

**INDEPENDENT AGENCY AGREEMENT  
PHOTOGRAPHS & EDITORIAL TEXT  
SEASON 2020/2021**



**DATE OF AGREEMENT**

**2020**

**PARTIES**

**A FOOTBALL DATACO LIMITED ("DataCo")** of Brunel Building, 57 North Wharf Road, London, W2 1HQ acting as duly authorised agent for and on behalf of each and all of **THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED** of Brunel Building, 57 North Wharf Road, London, W2 1HQ (the "**FAPL**"); and **THE FOOTBALL LEAGUE LIMITED** of EFL House, 10-12 West Cliff, Preston, PR1 8HU (the "**EFL**").

**B** .....whose address is at  
..... ("**Agency**")

**SECTION B - PLEASE COMPLETE THE FOLLOWING:**

<b>Please indicate which Leagues you wish to attend.</b>	The Premier League Only	
	The English Football League (EFL) Only	
	The Premier League & The English Football League (EFL)	
<b>Please indicate who will attend Matches on your behalf.</b>	Photographers Only	
	Journalists Only	
	Both Photographers & Journalists	
<b>Has the Agency (or any of its Authorised Representatives) had any photographer, journalist or other media accreditation (whether issued by DataCo or any other entity) declined, suspended or withdrawn? If "Yes", please provide further details.</b>	Yes	
	No	

## **IT IS AGREED THAT:**

### **1. Accreditation Request Procedure**

- 1.1 The Agency must apply via i-PBS to the Home Club for an Authorised Representative to attend a Match for the purpose of taking Photographs or producing Editorial Text Reports.
- 1.2 Each Authorised Representative that attends any Match on behalf of the Agency must meet the Qualifying Criteria and hold, and must produce on demand when attending any Match, a valid UK Press Card, valid AIPS Card or a valid Premier League/English Football League Photo ID Card. If the Authorised Representative does not comply with the provisions of this clause the Agency shall procure that the Authorised Representative shall comply with the provisions of this Agreement. For the avoidance of doubt Photographs taken by (and/or Editorial Text Reports generated by) an Authorised Representative that attends a Match on behalf of the Agency pursuant to this Agreement shall, for the purposes of this Agreement, be deemed the property of the Agency and may not be submitted by the Authorised Representative to meet any Qualifying Criteria in subsequent seasons.
- 1.3 The Agency warrants to DataCo that the Agency and to the best of the Agency's knowledge and belief the Authorised Representative(s) appointed to attend a Match on its behalf have not:
- (i) at any time carried out or facilitated any unauthorised use, commercialisation or distribution (whether profitable or not) of any audio commentary, visual or audio-visual material, data, photographs or editorial text pertaining to football players or football matches; or
  - (ii) been refused an applicable journalist or other licence or Accreditation to attend any Stadium or whose licence has been terminated or (during the currency of the suspension only) suspended; or
  - (iii) is or has been a director, employee or contractor of any firm or company that has been refused an agreement to attend Matches in like terms to this Agreement or whose agreement to attend any Stadium has been terminated or (during the currency of the suspension only) suspended,

it being agreed that Agency shall not allow any such Authorised Representative (and shall procure that such Authorised Representative shall not) attend a Match if the Agency learns at the relevant time that any of the above applies in relation to an Authorised Representative. For the avoidance of doubt, to the extent that any of the provisions of this clause 1.3 applies to any Authorised Representative or proposed Authorised Representative, Agency should notify the same to DataCo and DataCo shall determine in its sole discretion whether in view of the particular factual matrix, whether that proposed Authorised Representative will be granted accreditation under the terms and conditions of this Agreement and/or whether that Authorised Representative shall have its accreditation revoked.

- 1.4 The Agency shall ensure that the Authorised Representative(s) appointed to attend a Match on its behalf shall not also attend the Match on behalf of another entity (so that, for the avoidance of doubt, an Authorised Representative shall not be entitled to attend a Match on behalf of The Agency and any other entity).

### **2. Access to Stadium**

- 2.1 The Agency acknowledges that access to the Stadium is at the Home Club's discretion and is subject to the terms and conditions contained in this Agreement.

