

## META PLATFORMS, INC./GIPHY, INC. FINAL ORDER

### Final Order made by the Competition and Markets Authority pursuant to section 84 of the Enterprise Act 2002

#### Whereas:

1. On 15 May 2020, Facebook, Inc. through its subsidiary, Tabby Acquisition Sub, Inc., (together “**Facebook**”) completed its acquisition of Giphy, Inc. (“**Giphy**”) (the “**Merger**”).
2. On 9 June 2020 the Competition and Markets Authority (the “**CMA**”) made an Initial Enforcement Order (the “**IEO**”) pursuant to section 72 of the Enterprise Act 2002 (the “**Act**”) requiring Facebook and Giphy to remain independent and to prevent pre-emptive action. On 29 June 2021, a variation order was made to the IEO.
3. On 1 April 2021, the CMA in exercise of its duty under section 22(1) of the Act, referred the Merger, for further investigation and report (the “**Reference**”) by a group of CMA panel members (the “**Phase 2 Inquiry Group**”).
4. On 28 October 2021 Facebook changed its corporate name to Meta Platforms, Inc. (“**Meta**”) pursuant to an amended and restated certificate of incorporation filed with the Delaware Secretary of State on October 28, 2021. The only change to the company’s Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws was the change of the company’s corporate name from Facebook, Inc. to Meta Platforms, Inc..
5. On 30 November 2021 the CMA published a final report pursuant to section 38 of the Act (the “**Phase 2 Final Report**”) which concluded that:
  - a) the Merger had resulted in the creation of a relevant merger situation;
  - b) the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (“**SLC**”) in the following respects:

- (i) in the supply of display advertising in the UK due to horizontal unilateral effects arising from a loss of dynamic competition; and
    - (ii) in the supply of social media services worldwide due to vertical effects resulting from input foreclosure;
  - c) the CMA should take action to remedy the SLCs identified and any adverse effects likely to arise; and,
  - d) that Giphy be divested (the '**Phase 2 Remedy**').
6. The CMA in the Final Report and subsequent documents recognised the change of corporate name from Facebook, Inc. to Meta Platforms, Inc. References to 'Facebook' throughout were retained as the inquiry related to the acquisition of Giphy under the previous corporate name but remedial enforcement would be undertaken using the name 'Meta'.
  7. On 23 December 2021 Meta made an application to the Competition Appeal Tribunal (the '**Tribunal**') pursuant to [section 120](#) of the Act for a review of the CMA's decision in the Final Report and sought an order quashing the CMA's decisions on the basis of six grounds.
  8. Meta did not offer undertakings implementing the Phase 2 Remedy. On 29 March 2022, the CMA made an order pursuant to [section 84](#) of the Act for the purpose of remedying, mitigating or preventing the SLCs identified in the Phase 2 Final Report and any adverse effects which have resulted from, or may be expected to result from it (the '**Phase 2 Final Order**'). Pursuant to [section 72\(6\)\(a\)\(ii\)](#) of the Act, the IEO ceased to be in force on the date on which the Phase 2 Final Order was made.
  9. The Phase 2 Final Order provided that while it commenced on the day it was made, implementation of the Phase 2 Remedy would not commence until the proceedings in the Tribunal, or any associated or consequential proceedings were either concluded or no longer pursued.
  10. After a hearing in April 2022, the Tribunal's judgment was handed down on 14 June 2022 (the '**Judgment**'). In the Judgment, the Tribunal unanimously dismissed five of six of Meta's grounds of challenge but partially upheld Meta's application on one ground. The Tribunal found that excisions to the provisional findings and the Phase 2 Final Report made on confidentiality grounds were unlawful to the extent that the redacted material should have been disclosed to the affected parties to whom the CMA owed a duty to consult.

