time, entitled.

8.5 If in performing the Agreement the Supplier uses any Intellectual Property Rights owned by itself or a third party (other than Ebbsfleet), the Supplier shall grant to Ebbsfleet or shall procure for it a perpetual, non-exclusive, royalty free, transferable licence to use, develop, support or maintain such Intellectual Property Rights in order to enable Ebbsfleet to secure the full benefit of the Goods and the Services and the rights assigned to it under this Clause. This shall include for the completion and use of the output of the Services and the Goods for the purposes of providing services to its clients.

8.6 The Supplier shall indemnify and keep Ebbsfleet indemnified from and against any and all losses, costs, expenses, claims and other liabilities incurred by Ebbsfleet as a result of any claim that the use by Ebbsfleet of the Goods, Deliverables, the Services and/or Intellectual Property Rights for which the Supplier has secured or granted a licence in accordance with this Clause, infringes the rights of a third party.

8.7 Any use of the name and/or logo of Ebbsfleet is subject to the prior written consent of Ebbsfleet and compliance with the relevant Ebbsfleet guidelines.

8.8 All Ebbsfleet Materials are the exclusive property of Ebbsfleet.

## 9. DATA PROTECTION

9.1 For the purpose of this Clause 9, "**Controller**", "**Process**", "**Processing**", and "**Personal Data**"

shall have the meanings given to them in the Data Protection Laws.

9.2 Each Party shall Process the other Party's contact data (in its capacity as a Controller) in order to (as appropriate): (a) administer and discharge its obligations under this Agreement; (b) compile, dispatch and manage the payment of invoices relating to this Agreement; (c) manage this Agreement and resolve any disputes relating to it; (d) respond and/or raise general queries relating to this Agreement; and (e) comply with their respective obligations.

9.3 Each Party shall Process the other Party's contact data for the purposes set out in Clause 9.2 in accordance with that Party's relevant privacy policy. Each Party may be required to share the other party's contact data referred to in Clause 9.2 with its affiliates and other relevant parties, within or outside the country of origin, in order to carry out the activities specified in Clause 9.2, but in doing so, each Party will ensure that the sharing and use of the contact data complies with the applicable Data Protection Laws.

9.4 Save as set out in Clauses 9.2 and 9.3 the Parties do not envisage that they will Process any Personal Data for or on behalf of the other, under or in connection with this Agreement. Where and to the extent that in undertaking the obligations set out in this Agreement, either Party anticipates that the other will process any Personal Data for and on its behalf, it shall notify the other and the parties shall agree a variation to this Agreement to incorporate appropriate provisions in accordance with Article 28 of the GDPR, or as otherwise required by the Data Protection Laws. In the event such amendments are not able to be agreed, the Parties acknowledge and agree that no further Processing of the Personal Data under this Agreement will be carried out until such variation has been agreed and executed.

## 10. CONFIDENTIALITY AND FREEDOM OF INFORMATION

10.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party or its Group, unless permitted by Clause 10.2. No Party shall use any other Party's confidential information for any purpose other than to perform the Agreement.

10.2 Each Party may disclose the other Party's confidential information:-

10.2.1 to its employees, officers, representatives or advisers who need to know such information to carry out the Party's obligations under the Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this Clause 10; and