- 2.2 Access to the Stadium is subject to compliance with the applicable Ground Regulations. In the event of any discrepancy between the provisions of this Agreement and the Ground Regulations, the provisions of this Agreement shall apply in respect of that discrepancy.
- 2.3 The Agency shall procure that whilst present in the Stadium, the Authorised Representative shall:
- (i) comply with the applicable Ground Regulations;
  - (ii) comply with the reasonable instructions of the Home Club (e.g. when pitch-side photographers must wear branded bibs supplied by the Home Club);
  - (iii) not transfer their Accreditation to any other person and shall return such Accreditation to the Home Club immediately on demand;
  - (iv) occupy only those locations stipulated for members of the press by the Home Club;
  - (v) not (nor knowingly assist or authorise any third party to) collect, collate, transmit, distribute, supply, use or otherwise communicate any commercial messages, audio commentary, visual or audio-visual material, data, photographs or editorial text, statistics or any other data whatsoever (other than Photographs and Editorial Text Reports, in each case strictly in accordance with the terms and conditions of this Agreement); and
  - (vi) shall not operate or use any equipment which is capable of recording, broadcasting, transmitting, distributing, supplying or otherwise making available (in each case by digital or other means) any audio commentary, visual or audio-visual material, data, photographs or editorial text (other than Photographs and Editorial Text Reports, in each case strictly in accordance with the terms and conditions of this Agreement), it being agreed that mobile telephones and other mobile devices are permitted within the Stadium PROVIDED THAT they are used for personal and private use only (which, for the avoidance of doubt and by way of example only, excludes publishing of such content via social networking sites).
- 2.4 The Agency shall not (and shall procure that the Authorised Representative shall not):
- (i) collect, collate, supply, distribute, use or Publish or otherwise communicate (on any medium and at any time) (save as a minor, incidental part of genuine editorial text) any match/player data or statistics generated or created by the Authorised Representative whilst at the Stadium (whether that be pre-Match, during the Match or post-Match (including without limitation during activities on the pitch after the final whistle) it being agreed that any authorised post-match activity at any post-Match conference is subject to agreement with the relevant Club;
  - (ii) collect, collate, supply, distribute, use or Publish or otherwise communicate (on any medium and at any time) any audio visual, or audio material generated or created by the Authorised Representative whilst at the Stadium (whether that be pre-Match, during the Match or post-Match (including without limitation during activities on the pitch after the final whistle));
  - (iii) assist any third party to breach any Ground Regulations, Ticket Conditions and/or Media Accreditation Terms or assist any unauthorised individual/company to gain access to the Stadium; or
  - (iv) authorise or knowingly permit any third party to do any of the acts set out in clauses 2.4(a) - (c) (inclusive) or Publish or otherwise make available any Photograph and/or Editorial Text Report other than as expressly permitted by the provisions of this Agreement.

- 2.5 In addition Agency shall procure that Authorised Representatives shall not use or Publish Photographs or Editorial Text Reports (or any part of them) in any way (other than providing the same to the Agency for use in compliance with this Agreement) including without limitation on any Authorised Representative channels on Social Networking Services or on any website owned, operated, or used by Authorised Representatives or on any channel or platform whatsoever.
- 2.6 For the avoidance of doubt, nothing in this Agreement shall in any way prevent or restrict the Agency from Publishing any photograph or editorial material concerning incidents (not forming part of the Match itself) which could reasonably be considered to be news of national or international importance provided that in these circumstances the Agency shall not Publish any such materials by way of audio-visual reporting.
- 2.7 All rights not expressly granted to the Agency are reserved to the Leagues and/or DataCo (as applicable).
- 2.8 The Agency acknowledges that it is responsible for the acts and omissions of its Authorised Representatives and for the purpose of this Agreement those acts and omissions shall be treated as if they were the acts and omissions of the Agency itself.
- 2.9 The Agency shall ensure that any Authorised Representative(s) appointed to attend a Match on its behalf have either been provided with a copy of this Agreement or been made aware of any terms that are relevant to their activities in connection with this Agreement.

### **3. Use and Reproduction of Photographs & Editorial Text Reports**

- 3.1 The Agency shall be entitled to Distribute Photographs and Editorial Text Reports to its customers for use and Publication in Printed Paper Titles and New Media Services only; PROVIDED THAT there is a written supply agreement between the Agency and the customer which incorporates (in substantially the same terms) the Conditions of Use set out in clause 4 below.

### **4. Conditions of Use**

- 4.1 The Publication of Photographs and Editorial Text Reports are subject to the following restrictions:
- (i) Where Photographs and/or Editorial Text Reports are used or Published in New Media Services:
    - (i) a maximum of 45 Photographs may be Published during that Match (together with an additional 15 Photographs during extra-time in that Match, if applicable); and
    - (ii) there are no limits on the number of Photographs and Editorial Text Reports that may be published after the conclusion of the Match;
  - (ii) Where Photographs and/or Editorial Text Reports are used or Published in Social Network Services:
    - (i) a maximum of 45 Photographs may be Published on Social Network Services during that Match; and
    - (ii) for the avoidance of doubt there is no requirement to delay the Publication of any Photographs and/or Editorial Text Reports that are Published on Social Network Services;