11. On 15 July 2022 the Tribunal issued an order (the '**Tribunal Order**') remitting the Reference to the CMA for reconsideration in the light of the Judgment (the '**Remittal**'). On the same day a group consisting of the same CMA panel members who constituted the Phase 2 Inquiry Group was appointed (the '**Inquiry Group**') to investigate the Reference on remittal (the '**Remittal Inquiry**').
12. On 18 July 2022 in light of the Remittal, the CMA made an interim order pursuant to [section 81](#) of the Act to prevent pre-emptive action during the Remittal and revoked the Phase 2 Final Order (the '**Interim Order**'). The Interim Order will cease to be in force on the date on which this Order is made, pursuant to [section 81\(8\)](#) of the Act. Any derogations already granted by the CMA pursuant to the IEO, the Phase 2 Final Order or Interim Order remain applicable.
13. On 19 October 2022 the CMA issued a final report on the Remittal Inquiry (the '**Final Report**') which concluded that:
  - (a) the Merger had resulted in the creation of a relevant merger situation;
  - (b) the creation of that situation has resulted, or may be expected to result, in a SLC in the following respects:
    - (i) in the supply of display advertising in the UK due to horizontal unilateral effects arising from a loss of dynamic competition; and
    - (ii) in the supply of social media services worldwide due to vertical effects resulting from input foreclosure;
  - (c) the CMA should take action to remedy the SLCs identified and any adverse effects likely to arise; and,
  - (d) that Giphy be divested (the '**Remedy**').
14. The implementation of the Remedy will be subject to among others the following safeguards:
  - (a) The CMA will need to satisfy itself of the suitability of the Potential Purchaser of the Divestment Business (see Schedule 1);
  - (b) Provisions are included in this Order for the CMA's ability to appoint a Divestiture Trustee (see Article 8).
15. On 31 October 2022 Meta advised that it did not intend to offer undertakings.

16. NOW, as Undertakings were not forthcoming, for the purpose of remedying, mitigating or preventing the SLCs identified in the Final Report and any adverse effects which have resulted from, or may be expected to result from it and in performance of its duty under [section 41](#) and in exercise of its powers under [section 84\(1\), \(2\) and \(3\)](#), [section 86\(1\) to \(5\)](#), [section 87](#) and paragraphs 2, 10, 11, 12, 13, 14, 19, 20C, 21, 22 and 24 of [Schedule 8](#) to the Act, the CMA makes the following Order:

## **1. Title, Commencement, Application and Scope**

- 1.1 The title of this Order is the 'Meta Platforms, Inc./ Giphy, Inc. Final Order 2022'.
- 1.2 The purpose of this Order is to give effect to the Final Report and this Order shall be construed accordingly. In the event of conflict between this Order and the Final Report, this Order prevails.
- 1.3 The Order applies to Meta and its subsidiaries, including for the avoidance of doubt, Giphy, and any person who is an Affiliate of Meta, and to a Monitoring Trustee, Divestiture Trustee or a Hold Separate Manager appointed or reappointed under this Order.
- 1.4 The Order comes into force on the Commencement Date.
- 1.5 The Order may be varied or revoked by the CMA under [section 84](#) of the Act.
- 1.6 The Schedules form part of this Order.
- 1.7 Any words or expressions used in this Order, or the recitals of this Order shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act and the Final Report.
- 1.8 References to recitals, paragraphs, subparagraphs and annexes are references to the recitals, paragraphs and subparagraphs of, and annexes to, this Final Order unless otherwise stated.
- 1.9 Unless the context requires otherwise, the singular shall include the plural and vice versa and references to persons includes bodies of persons whether corporate or incorporate. Any reference to a person or position includes their or its successor in title.
- 1.10 References to any statute or statutory provision shall be construed as references to that statute or statutory provisions as amended, re-enacted or modified, whether by statute or otherwise.