10.2.2	as may be required by law, court order or any governmental or regulatory authority.		alleged MSA Offence or prosecution under the MSA; and
10.3	The Supplier shall only use data supplied to it by or on behalf of Ebbsfleet for the purposes of performing the Agreement and shall not alter or delete it without Ebbsfleet's consent. The Supplier shall comply with any IT and data security requirements notified to it by Ebbsfleet from time to time.	11.1.2	it will comply with the MSA.
10.4	The Supplier shall indemnify and keep Ebbsfleet indemnified from and against any and all losses, costs, expenses, claims and other liabilities incurred by Ebbsfleet as a result of any breach of Clause 10.3 by the Supplier.	11.2	Any breach by the Supplier of this Clause 11 will constitute a material breach which is incapable of remedy and Ebbsfleet will have the right to terminate the Contract immediately in accordance with Clause 16.
10.5	The Supplier shall, at any time on the request of Ebbsfleet, return all confidential information and/or data to Ebbsfleet and/or permanently delete the same (where possible) from its systems, including any back up copies.	12.	<b>ANTI-BRIBERY</b>
10.6	The Supplier shall notify Ebbsfleet within 48 hours of receiving a Request for Information.	12.1	Both Parties shall comply with all Bribery Law. Neither Party shall place the other in breach of the Bribery Law.
10.7	As soon as reasonably practicable and in any event within 5 Working Days of a request from Ebbsfleet, the Supplier shall provide all necessary assistance and cooperation as reasonably requested by Ebbsfleet to enable Ebbsfleet to comply with its obligations under the FOIA and Environmental Information Regulation.	12.2	Both Parties shall maintain in place throughout the term of the Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Bribery Law, and will enforce them where appropriate. Where requested, both Parties shall promptly answer reasonable enquiries relating to those policies and procedures.
10.8	The Supplier acknowledges that Ebbsfleet may be required under the FOIA and Environmental Information Regulations to disclose Information without consulting or obtaining consent from the Supplier. Ebbsfleet shall take reasonable steps to notify the Supplier of a Request for Information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations.	12.3	The Supplier shall promptly report to Ebbsfleet any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Agreement.
11.	<b>MODERN SLAVERY</b>	12.4	The Supplier shall ensure that any of the Supplier Personnel who perform Services or provide Goods in connection with the Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause (" <b>Applicable Bribery Terms</b> "). The Supplier shall be responsible for the observance and performance by the Supplier Personnel of the Applicable Bribery Terms, and shall be directly liable to Ebbsfleet for any breach by such persons of any of the Applicable Bribery Terms.
11.1	The Supplier undertakes, warrants and represents that:	12.5	Breach of this Clause shall be deemed a material breach and not capable of remedy.
11.1.1	neither it nor any of the Supplier Personnel:	12.6	For the purpose of this Clause, the defined terms shall have the meaning under the Bribery Law. In the event of any conflict or inconsistency between the Bribery Act 2010 and other Bribery Laws, the Bribery Act 2010 shall prevail.
	(a) have committed an offence under the MSA (an " <b>MSA Offence</b> "); or	12.7	In order to determine the Supplier's compliance with this Clause, Ebbsfleet shall have the right to inspect the Supplier's records such as travel and entertainment expenses and other disbursements incurred on behalf of Ebbsfleet or in the course of delivering the Services or providing the Goods.
	(b) have been notified that they are subject to an investigation relating to an alleged MSA Offence or prosecution under the MSA; or	12.8	Any breach by the Supplier of this Clause 11 will constitute a material breach which is incapable of remedy and Ebbsfleet will have the right to terminate the Contract immediately in accordance with Clause 16.
	(c) are aware of any circumstances within their supply chain that could give rise to an investigation relating to an	13.	<b>ANTI TAX EVASION FACILITATION</b>
		13.1	The Supplier will ensure that it will not by any act or omission commit, or cause, facilitate or contribute to the commission by any person of a