- (iii) Photographs and Editorial Text Reports may be Published for editorial/news reporting purposes only;
- (iv) Photographs and Editorial Text Reports may not be used or Published in Merchandise & Souvenirs;
- (v) Photographs and Editorial Text Reports may not be used or Published in (or for the purpose of promoting or advertising) or in any materials referencing or connected to any gambling service or gambling product or on accounts/channels on Social Media Services or New Media Services relating in any way to gambling services or gambling products (whether such Photographs and Text Reports are used commercially (by way of example only, promoting or advertising the gambling service or gambling product) or not). For the avoidance of doubt a gambling service or gambling product includes any free-to-play gambling style services or products;
- (vi) Photographs and Editorial Text Reports may not be used or Published in (or for the purpose of promoting or advertising) any game or competition save for a free to enter game or competition that is used as a promotional tool for NPA Member Titles and/or NPA Member's New Media Services which are bone fide editorial news services. For the avoidance of doubt, Photographs may be used in connection with NPA Member branded fantasy football competitions (e.g. "Mail Online Fantasy Football") as long as four or more Players from a minimum of 4 (four) different Clubs are featured;
- (vii) Photographs and/or Editorial Text Reports shall not be used or Published in a manner that emulates audio-visual or audio material (with the exception of products for people with visual impairment such as talking newspapers and post-match automated text to speech technology which are expressly permitted). Subject to compliance with the conditions in Schedule 2, Sequences of Stills are permitted;
- (viii) No use of Photographs or Editorial Text Reports which amounts to a continuous (or near continuous) match commentary or live (or near live) data service may be Published during the Match.
- (ix) Photographs and/or Editorial Text Reports shall not be used or Published in any website, publication or other service or product that the Agency is aware (whether via written notification from DataCo/the Leagues or otherwise) or should reasonably have been aware:
  - (i) includes any Unauthorised Match Streaming;
  - (ii) advertises or promotes (including without limitation via the inclusion of hyperlink(s)) Unauthorised Match Streaming content on another website, publication or other service or product;
  - (iii) incorporates any unauthorised use of Club/League logos or trademarks. For the avoidance of doubt, Club/League logos or trademarks accompanying or within match reports and editorial articles in newspapers (or any special supplements/magazines provided the same are not sold or distributed at point of sale separately from such newspapers) are permitted; and/or
  - (iv) incorporates any unlicensed data where such use or Publication amounts to an infringement of DataCo's/the League's intellectual property rights;
- (x) no Photosale may be made without the prior written approval of the relevant Club(s) featured in the Photograph;
- (xi) Photographs shall not be altered or manipulated by means other than (i) 'flipping', (ii) 'cropping' performed in good faith and not so as to distort the meaning or the

circumstances depicted in the Photographs, (iii) manipulation which is fun, harmless and an editorial means of telling a story, (iv) standard computerised 'enhancement' in the form of minor alterations and/or presenting a Player as employed by a Club other than the Club to which he is registered at the time of publication but only in order to anticipate the post-transfer photo call in circumstances where the Player's transfer has been officially announced or confirmed by the transferee Club; and (v) computer-generated composite Players. For the avoidance of doubt, and by way of example and not limitation, Photographs shall not be manipulated or otherwise altered so as to obscure or remove a sponsor's name or logo;

- (xii) Photographs and Editorial Text Reports may not be reproduced as part of any website, publication or other service or product that is offered, titled, described or promoted as
  - (i) a 'live' website, publication or other service or product;
  - (ii) an official Club or League website, publication or other service or product;
  - (iii) a Single Club Product/Service; and/or
  - (iv) a Single Player Product/Service.
- (xiii) Photographs shall not be used to create an endorsement or commercial association unless such an endorsement or commercial association exists;
- (xiv) The Agency shall seek to ensure that every Publication of a Photograph shall where reasonably practicable be visibly attributed to the Authorised Representative that took the Photograph or their applicable agency; and
- (xv) any Publication of Photographs or Editorial Text Reports shall incorporate unambiguous conditions of use that restrict any third party from using or reproducing Photographs or Editorial Text Reports other than for their own personal, private non-public facing use.

## **5. Agency's Own Use of Photographs and Editorial Text Reports**

- 5.1 The Agency may store and display Photographs on its business websites and in its other delivery systems during Matches and afterwards for the sole purpose of supplying Photographs to its customers for use and Publication strictly in accordance with the provisions of this Agreement. The Agency will ensure that:
  - (i) only registered users of its website/delivery system are able to access, view and download high resolution Photographs;
  - (ii) non-registered users of its website/delivery system are only able to view low resolution (i.e. 72 dpi) Photographs and such low resolution Photographs must also contain a watermark that obscures a prominent element of the Photograph (e.g. the face of a player).
- 5.2 The Agency may use or Publish Editorial Text Reports and/or Photographs in advertising and marketing materials for its own services in each case provided that four or more Players from a minimum of 4 (four) different Clubs are featured in that execution.

## **6. Use of Photographs by Clubs & Leagues**

- 6.1 Subject to the payment of a reasonable handling fee, the Agency will permit and/or procure access to, sight of, or a print of, any Photograph promptly upon receipt of a written request from DataCo, either League or any Club. Such right of access to the Photographs does not

imply any right of reproduction and there is no obligation on the Agency to preserve the Photographs.

## **7. Term & Termination**

7.1 This Agreement shall commence on the date of execution and subject to earlier termination shall expire at the end of 2020/21 football season (including any play off matches) ("**Term**").

7.2 Either party shall be entitled to terminate this Agreement immediately by written notice to the other in the event that:

- (i) the other party commits a material breach (subject to the provisions of clause 8(Dispute Between the Agency's Customer and DataCo/the Leagues), following conclusion of the dispute resolution procedure) and the breach cannot be remedied; and/or
- (ii) the other party fails to remedy any other breach of any other term of this Agreement which is capable of remedy within 20 working days of being given notice to do so; and/or
- (iii) the other party is declared bankrupt or enters into any arrangement or compound with its creditors or a petition is presented for its winding up or a resolution is passed for its winding up or enters into liquidation, administration, receivership or company voluntary arrangement or appears in the other party's reasonable opinion unable to pay its debts as and when they fall due.

7.3 Termination or expiry of this Agreement will be without prejudice to any rights or liabilities of either party that have accrued prior to such termination.