1.11 The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

## 2. Interpretation

2.1 In this Order:

**the Act** means the Enterprise Act 2002;

**Affiliate** means a person who is an affiliate of another person if they or their respective enterprises are to be regarded as being under common control for the purposes of [section 26](#) of the Act;

**Approved Purchaser** means any Potential Purchaser which the CMA considers to satisfy the Suitable Purchaser Criteria and approves in accordance with Article 3.5;

**Back Office Functions** includes payroll, accounting, treasury, human resources, insurance services, provision of pension benefits and all other services provided to Giphy by Meta as at the Commencement Date;

**CMA** means the Competition and Markets Authority;

**Chief Revenue Officer** means a person appointed pursuant to Schedule 6, by Giphy to develop and implement a revenue strategy for the Giphy Business;

**Commencement Date** means 6 January 2023;

**Completion Date** means the date on which the Final Disposal is implemented;

**Compliance Statement** means a statement provided by Meta and Giphy in accordance with Article 5 and Schedules 4 and 5;

**Divestment Business** means the Giphy Business acquired by Meta as a consequence of the Merger Agreement of 4 May 2020, including, for the avoidance of doubt, those matters listed in Schedule 6;

**Divestiture Trustee** means any person appointed in accordance with Article 8;

**Divestiture Trustee Mandate** means the mandate approved by the CMA given by Facebook to the Divestiture Trustee on terms specified by the CMA in directions issued to appoint a Divestiture Trustee pursuant to Article 8;

**Divestiture Trustee Obligation** means the obligation on the Divestiture

Trustee to bring about the Final Disposal of the Divestment Business;

**Facebook, Inc.** means a Delaware incorporated corporation now known as Meta Platforms, Inc.;

**Final Disposal** means the completed divestment of the Divestiture Business to an Approved Purchaser in accordance with Article 3;

**Final Report** means the report of the CMA entitled *Completed Acquisition by Facebook, Inc. (now known as Meta Platforms, Inc.) of Giphy, Inc.* published on 19 October 2022;

**GIF-related Activities** means any activities relating to the procurement, supply or development of GIF-related Content whether by or to Meta, Giphy or any third party, including (without limitation) any operational, relationship management, strategic, development, technical or back-office activities or services;

**GIF-related Content** means non-text content created or shared by users via a social media, social network or messaging platform (including GIFs, stickers (including GIF stickers), emojis, video clips, images and other micro-expression assets);

**GIF stickers** means an animated image comprised of a transparent (or semi-transparent) background which can be placed over images or text and audio stickers.

**Giphy** means Giphy, Inc.;

**Giphy, Inc.** means the wholly owned subsidiary of Meta acquired by Tabby Acquisition Sub, Inc. a wholly owned subsidiary of Meta, pursuant to the Merger Agreement of 4 May 2020;

**Giphy Business** means the business conducted by Giphy including its tangible and intangible assets, Giphy Products, senior management, employees and contractors acquired by or transferred to, as applicable, Meta as a consequence of the Merger;

**Giphy Data** means data collected, generated, or received in connection with the marketing, delivery, or use of any Giphy Product, including data owned or licensed by Giphy and any agreement to which Giphy is bound and Personal Data;

**Giphy Intellectual Property** means any and all Giphy-Owned Intellectual Property, Giphy Registered Intellectual Property and any and all Third-Party

Intellectual Property licensed to or used by Giphy which is necessary to operate the Giphy Business;

**Giphy-Owned Intellectual Property** means any and all Intellectual Property owned or purported to be owned by Giphy including all Giphy-Registered Intellectual Property acquired by Meta pursuant to the Merger Agreement of 4 May 2020;

**Giphy Products** means all products (including Software programs, mobile and web applications), technology and services (including interactive or hosted services) developed, produced, marketed, licensed, sold, distributed, published or performed by or on behalf of Giphy and all products or services currently under design or development;

**Giphy Registered Intellectual Property** means all patents, patent applications, trademarks, internet domain names wheresoever registered in the name of Giphy or its subsidiaries including any and all arising from the Giphy Products and registered in the name of Meta or its subsidiaries as at the Completion Date;

**Giphy Source Code** means collectively, any Source Code of any Giphy-Owned Intellectual Property or Giphy Products;

**Giphy Websites** means all web sites owned, operated or hosted by Giphy or its subsidiaries or through which Giphy or its subsidiaries conduct the Giphy Business and the underlying platforms for such web sites;

**Hold Separate Manager** means the person originally appointed pursuant to the directions issued by the CMA on 30 July 2020 under the IEO and re-appointed in accordance with Article 9;