- Corporate Failure to Prevent Offence, a UK Tax Evasion Offence, or a Foreign Tax Evasion Offence as each of those terms (and "associated with") is defined in: (i) Part 3 of the Criminal Finances Act 2017 or any similar or equivalent Applicable Law in any other relevant jurisdiction, and (ii) and guidance published under the same.
- 13.2 The Supplier warrants and represents that neither itself, nor to the best of its knowledge, information and belief, the Supplier Personnel have:
- 13.2.1 been investigated in connection with, or charged with having committed or facilitated the commission of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence;
- 13.2.2 received any court orders, warrants, oral or written notices from a government prosecuting authority concerning any actual or alleged violation by itself or the Supplier Personnel of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence; or
- 13.2.3 received any report or discovered any evidence suggesting that itself or the Supplier Personnel committed or facilitated the commission of any UK Tax Evasion Offence or any Foreign Tax Evasion Offence.
- 13.3 For the purpose of this Clause 13 "UK Tax Evasion Offence" and "Foreign Tax Evasion Offence" have the definitions given to them in (i) Part 3 of the Criminal Finances Act 2017 or any similar or equivalent Applicable Law in any other relevant jurisdiction, and (ii) and guidance published under the same; and "Corporate Failure to Prevent Offence" means an offence under section 45 and/or section 46 of CFA 2017 and any other Applicable Laws in relation to preventing the facilitation of tax evasion.
- 13.4 The Supplier will immediately notify Ebbsfleet as soon as it becomes aware of a breach or possible breach of any of the requirements in this Clause 13.
- 13.5 Any breach by the Supplier of this Clause 13 will constitute a material breach which is incapable of remedy and Ebbsfleet will have the right to terminate the Contract immediately in accordance with Clause 16.
14. **CLIMATE CHANGE**
- 14.1 The Supplier acknowledges and understands Ebbsfleet's and UK Government's Net Zero Target.
- 14.2 The Supplier shall perform the Services in such a manner as to reduce the Total Emissions as soon as reasonably possible in order to contribute to efforts to limit global temperature increase to 1.5 degrees Celsius above pre-industrial levels.
15. **LIABILITY**
- 15.1 Nothing in the Agreement shall limit or exclude the liability of either Party for:-
- 15.1.1 death or personal injury resulting from its negligence;
- 15.1.2 fraud or fraudulent misrepresentation;
- 15.1.3 any indemnities within the Agreement;
- 15.1.4 breach of any obligations of confidentiality owed to the other Party;
- 15.1.5 breach of any obligations under Clause 11; and/or
- 15.1.6 the deliberate default or wilful misconduct of that Party.
- 15.2 Subject to Clause 15.1:-
- 15.2.1 neither Party shall be liable, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any special, indirect or consequential damage or loss arising in connection with the Agreement; and
- 15.2.2 each Party's liability is limited to the amounts set out in the Term Sheet.
- 15.3 The Supplier shall take out and maintain the insurance policies detailed in the Term Sheet along with any other insurances required by any Applicable Law from time to time to a minimum amount as determined by Ebbsfleet from time to time. The Supplier shall provide evidence that it has done the same and paid all premiums as and when requested by Ebbsfleet.
16. **TERMINATION**
- 16.1 Without limiting its other right or remedies, Ebbsfleet may terminate the Agreement:-
- 16.1.1 in respect of the supply of Services, by giving the Supplier not less than seven (7) days' notice in writing, unless stated otherwise in the Term Sheet; and
- 16.1.2 in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier. If Ebbsfleet invokes its right under this Clause 16.1.2 it shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination (provided such costs are evidenced to the satisfaction of Ebbsfleet), but such termination shall not include loss of anticipated profits or any consequential loss.
- 16.2 In any of the circumstances in the Agreement in which a Party may terminate the Agreement, that Party may terminate the Agreement solely in respect of the Goods, or the Services, and the Agreement shall continue in respect of the remaining supply.
- 16.3 Either party may immediately terminate the Agreement without payment of compensation or other damages caused to the other solely by such termination by giving notice in writing to the

Supplier if any one or more of the following events happens:-

- 16.3.1 the other commits a material breach of any of its obligations under the Agreement which is incapable of remedy; or
- 16.3.2 the other fails to remedy, where it is capable of remedy, or persists in any breach of any of its obligations under the Agreement after having been required in writing to remedy or desist from such breach within a period of 30 days.
- 16.4 Ebbsfleet shall be entitled to terminate the Agreement immediately by written notice to the Supplier if:-
  - 16.4.1 the Supplier is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
  - 16.4.2 the Supplier becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
  - 16.4.3 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
  - 16.4.4 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
  - 16.4.5 the Supplier calls a meeting for the purpose of passing a resolution to wind itself up, or such a resolution is passed;
  - 16.4.6 the Supplier presents, or has presented, a petition for a winding up order;
  - 16.4.7 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Supplier;
  - 16.4.8 the Supplier makes any voluntary arrangement with its creditors or becomes subject to an administration order;
  - 16.4.9 the Supplier has an administrator appointed in respect of it or is subject of an application for an administration filed at any court or a notice of intention to appoint an administrator given to any person;
  - 16.4.10 the Supplier goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on that other party under the Agreement);
  - 16.4.11 the Supplier ceases, or threatens to cease, to carry on business; or
  - 16.4.12 the Supplier suffers or undergoes any procedure analogous to any of those specified in Clause 16.4.1 to 16.4.11 (inclusive) above or any other procedure