## **8. Dispute Between the Agency's Customer and DataCo/the Leagues**

8.1 After first having followed the process set out in clause 9, if DataCo and/or the League(s) serve written notice on an Agency stating that it/they believe that one or more of the Agency's customers (which term shall include a customer of one of the Agency's appointed sub-agents or wholesalers) has failed to comply with the Conditions of Use and, if applicable, that such failure has been persistent or flagrant ("**Customer Breach Notice**") then within five (5) days:

- (i) If the Customer Breach Notice is accepted, the Agency will follow the procedure set out in clause 8.2 below; or
- (ii) If the Agency disagrees with the Customer Breach Notice, either party may refer the dispute to the Dispute Resolution Panel in accordance with clause 8.3 below.

8.2 If the Agency accepts the Customer Breach Notice, or follows the recommendation of the Dispute Resolution Panel (under clause 8.4 below) then:

- (i) the Agency shall immediately notify the relevant customer of the alleged failure to comply with the Conditions of Use and shall require such customer to remedy the alleged failure within fourteen (14) days;
- (ii) if the customer fails to remedy such alleged failure in accordance with 7.2(a) the Agency shall within seven (7) days either:
  - (i) discontinue the supply of Photographs and/or Editorial Text Reports to that customer; or
  - (ii) assign to DataCo and/or the League(s)) the right to issue and conduct legal proceedings (and retain the proceeds from such litigation) to secure the

removal of Photographs and/or Editorial Text Reports that have been supplied by the Agency to that customer.

**PROVIDED THAT** if the Dispute Resolution Panel determines that such failure has been persistent or flagrant, the Agency shall comply with paragraphs 8.2(ii)(i) and 8.2(ii)(ii).

- 8.3 Where the Agency has a dispute about the Customer Breach Notice it shall be entitled to refer such matter for adjudication by the Dispute Resolution Panel. Such referral must be made in writing by the Agency within the period specified in clause 8.1 ("**Referral Notice**").
- 8.4 The Dispute Resolution Panel shall meet monthly to consider any Referral Notices served and shall be entitled to conduct its proceedings in any manner it deems appropriate. If there are no Referral Notices, the meeting may be deferred. If there is an exceptionally urgent and material issue, the Dispute Resolution Panel may decide to meet by telephone. The Dispute Resolution Panel will issue a decision as to whether the Customer Breach Notice is valid or not.
- 8.5 If the Agency fails to follow the decision of the Dispute Resolution Panel within 5 days following notification, then DataCo/the Leagues may request and in which case the Agency shall assign to DataCo and/or the League(s) the right to issue and conduct legal proceedings (and retain the proceeds from such litigation) to secure the removal of Photographs and/or Editorial Text Reports that have been supplied by the Agency to that customer (and if the proviso to clause 8.2 above applies discontinue the supply of Photographs and/or Editorial Text Reports to the relevant customer).
- 8.6 Failure on the part of the Agency to comply with the provisions of clause 8 shall entitle DataCo/the Leagues to terminate this Agreement immediately by written notice to the Agency.

## **9. Content Identification Process**

- 9.1 Before serving the Customer Breach Notice, DataCo and/or the League(s) must fulfil the process of identification of the content in accordance with this clause 9.
- 9.2 Promptly upon request from DataCo/the Leagues in the form of the Content Identification Notice (as defined in clause 9.3 below) (and in any event within five (5) days following receipt of such request) the Agency shall confirm whether or not:
- (i) an identified user of Photographs/Editorial Text Reports is a customer of the Agency or the Agency's sub-agents/wholesalers;
  - (ii) a particular Photograph is owned by the Agency or the Agency's sub-agents/wholesalers; and/or
  - (iii) a particular Photograph was supplied by the Agency or the Agency's sub-agents/wholesalers.
- 9.3 A Content Identification Notice must include the following information to allow the content identification process to happen:
- (i) Screenshots, URLs, AV files of alleged breach;
  - (ii) Details of suspected date and occasion picture was taken;
  - (iii) Details of individuals and organisations accredited for the suspected event;
  - (iv) Information about which photographers were located in a position to take the picture; and



- (v) Any other occasions on which the picture has been published of which Football DataCo/the Leagues are aware.
- 9.4 Failure on the part of the Agency to respond and thereby comply with the provisions of this clause 9 and/or the supply of false or misleading information shall entitle DataCo/the Leagues to terminate this Agreement immediately by written notice to the Agency.