**Hold Separate Manager Mandate** means the mandate approved by the CMA given by Meta to the Hold Separate Manager on terms specified by the CMA in directions issued to appoint a Hold Separate Manager pursuant to Article 9;

**Hold Separate Manager Obligation** means the obligation on the Hold Separate Manager to exercise day-to-day management and control of Giphy so as to preserve and, if necessary, restore effective competition in the markets affected by the Merger;

**IEO** means the Initial Enforcement Order made by the CMA on 9 June 2020 pursuant to [section 72\(2\)](#) of the Act and as varied by a Variation Order made on 29 June 2021;

**Interim Order** means the Interim Order made by the CMA on 18 July 2022 pursuant to [section 81](#) of the Act;

**Infrastructure** means the information and communications technology infrastructure and systems (including software, hardware, firmware, networks and the Giphy Websites) that are in use in the Giphy Business;

**Initial Divestiture Period** means the period of [~~3~~] beginning on the Commencement Date, or such longer period as the CMA may approve on request under Article 7;

**Intellectual Property** means Intellectual Property Rights and Proprietary Information and Technology;

**Intellectual Property Rights** means any and all of the following and all rights in, arising out of, or associated therewith, throughout the world: patents, utility models, and applications therefor and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof and equivalent or similar rights in inventions and discoveries anywhere in the world, including invention disclosures, common law and statutory rights associated with trade secrets, confidential and proprietary information and know-how, industrial designs and any registrations and applications therefor, trade names, logos, trade dress, trademarks and service marks, trademark and service mark registrations, trademark and service mark applications and any and all goodwill associated with and symbolized by the foregoing items, Internet domain name applications and registrations, social media accounts, Internet and World Wide Web URLs or addresses, copyrights, copyright registrations and applications therefor and all other rights corresponding thereto, database rights, mask works, mask work registrations and applications therefor and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology, moral and economic rights of authors and inventors, however denominated and any similar or equivalent rights to any of the foregoing, and all benefits, privileges, causes of action and remedies relating to any of the foregoing;

**key staff** means staff who are in positions of executive or managerial responsibility and/or whose performance affect the viability of the Giphy Business or the Meta Business (subject to any derogations already granted under the IEO, Phase 2 Final Order or Interim Order, or further granted from the terms of paragraph 4 of this Order);

**Merger** means the completed acquisition by Meta of Giphy through Tabby Acquisition Sub, Inc.;



**Merger Agreement of 4 May 2020** means the Agreement and Plan of Merger of 4 May 2020 by and among Facebook, Inc., Tabby Acquisition Sub, Inc. and Giphy, Inc.;

**Meta Business** means the business conducted by Meta and its subsidiaries;

**Meta Intellectual Property** means any and all intellectual property owned by or licensed to Meta and licensed to Giphy for use in association with the Giphy products;

**Meta Platforms, Inc.** means the Delaware incorporated corporation formerly known as Facebook, Inc. whose registered address is 251 Little Falls Drive, Wilmington, New Castle County, Delaware 19808, United States of America;

**Monitoring Trustee** means the person originally appointed by Meta pursuant to the directions issued by the CMA on 19 June 2020 under the IEO and whose appointment will continue in accordance with Article 6;

**Monitoring Trustee Mandate** means the mandate containing the terms of appointment of the Monitoring Trustee, dated 2 July 2020 and including any subsequent amendments;

**New Giphy Intellectual Property** means any and all Intellectual Property, Giphy Source Code, Software, Source Code, and Giphy Data which has been created since 4 May 2020 or is currently under design or development for or related to GIF-related Activities, GIF-related Content or Giphy Products, as at the Completion Date;

**New Infrastructure** means any and all Infrastructure which has been created since 4 May 2020 or is currently under design or development for or related to GIF-related Activities, GIF-related Content or Giphy Products, as at the Completion Date;

**Notice** means a written communication sent by post, personal delivery or, with prior consent of the recipient, by email;

**ordinary course of business** means a party's customary commercial transactions and practices in the day-to-day supply of goods and/or services only and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Giphy and Meta;