available in the country in which the Supplier is constituted, established or domiciled;

- 16.4.13 takes any steps in anticipation of, or has no realistic prospect of avoiding, any event or procedure specified in Clause 16.4.1 to 16.4.12;
- 16.4.14 the Supplier is the subject of any change of control (as defined in section 1124 of the Corporation Taxes Act 2010);
- 16.4.15 the Supplier ceases to hold any required Regulator authorisation or the benefit of any licences, approvals, permissions, authorisations or consents necessary for it to comply with its obligations under the Agreement are suspended, revoked or cancelled; or
- 16.4.16 the Supplier (or any of its sub-contractors) does anything which in the opinion of Ebbsfleet is likely to damage its reputation and goodwill.

## 17. CONSEQUENCES OF TERMINATION

17.1 On termination of the Agreement for any reason, the Supplier shall comply with any specific termination activities identified in the Term Sheet and, in any event, immediately deliver to Ebbsfleet or destroy (on the instruction of Ebbsfleet):-

- 17.1.1 any and all Ebbsfleet Materials;
- 17.1.2 all copies of confidential information and data provided by or on behalf of Ebbsfleet for the Agreement; and
- 17.1.3 all information, data and specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to Ebbsfleet (to the extent that they have not already done so under the other terms of the Agreement).
- 17.2 On termination of the Agreement the Supplier shall deliver to Ebbsfleet any Goods which have been ordered by Ebbsfleet prior to termination but not yet delivered.
- 17.3 Ebbsfleet shall immediately pay all outstanding invoices of the Supplier in accordance with the terms of this Agreement.
- 17.4 If any Charges have been paid in advance for Goods and/or Services not provided by the Supplier as at the termination date, the Supplier shall promptly repay to Ebbsfleet all such monies.
- 17.5 The Supplier shall provide access to Ebbsfleet and any replacement supplier for up to 12 months after the expiry or termination of the Agreement to such information relating to the Agreement as remains in the Supplier's possession or control and such members of the Supplier's team as have been involved in the performance of the