## 10. Warranty & Indemnity

- 10.1 The Agency hereby:
- (i) warrants that all information given by it in this Agreement is complete and accurate;
  - (ii) warrants that it has the right and authority to enter into this Agreement on behalf of itself and the Authorised Representatives; and
  - (iii) agrees that the applicable Home Club retains the sole discretion to decline any application for Accreditation.
- 10.2 The Agency warrants and undertakes that its Authorised Representatives are (and shall remain throughout the Term) covered by the necessary public liability insurance as set out in paragraph 1.28 of Schedule 1 and shall produce (or procure that the Authorised Representative shall produce) documentary evidence of such cover upon reasonable notice.
- 10.3 The Agency shall indemnify and keep indemnified each of the Leagues, DataCo and each Club ("the **Indemnified Party**") from and against any and all costs, expenses, damages and loss arising as a result of a breach by the Agency (and/or any of the Agency's Authorised Representatives) of clauses 2.4, 3 and/or 4 of this Agreement.
- 10.4 Where the Agency is liable to indemnify and/or hold harmless an Indemnified Party under clause 10.3:
- (i) the Indemnified Party shall give notice of any such claim to the Agency within a reasonable time after becoming aware of its existence;
  - (ii) the Indemnified Party shall provide to the Agency such information and assistance in relation to such claims as the Agency may reasonable require to evaluate its response, all at the Agency's cost and expense and
  - (iii) the Indemnified Party shall not make any settlement, compromise or prejudicial admission in relation to such claim without the prior consent of the Agency (such consent not to be unreasonably withheld, conditioned or delayed) and it will be deemed to be unreasonable if the Agency declines consent after having received an opinion from counsel (of 10 or more years standing with experience of the subject matter in question) who has been jointly instructed by the Agency and the Indemnified Party or (in the circumstances set out below) by the President of the Bar Council to the effect that any defence that the Indemnified Party may have to the claim will not in all the circumstances have a reasonable chance of success. In the absence of agreement between the parties within 14 days of a counsel being suggested in writing by either the Indemnified Party or the Agency to the other, either the Indemnified Party or the Agency may apply to the President of the Bar Council to forthwith appoint such counsel to provide advice under this clause 10.
- 10.5 To the maximum extent permitted by law and save in respect of clause 10.2 the Agency's liability under this clause 10 shall not exceed £100,000 per claim.

## **11. Exclusion of Liability**

- 11.1 Nothing in this Agreement shall exclude or limit any of the parties' liability for:
- (i) fraud or fraudulent misrepresentation;
  - (ii) personal injury or death caused by negligence; or
  - (iii) any other liability that cannot be excluded by law.
- 11.2 To the maximum extent permitted by law, DataCo, each of the Leagues, Club(s) and/or Stadium owners/operators shall not be liable for anything which happens to any Authorised Representatives when entering or when present in any Stadium.
- 11.3 No party shall be liable to any other for loss of profits, loss of anticipated savings, goodwill or other indirect or consequential loss, whether arising from negligence, the performance or non-performance of its obligations under this Agreement or howsoever.

## **12. Confidentiality**

- 12.1 Each party hereby undertakes to the other that, subject to clause 12.2, 12.3 and 12.4, below, it will treat the Confidential Information as confidential and will not disclose any such Confidential Information to any person and will not use such Confidential Information other than for the purposes of this Agreement or with the prior written consent of the disclosing party. In addition, neither party shall make any public announcement or press release about the execution of this Agreement without the other parties' prior written approval as to the form, content and manner thereof, which shall not be unreasonably withheld or delayed.
- 12.2 The provisions of clause 12.1 above shall not apply in respect of any disclosure of Confidential Information:
- (i) which is in the public domain other than by default of the recipient party;
  - (ii) was independently disclosed to it by a third party entitled to disclose the same; or
  - (iii) which is required by law.
- 12.3 DataCo shall be entitled to disclose any Confidential Information disclosed by Agency to the Leagues and/or Clubs
- 12.4 Nothing in this clause shall prevent:
- (i) the Agency from identifying themselves as a company accredited by DataCo; and
  - (ii) DataCo from disclosing the accreditation status of the Agency to another governing body.
- 12.5 The restrictions contained in this clause 12 shall continue to apply after the termination or expiration of this Agreement without limit in time.
- 12.6 For the avoidance of doubt, no party shall make or authorise any announcement or press release concerning this Agreement save as separately and expressly agreed in writing by both parties

## **13. Notices**

- 13.1 Any notice given under this Agreement must be in writing and served:

- (i) by hand delivery to the recipient; or
- (ii) by first class recorded delivery post addressed to the relevant party's address as specified in this Agreement, or such other address as a party may have last notified to the others in writing; or
- (iii) by email to the recipient (as notified by each party to the other on execution of this Agreement)

13.2 Any notice given pursuant to clause 13.1 is deemed to have been served:

- (i) if delivered by hand, at the time of delivery; or
- (ii) if sent by post, two clear Business Days after the date of posting; or
- (iii) if sent by email, at the time of transmission

13.3 If deemed receipt under clause 13.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. For the purpose of this clause 13.3 business hours means between 09.00 and 17.00 at the place of receipt on a Business Day.

#### **14. Suspension**

Without prejudice to its other rights and remedies, DataCo shall be entitled to suspend any and all of the Agency's rights under this Agreement (including any rights exercisable by any of the Agency's Authorised Representatives) immediately by written notice to the Agency in the event that the Agency (and any of the Agency's Authorised Representatives) is prevented, interrupted or delayed in exercising such rights by a Force Majeure Event. The suspension shall last as long as the Force Majeure Event persists or until this Agreement is terminated.

#### **15. Miscellaneous**

15.1 This Agreement shall not be deemed to constitute a partnership, agency or a joint venture between the parties hereto or an employer/employee relationship.

15.2 This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter of this Agreement and supersedes any and all previous agreements, understanding or correspondence between the parties (whether written or oral) in relation to such subject matter.

15.3 The Agency may not assign, sub-license, delegate, or transfer any of its rights or obligations under this Agreement without the prior written approval of DataCo and/or the League(s). DataCo and/or the League(s) may assign, sub-license, delegate, or transfer any of its rights or obligations under this Agreement, provided it gives prior written notice to the Agency.

15.4 Any modification or addition to this Agreement shall not be binding unless made in writing and signed by the parties hereto.

15.5 The parties shall at the request and cost of the other use all reasonable endeavours to do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to this Agreement.