**Ordinary course of business GIF-related Activities** means the ongoing day-to-day operation, management and technical administration of Facebook's application programming interface (API) relationship with any

third-party GIF-related Content providers, excluding any activities that are likely to have a material effect on, or result in a substantial change to, the functionality of the API relationship for longer than 24 hours;

**Personal Data** means any information relating to an identified or identifiable natural person including a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person or any other piece of information that allows the identification of a natural person or is otherwise considered personally identifiable information or personal information under any applicable law;

**Phase 2 Final Order** means the final order made by the CMA on 29 March 2022 pursuant to [section 84](#) of the Act;

**Potential Purchaser** means a proposed purchaser of the Divestment Business put forward by Meta for approval by the CMA in accordance with Article 3, and includes any members of a consortium or connected entities beneficially interested in the purchase of the Divestment Business;

**Proprietary Information and Technology** means any and all of the following: works of authorship, computer programs, Software, Source Code and executable code, whether embodied in Software, firmware or otherwise, assemblers, applets, compilers, user interfaces, application programming interfaces, protocols, architectures, documentation, annotations, comments, designs, files, records, schematics, test methodologies, test vectors, emulation and simulation tools and reports, hardware development tools, models, tooling, prototypes, breadboards and other devices, data, data structures, databases, data compilations and collections, inventions (whether or not patentable), invention disclosures, discoveries, improvements, technology, proprietary and confidential ideas and information, tools, concepts, techniques, methods, processes, formulae, patterns, algorithms and specifications, customer lists and supplier lists and any and all instantiations or embodiments of the foregoing or any Intellectual Property Rights in any form and embodied in any media;

**Relevant Information** has the meaning given in Article 11.2;

**SLC** means a substantial lessening of competition pursuant to [section 35](#) of the Act;

**Software** means any and all:

- (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in Source Code or object code,
- (ii) databases, compilations, data aggregation programs and search engine technologies, including any and all data and collections of data, whether machine readable or otherwise,
- (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing and
- (iv) all user documentation and related materials, including user manuals and training materials, relating to any of the foregoing.

**Source Code** means software source code or database specifications or designs, in form other than object code form, including related programmer comments and annotations, help text, data and data structures, instructions and procedural, object-oriented and other code, or any material proprietary information or algorithm contained in or relating to any software source code or database specifications or designs, which may be printed out or displayed in human readable form;

**subsidiary** has the meaning given by section 1159 of the Companies Act 2006;

**Suitable Purchaser Criteria** means the criteria contained in Schedule 1 of this Order and shall be construed as consistent with and giving effect to paragraphs 11.161 to 11.186 of the Final Report;

**the two businesses** means the Giphy Business and the Meta Business;

**Third Party Intellectual Property** means any and all intellectual property not owned by Giphy but licensed to or used by Giphy including any and all Meta Intellectual Property licensed to or used by Giphy;

**Transaction Agreement** means the sale agreement between Meta and an Approved Purchaser for the sale of Giphy and any and all agreements or arrangements ancillary or connected to the sale agreement and are necessary in order to effect the Final Disposal of the Divestment Business;

**working day** means any day which is not a Saturday, Sunday, Christmas Day, Good Friday or bank holiday in any part of the United Kingdom under the Banking and Financial Deadlines Act 1971.