- Agreement and who are still employed by the Supplier. This assistance shall be provided free of charge if the Agreement is terminated under Clause 17.5 or 17.6 and, in all other cases, at fees to be agreed by the Parties.
- 17.6 On any termination or expiry of the Agreement the accrued rights and liabilities of the Parties as at termination, and all Clauses which are expressly or by implication to survive termination or expiry, shall survive and continue.
18. **GENERAL**
- 18.1 Neither Party shall be liable for any delay or failure in performing its obligations under the Agreement as a result of reasons beyond its reasonable control provided that it informs the other Party as soon as possible of the event and takes all reasonable steps to resume performance of its obligations as soon as possible and to mitigate the effects of the unforeseen event.
- 18.2 Neither Party may assign, novate, transfer or subcontract any of its rights, benefits or obligations under the Agreement without the prior written consent of the other Party, provided that Ebbsfleet may assign, novate, transfer or subcontract its rights and obligations under the Agreement to another member of its Group.
- 18.3 Failure to exercise, or any delay in exercising, any right or remedy under the Agreement, or at law or equity, shall not be a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 18.4 If any provision of the Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal and enforceable.
- 18.5 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, make any party the agent of another Party, nor authorise any Party to enter into commitments for or on behalf of the other Party.
- 18.6 Each Party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, and/or procure the execution and delivery of all documents and doing of all such things as required to give effect to the Agreement and the transactions contemplated by it.
- 18.7 A notice required to be given under the Agreement shall be in writing and shall be:-  
18.7.1 delivered personally; or  
18.7.2 sent by pre-paid first-class post or recorded delivery; or  
18.7.3 sent by commercial courier.
- 18.8 to the Party required to receive the notice at its address set out in the Term Sheet marked for the attention of the persons set out in the Term Sheet.  
A notice shall be deemed duly received: (i) if delivered personally, when left at the address and for the contact referred to in Clause 18.8; or (ii) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or (iii) if delivered by commercial courier, on the date and at the time the courier's delivery receipt is signed.
- 18.9 The Supplier acknowledges that Ebbsfleet may appoint an auditor during the term of the Agreement and for 12 months thereafter on reasonable notice to conduct periodic audits (such periods to be determined by Ebbsfleet) of the Supplier's total provision of Goods and/or Services.
- 18.10 The Agreement is the entire agreement between the Parties, superseding all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to the subject matter.
- 18.11 A variation of the Agreement shall not be effective unless in writing and signed by both Parties (and their authorised representatives).
- 18.12 Only the Parties shall have any rights under or in connection with the Agreement.
- 18.13 This Agreement and any issues or dispute arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statutory regulation or otherwise) shall be construed in accordance with English law and the Parties hereby submit to the exclusive jurisdiction of the English Courts.

## Appendix 2: Specification

Ebbfleet Development Corporation has appointed Whistlejacket London to provide support for a wide range of the Corporation's marketing ambitions.

This project will operate on a call down basis for tasks when required by the Corporation. There is no minimum value for this contract.

The Corporation has engaged Whistlejacket London in a call-off agreement in which the Corporation will place orders for design services as needed throughout the contract period. There is no minimum value for the contract.

### **Indicative design projects include, but are not limited to:**

- Seasonal Ebbfleet Living magazines
- A range of posters and flyers for community and commercial stakeholders
- Multi page marketing booklets
- Corporate documentation
- Event & promotion materials, such as signage and pull up banners

Upon identifying the need for works, the Corporation will submit a brief to the Supplier, outlining the requirements and deadline for works to be completed. The Supplier will be required to submit their proposal outlining the proposed days of work and fee to complete the task, in accordance with the daily fees provided in document **Whistlejacket EDC 5058 Annex D – Pricing Schedule Clarification V1 18.09.24**


Works will then commence upon acceptance of the proposal. Specific detail pertaining to the delivery timescales and format of each task will be outlined in individual task briefs, along with any additional requirements that may be relevant to the task, and agreed by both parties prior to commencement.

Further information on the delivery and performance of the contract can be found in submission document: **EDC\_5058\_Creative and Graphic Design Services\_Whistlejacket\_Quality Submission.**

### **Appendix 3: Social Value**

Whistlejacket's commitment to Social Value will be addressed in line with the document provided and via the Social Value Portal and can be found in document: **EDC\_5058\_Creative and Graphic Design Services\_Whistlejacket\_RFQ Response For Social Value\_Completed.docx**

Whistlejacket London will work with the Corporation to identify and nominate a local group, in which Whistlejacket London will give them a complete brand package. Whistlejacket London have put a value to that support against the rates submitted in the bid of [REDACTED].

Whistlejacket London will allocate and deliver a minimum of the equivalent of 29 days' work across the Whistlejacket team, with commitment to the following indicative outputs (as a minimum):

- Logo
- Colour palette
- Typeface
- Messaging
- Suite of images (10 minimum)
- Graphic design elements – including iconography and illustration styles
- Collateral templates – such as brochure, social media assets and poster templates

Whistlejacket will work with the Corporation to identify and refine the delivery of the above commitments, and will provide updates on their progress via the Social Value Portal and to the Corporation by way of quarterly updates.

Whistlejacket London will be expected to deliver their Social Value Commitments within 12 months of project commencement.