15.6 No failure or forbearance of either party to exercise any right conferred or to enforce any obligation imposed by this Agreement shall be deemed to be a waiver of any such right or obligation nor operate so as to bar or limit the exercise or enforcement thereof at any time thereafter.

- 15.7 The rights and remedies arising under, or in connection with, this Agreement are cumulative and, except where otherwise expressly provided in this Agreement, do not exclude rights and remedies provided by applicable law or otherwise.
- 15.8 If at any time any term or provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any rule of law or enactment, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.
- 15.9 A person who is not a party to this Agreement will not have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 15.10 Where any approval or consent is required from the Leagues in respect of any matter under this Agreement, DataCo may validly give such consent.
- 15.11 This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement.
- 15.12 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

SIGNED for and on behalf of Football DataCo Limited

(Signature): .....

(Name): .....

(Job Title): .....

SIGNED for and on behalf of the Agency

(Signature): .....

(Name): .....

(Job Title): .....

## SCHEDULE 1 DEFINITIONS

In this agreement (**Agreement**) the following words shall have the following meanings:

- 1.1 **Accreditation** means any official documentation issued by a Home Club to an Authorised Representative for the purpose of identifying the same.
- 1.2 **Advertising & Marketing Materials** means advertising and marketing (branded solely under a newspaper title) that relates to Printed Paper Titles (paragraph 1.26(a)-(d)) in each case provided that four or more Players from a minimum of 4 (four) different Clubs are featured in that execution; or (ii) any other given execution, subject to the prior written consent of the relevant League (not to be unreasonably withheld or delayed and not to be subject to a fee) and in each case provided that four or more Players from a minimum of 4 (four) different Clubs are featured.
- 1.3 **Agency** means the agency named on page 1 of this Agreement
- 1.4 **Authorised Representative** means a photographer or journalist that attends any Match for or on behalf of the Agency.
- 1.5 **Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
- 1.6 **Conditions of Use** means those conditions governing the use and reproduction of Photographs and Editorial Text Reports set out in clause 4 of the Agreement.
- 1.7 **Confidential Information** means (i) any agreements or documents executed by the parties in connection with this Agreement; (ii) any dealings or communications between the parties concerning any matter arising out of, or in connection with this Agreement (including the appointment of any Authorised Representative pursuant to this Agreement); (iii) any disputes or governance issues relating to, or in connection with this Agreement; (iv) all information relating in any manner to the business and/or affairs of the other party which may be communicated to it under or in connection with this Agreement.
- 1.8 **Digital Radio Service** means a digital radio service where Photographs and/or Editorial Text Reports are used in a news context.
- 1.9 **Dispute Resolution Panel** means a panel formed to determine the validity and materiality of a Customer Breach Notice comprising one industry representative appointed by the Agency, one representative appointed by the Leagues and an independent chairman appointed by the representatives or, in the absence of agreement by the representatives, by the President of the Law Society.
- 1.10 **Editorial Text Reports** means articles that are generated through the attendance of Authorised Representatives at Stadia and that contain opinion and are descriptive, informative or illustrative of Match(es) or passages of play.
- 1.11 **Force Majeure Event** means an event or cause beyond the reasonable control of a party including without limitation any:(a) fire, flood, earthquake, unusually severe weather or elements of nature or acts of God, epidemics and/or pandemics; (b) war, embargo, riot, civil disorder, rebellion or revolution; (c) interruption or failure of any utility services or network, and any systemic virus; (d) acts of any public authority or imposition of any government sanction, embargo or similar action; (e) civil commotion, hostilities (whether war is declared or not), sabotage, an act of terrorism as defined in the Terrorism Act 2000; or (f) other causes beyond a party's reasonable control which, for the avoidance of doubt, shall not include any industrial dispute involving the staff or employees of either. In addition, the parties agree and

acknowledge that any act or omission of any Club and/or League caused by a Force Majeure Event shall be deemed a Force Majeure Event under this Agreement.

- 1.12 **Ground Regulations** means regulations issued from time to time governing the terms and conditions upon which any admission is granted to the Stadium and made available to the Agency upon request.
- 1.13 **Home Club** means the Club at whose Stadium any Match is or should be played, or where ground sharing is in operation, the Club whose name first appears on the relevant fixture or, in respect of any Match played at a neutral Stadium, the football authority under whose auspices the Match is organised.
- 1.14 **Interactive Television Service** means a television service with interactive content and enhancements that contains Photographs and/or Editorial Text Reports used in a news context.
- 1.15 **i-PBS System** means the internet press booking system that handles centrally all requests for Authorised Representatives to attend Matches.
- 1.16 **League** means each of the EFL and the FAPL.
- 1.17 **Match** means an association football match taking place at a Stadium in respect of which Accreditation is required by the Home Club or part thereof. For the avoidance of doubt, the definition of "Match" expressly excludes any pre-match conference, post-match conference, friendly match or other event (of whatever nature) that take place at the Stadium which are subject to separate agreement with (and separate terms and conditions of entry issued by) the Home Club
- 1.18 **Media Accreditation Terms** means terms and conditions identical (mutatis mutandis) to those contained in this Agreement that have been entered into by other media organisations or freelancers.
- 1.19 **Merchandise & Souvenirs** means any physical or virtual merchandise, memorabilia or collectible and includes without limitation collector cards and stickers, posters (when sold separately from newspapers), artists reference (other than for news/editorial purposes) packaging, calendars, clothing, cups and badges.
- 1.20 **New Media Services** means a Website Service, Wireless Telephone Service, Wireless Radio Communication Services, Digital Radio Service, Television Service and Interactive Television Service and any technology substantially similar to (or derived from) the foregoing and which may come into common usage during the Term but for the avoidance of doubt excludes Social Network Services.
- 1.21 **NPA Member** means each of the members of the Newspaper Publishers' Association from time to time.
- 1.22 **NPA Member Titles** means a newspaper, magazine or periodical Published by an NPA Member.
- 1.23 **Photograph** means a single still visual image (or information or material capable of being converted into such) captured in physical form (including 'negative'), digital form or other form of electronic storage of whatever nature, whether transient or otherwise, or in any other form whether now existing or hereafter invented, (but excluding any moving image or images and/or digital sequencing in the form of moving images of whatever nature including, but not limited to Sequences of Stills) captured by any Authorised Representative using photographic equipment while present at a Stadium.