### 3. Divestiture

- 3.1 Meta shall within the Initial Divestiture Period give effect to and implement the Final Disposal and divest the Divestment Business to an Approved Purchaser.
- 3.1.1 Meta shall procure that its subsidiaries, in particular Giphy, do all things necessary to ensure implementation of the Final Disposal.
- 3.1.2 Meta shall seek CMA approval of the final terms of the divestiture prior to the Final Disposal and provide all Transaction Agreements or other information the CMA may require.
- 3.1.3. Meta shall inform the CMA as soon as practicable, and in any event within two Working Days of the date when: (i) Meta has agreed heads of terms (if applicable); (ii) the Transaction Agreement has been agreed; and (iii) the Final Disposal has been completed.
- 3.2 Meta shall seek and obtain the approval of the CMA before distributing divestiture marketing materials or other documentation to potential bidders, these being the key materials based on which Meta will market the divestiture of Giphy.
- 3.3 Following the commencement of the Initial Divestiture Period, and as soon as reasonably practicable and in any event within three Working Days, Meta shall provide to the CMA, for its comment and approval, Meta's proposed timetable setting out the key milestones to complete the Final Disposal within the Initial Divestiture Period. Meta shall notify the CMA as soon as reasonably practicable of any material changes or amendments to the timetable as approved by the CMA.
- 3.4 Meta shall provide a written report to the CMA and the Monitoring Trustee in accordance with Article 6.2 every two weeks from the commencement of the Initial Divestiture Period, or on such other interval as agreed with the CMA, until Final Disposal. The report will outline the progress that Meta has made towards Final Disposal and the steps that have otherwise been taken to comply with the Order, and shall in particular report on:
- (a) the progress that has been made against the timetable as approved by the CMA under Article 3.3;
  - (b) the status of any discussions that have been held with Potential Purchasers;
  - (c) the steps that have been taken towards reaching a Transaction Agreement and the persons to whom any draft agreement has been distributed;

- (d) progress of transfer of Giphy staff from Facebook/Meta contracts to Giphy contracts; and
  - (e) such other matters as may be directed by the CMA from time to time.
- 3.5 Meta shall submit to the CMA for approval a list of Potential Purchasers of the Divestment Business in accordance with the timetable as approved by the CMA under Article 3.3.
- 3.6 The CMA shall, following receipt from Meta of a list of Potential Purchasers, and such information in relation to Potential Purchasers as the CMA may reasonably require, engage with the Potential Purchasers and as soon as reasonably practicable confirm to Meta which, if any, of the Potential Purchasers are Approved Purchasers.
- 3.7 Prior to entering into a Transaction Agreement with an Approved Purchaser, Meta shall submit the Transaction Agreement to the CMA in accordance with Article 11 and the timetable as approved by the CMA under Article 3.1.2.
- 3.8 In accordance with the timetable as approved by the CMA under Article 3.3, the CMA shall, following further engagement with the relevant Approved Purchaser, if necessary, assess any Transaction Agreement submitted by Meta, and approve a Transaction Agreement which it considers would effectively remedy the SLCs identified in the Final Report. To the extent there are any material revisions to an approved Transaction Agreement the CMA will also consider approval of these as soon as reasonably practicable.
- 3.9 Meta shall comply with any written directions given by the CMA under this Order, and to procure that its subsidiaries also comply, and to take such steps as may be specified or described in the directions for complying with this Order, in particular the appointment of a Divestiture Trustee.
- 3.10 Meta shall inform the CMA as soon as practicable, and in any event within three Working Days of becoming aware, if it will not, or believes it is unlikely to, achieve the Final Disposal within the Initial Divestiture Period.

#### **4. Asset Maintenance Measures**

- 4.1 Except with the prior written consent of the CMA, but subject to the derogations previously granted by the CMA under the IEO, Phase 2 Final Order or Interim Order, Meta and Giphy shall not, from the Commencement Date until the Final Disposal, take any action that might prejudice the Final Disposal, the CMA's decisions in the Final Report or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating or

preventing the SLCs or any adverse effect which has resulted from, or may be expected to result from, the SLC findings including any action which might:

- (a) lead to the integration of the Giphy Business with the Meta Business;
- (b) transfer the ownership or control of the Giphy Business or any of its subsidiaries except in compliance with this Order; or
- (c) otherwise impair the ability of the Giphy Business and the Meta Business to compete independently in any of the markets affected by the Merger.