- 1.24 **Photosale** means the making of a high quality, printed to order hard copy of a Photograph for sale to an individual consumer or any other method of supplying the same for sale including, but not limited to, any digital download of a Photograph for such purposes.
- 1.25 **Player** means any player of the Club(s) and includes any manager, coach and any personnel on the pitch or in the technical area with authorisation during the Match.
- 1.26 **Printed Paper Titles** means printed paper formats of the following:
- (a) an ordinary edition of a newspaper and/or any special supplement (which may be in magazine format) to such newspaper provided the same is not sold or distributed at point of sale separately from the said newspaper;
  - (b) a magazine or periodical publication produced at regular intervals;
  - (c) a book not devoted solely to a league, competition, division, Club, Player or Match **PROVIDED THAT** any such book must not feature material relating to only one league, competition, division, Club, Player or Match. The main title of any such book must not contain the official name of a league, club or competition;
  - (d) wraparounds and inserts for competitions contained in or attached to any newspaper;
  - (e) posters, provided that such posters:
    - (i) shall be produced in printed paper format (including newsprint and glossy paper of any size) double or single sided provided that in the case of a double sided product, the conditions set out in paragraphs (i)-(iv) of this subparagraph shall apply to each side of that product;
    - (ii) shall not give undue prominence to any Player or any Club and shall not use Photographs to create the impression of an endorsement unless such an endorsement exists;
    - (iii) shall clearly indicate the name of the publishing newspaper/magazine; and
    - (iv) shall not be sold or distributed separately from the publishing newspaper/magazine save that token/voucher redemption and reasonable postage and packaging costs are permitted.
  - (f) partworks (meaning a collectable series of items not sold separately from any newspaper/magazine and not based solely on any competition organised by a League and/or on any Player or Players and/or any fixture or fixtures any Club or Clubs has or have played or will be playing); and
  - (g) Advertising & Marketing Materials.
- 1.27 **Publish** means to use, reproduce or otherwise communicate to any person, exhibit, broadcast, transmit, include in any cable program service, post to the internet or any online system, or send by any telegraphic or telecommunication system, distribute or publish in any format whatsoever. "Publication" shall be interpreted accordingly.
- 1.28 **Qualifying Criteria** means qualifying criteria as set out below that requires a photographer (or journalist) that wishes to attend a Match held:
- (a) at an FAPL Club's Stadium as a minimum:
    - (i) to have had Published in national newspapers (or equivalent) not less than 30 action photographs (or match reports) from football matches (that took

place in the 2019/2020 season) and have received payment for each photograph (or match report) Published; and

- (ii) to be covered by an adequate public liability insurance policy with a reputable insurer to the extent of not less than £5,000,000 per claim or series of claims; or

(b) at a EFL Club's Stadium as a minimum:

- (i) to have had Published in regional newspapers (or equivalent) not less than 15 action photographs (or match reports) from football matches that took place in the 2019/2020 season and have received payment for each photograph (or match report) Published; and

- (ii) to be covered by an adequate public liability insurance policy with a reputable insurer to the extent of not less than £2,000,000 per claim or series of claims.

- 1.29 **Sequence of Stills** means a sequence of still images which comprises not less than three (3) still images in any consecutive period of 60 seconds and any other method that uses still images in a manner that imitates or suggests moving images of Matches or Players. By way of example and not limitation 10 Sequence of Stills would comprise a maximum of 10 minutes.
- 1.30 **Single Club Product/Service** means any website, publication or other service or product offered substantially on a single Club basis and includes (by way of example and not limitation) any product or service that is branded or promoted on a single Club basis and any product or service where the content is based substantially on a single Club. For the avoidance of doubt, a website shall not be deemed a Single Club Product/Service if it can be navigated via a "two click" principle (or equivalent navigation process including bookmarking/favourites) whereby users will always initially access a League based or division based directory/page located within the website and must subsequently make a second click (or equivalent navigation process including bookmarking/favourites) to select a specific Club.
- 1.31 **Single Player Product/Service** means any website, publication or other service or product offered substantially on a single Player basis and includes (by way of example and not limitation) any website, publication or other service or product that is branded or promoted on a single Player basis and any website, publication or other service or product where the content is based substantially on a single Player. For the avoidance of doubt, a website shall not be deemed a Single Player Product/Service if it can be navigated via a "two click" principle as set out in paragraph 1.30 above.
- 1.32 **Social Network Services** means general third party user communities such as Facebook and Twitter which are not primarily used to facilitate gambling, betting, gaming, data analysis, odds checking, prediction or match commentary services.
- 1.33 **Stadium** means that stadium owned, occupied or utilised by a Club and to which the public are admitted in respect of any Match.
- 1.34 **Television Service** means a television service, where Photographs and/or Editorial Text Reports are used in a news context.
- 1.35 **Ticket Conditions** means ticket conditions issued from time to time governing the terms and conditions upon which any admission is granted to the Stadium
- 1.36 **Unauthorised Match Streaming** means any communication to the public, transmission or other use of audio and/or audio-visual coverage of any Match (whether by live or near live streaming, streaming or downloading of recorded content) other than pursuant to and in



accordance with a licence granted directly or indirectly by the applicable League or as otherwise permitted by law.

1.37 **User Generated Content** means:

- (a) individual user's text comments and opinion (not amounting to continuous match commentary or data); and
- (b) individual user's photographs (provided that such photographs are not taken at or of a Match)

1.38 **Website Services** means a service offered via the physical network of interconnecting computers known as the Internet when such network delivers multimedia content, including, without limitation, text, graphics, software, audio and video identifiable by reference to a unique URI/URL (Universal Resource Indicator/Universal Resource Locator), which content is accessed by users of web browsers (for example, the browsers known as "Microsoft Internet Explorer" and "Google Chrome") through the use of the common set of, inter alia, TCP/IP protocols that contains Photographs and/or Editorial Text Reports used in a news context.

1.39 **Wireless Radio Communication Services** means a wireless radio communications system and includes 802.11, Wi-Fi, Bluetooth, Wireless LAN technologies, Hiperlan, Local Multipoint Distribution System (LMDS), Multichannel Multipoint Distribution System (MMDS), IrDA iBurst/HC-SDMA and any related, similar or derivative wireless radio communications systems (or any combination of them) that contains Photographs and/or Editorial Text Reports used in a news context but excluding any Wireless Telephone Service.

1.40 **Wireless Telephone Service** means any mobile wireless technology, which is or may be used with radio frequency spectrum in any band, to enable or facilitate transmission of textual material, data, voice, video or multimedia services to mobile devices and which includes (without limitation) wireless technology employed in General Packet Radio Services (GPRS), the Global System for Mobile Communications (GSM), Level 2 Data GSM Environment (EDGE), Code Division Multiple Access (CDMA), High Speed Circuit Switched Data (HSCSD), Personal Communications Networks (PCN), Wireless Application Protocol (WAP) and the Universal Mobile Telecommunications System (UMTS), Wideband Code Division Multiple Access (W-CDMA), Long Term Evolution (LTE) (also including E-UTRA), mobile WiMAX (802.16e, and other mobile WiMAX standards hereafter developed) and their related or derivative systems and services (or any combination of them) that contains Photographs and/or Editorial Text Reports used in a news context but excluding any Wireless Radio Communication Service.

1.41 **Interpretation**

In this Agreement, unless otherwise specified:

- (a) the list of contents and headings are for ease of reference only and shall not be taken into account in construing this Agreement;
- (b) references to this Agreement or any other document shall be construed as references to this Agreement or that other document, as amended, varied, novated, supplemented or replaced from time to time;
- (c) references to any recital, clause, paragraph or schedule are to those contained in this Agreement and all schedules to this Agreement are an integral part of this Agreement;
- (d) references to any gender includes the others and references to singular shall (unless otherwise stated) include the plural and vice versa;

- (e) references to a "person" shall be construed so as to include that person's successors in title and permitted assigns or transferees; and references to a "person" shall also be construed as including an individual, firm, partnership, trust, joint venture, company corporate, body corporate, unincorporated body, association, organisation, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality);
- (f) the words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;
- (g) "in writing" means any communication made by letter or email;
- (h) references to 'year' herein are references to a calendar year; and
- (i) references to statutory and other regulatory provisions and other codes shall be construed as references to those provisions and other codes as they may be amended, re-enacted or replaced from time to time.

## SCHEDULE 2 SEQUENCE OF STILLS

Sequences of Stills may be used and Published only on the following basis:

- 1.1 During the applicable Match:
  - (a) No Sequences of Stills may be used or Published; and
- 1.2 Following the conclusion of the applicable Match until 12 midnight immediately following the applicable Match ("1st **Permitted Period**):
  - (a) Not more than ten (10) Sequences of Stills of a Match (each comprising not more than 6 still images in any consecutive period of 60 seconds with an interval of not less than 10 seconds between each still image) may be used or Published in any consecutive period of two hours; and
- 1.3 Following the 1st Permitted Period until seven (7) days after the applicable Match:
  - (a) One or more Sequences of Stills (each comprising not more than 6 still images in any consecutive period of 60 seconds with an interval of not less than 10 seconds between each still image) may be used or Published; and
- 1.4 Seven (7) days after the applicable Match:
  - (a) One or more Sequences of Stills may be used or Published. Such Sequences of Stills may consist of more than six (6) images.
- 1.5 For the avoidance of doubt individual still images must be sourced from Photographs and cannot be sourced from audio visual footage of a Match.