4.2 Further and without prejudice to the generality of Article 4.1, Meta and Giphy shall at all times until Final Disposal procure that, except with the prior written consent of the CMA:

- (a) the Giphy Business is carried on separately from the Meta Business and the Giphy Business's separate sales or brand identity is maintained;
- (b) the Giphy Business and the Meta Business are maintained as a going concern and sufficient resources are made available for the development of the Giphy Business and the Meta Business, on the basis of their respective pre-Merger business plans;
- (c) except in the ordinary course of business or for the purpose of complying with this Order, no substantive changes are made to the organisational structure of, or the management responsibilities within the Giphy Business or the Meta Business;
- (d) no changes have been or are made to the organisational structure of the Meta Business which would alter, impede or frustrate the implementation, carrying out or enforcement of the Order;
- (e) except in the ordinary course of business, the nature, description, range and quality of goods and/or services supplied in the UK by each of the Giphy Business and the Meta Business are maintained and preserved;
- (f) except in the ordinary course of business for the separate operation of the Giphy Business and the Meta Business:
  - (i) all of the assets of the Giphy Business and the Meta Business are maintained and preserved, including facilities and goodwill;

- (ii) none of the assets of the Giphy Business or the Meta Business are disposed of (save for the purpose of complying with this Order); and
  - (iii) no interest in the assets of the Giphy Business or Meta Business is created or disposed of (save for the purpose of complying with this Order).
- (g) there is no integration of the information technology of the Giphy Business and Meta Business, and the software and hardware platforms of the Giphy Business shall remain essentially unchanged, except for routine changes and maintenance or where strictly necessary to comply with this Order;
- (h) the customer and supplier lists of the Giphy Business and the Meta Business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Giphy Business will be carried out by the Giphy Business alone and the Meta Business will not negotiate on behalf of the Giphy Business (and vice versa) or enter into any joint agreements with the Giphy Business (and vice versa);
- (i) all existing contracts of the Giphy Business and the Meta Business continue to be serviced by the business to which they were awarded;
- (j) no changes are made to key staff of the Giphy Business or the Meta Business;
- (k) no key staff are transferred between the Giphy Business and the Meta Business except where strictly necessary for the purpose of complying with this Order;
- (l) all reasonable steps are taken to encourage all key staff to remain with the Giphy Business or the Meta Business;
- (m) no action is taken to prevent the Giphy Business from reinstating staff transferred to Meta as a consequence of the Merger; and,
- (n) no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the Giphy Business (or any of its employees, directors, agents or Affiliates) to the Meta Business (or any of its employees, directors, agents or Affiliates), or vice versa, except where strictly necessary in the ordinary course of business (for example,

where required for compliance with external regulatory and/or accounting obligations) and on the basis that, following the Final Disposal, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

- 4.3 All directions and derogations issued in relation to or pursuant to the IEO, Phase 2 Final Order or Interim Order shall continue in force until the Final Disposal unless cancelled or revoked by the CMA.

## **5. Compliance**

- 5.1 Meta shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Meta with this Order. In particular, on 24 January 2023 and subsequently every two weeks thereafter (or, where this does not fall on a working day, the first working day thereafter) the Chief Compliance Officer of Meta or other persons as agreed with the CMA shall, on behalf of Meta provide a statement to the CMA in the form set out in Schedule 4 to this Order confirming compliance with this Order.
- 5.2 Giphy shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by Giphy with this Order. In particular, on 6 February 2023 and subsequently every month thereafter (or, where this does not fall on a working day, the first working day thereafter) the Hold Separate Manager of Giphy or other persons as agreed with the CMA shall, on behalf of Giphy provide a statement to the CMA in the form set out in Schedule 5 to this Order confirming compliance with this Order.
- 5.3 Meta and Giphy shall, until the Final Disposal, actively keep the CMA informed of any material developments (and, with the consent of the CMA, such updates may be provided through the Monitoring Trustee) relating to the Meta Business and the Giphy Business, which include but are not limited to:
- (a) Details of key staff who leave or join the Meta Business or the Giphy Business;
  - (b) Any interruption to the Meta Business or the Giphy Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours; and



- (c) All substantial customer volumes won or lost or substantial changes to the customer contracts for the Meta Business or the Giphy Business including any substantial changes in customers' demand; and
- (d) Substantial changes in the Meta Business' or the Giphy Business' contractual arrangements or relationships with key suppliers.

5.4 Meta shall, at all times until the Final Disposal, actively keep the CMA informed of any material developments (and, with the consent of the CMA, such updates may be provided through the Monitoring Trustee) which falls within the scope of Article 4.2(c), 4.2(e), 4.2(f), 4.2(k), and 4.2(l).

## **6. Monitoring Trustee**

6.1 The Monitoring Trustee originally appointed under the IEO and re-appointed under the Interim Order shall be re-appointed by Meta and shall continue from the Commencement Date. Subject to Article 6.5 the appointment and work of the Monitoring Trustee shall continue until the Final Disposal.

6.2 In addition to the obligations of the Monitoring Trustee under the Monitoring Trustee Mandate, from the Commencement Date the Monitoring Trustee shall monitor and, every two weeks until the date on which Final Disposal takes place, report to the CMA on:

- (a) the progress made by Meta against the timetable as approved by the CMA under Article 3.3 and the steps that have otherwise been taken to comply with the Order;
- (b) compliance with the Order of any operation of any data room and clean teams;
- (c) assisting the CMA to ensure Final Disposal;
- (d) any issues arising which the Monitoring Trustee considers might prejudice the intended and effective outcome of the divestiture process, or Final Disposal within the Initial Divestiture Period; and
- (e) any other matter that the CMA may direct.

6.3 The monitoring obligations of the Monitoring Trustee shall include:

- (a) Monitoring to ensure that none of the Giphy Intellectual Property or New Giphy Intellectual Property will be accessible to Meta from the Completion Date and that all steps are taken to delete the Giphy Source Code from Meta's 'version control server', except for that required in the ordinary course of business or ordinary course of

business GIF-related Activities and in accordance with the terms of any agreement with the Approved Purchaser concluded in accordance with paragraph 1.4 of Schedule 6;

- (b) monitoring of staff transfers pursuant to paragraph 2 of Schedule 6;
- (c) reviewing the divestiture marketing materials;
- (d) any other matter that the CMA may direct.

6.4 Meta shall make such changes to the Monitoring Trustee Mandate (to be approved by the CMA) as are required to give effect to Articles 6.1 to 6.3.

6.5 The monitoring obligations imposed under Article 6.2 shall cease to apply to the Monitoring Trustee in the event that a Divestiture Trustee is appointed under Article 8.

## **7. Extension of time limits**

7.1 The CMA may issue directions extending the Initial Divestiture Period following receipt of a request in writing from Meta, with agreement to any request not to be unreasonably refused, or at its own discretion. Directions extending the Initial Divestiture Period specified shall specify the duration of the extension.

## **8. Divestiture Trustee**

8.1 The CMA may issue directions to Meta to appoint a Divestiture Trustee, in accordance with Article 15 and Schedule 2, to bring about the Final Disposal (the '**Divestiture Trustee Obligation**')

- (a) if Meta fails to achieve the Final Disposal by the end of the Initial Divestiture Period;
- (b) if the CMA reasonably believes there is a risk of delay or failure to achieve the Final Disposal by the end of the Initial Divestiture Period, including but not limited to circumstances where Meta has breached any provision of Article 3;
- (c) if the CMA reasonably believes after raising its concerns with Meta that Meta has failed to comply with its obligations under this order or is not engaging constructively in the divestiture process; or
- (d) if there is a material deterioration in the Giphy Business during the divestiture process.

8.2 To give effect to Article 8.1, Meta shall enter into a Divestiture Trustee Mandate with the Divestiture Trustee in accordance with Schedule 2.

## **9. Hold Separate Manager**

9.1 The Hold Separate Manager originally appointed under the IEO and re-appointed under the Interim Order shall be re-appointed by Meta and shall continue in accordance with Schedule 3 from the Commencement Date until the Final Disposal.

9.2 The Hold Separate Manager shall perform the functions set out in paragraphs 9 to 15 of Schedule 3.

## **10. Re-acquisition prohibition**

10.1 Meta shall not, without the prior written consent of the CMA, re-acquire the Divestment Business (in whole or in part) or any assets relating to the Giphy Business, or acquire any material influence over them, for a period of 10 years from Final Disposal.

## **11. Procedure for consent and approval**

11.1. Where the consent or approval of the CMA is required by Meta or Giphy (however that requirement is expressed in this Order), Meta or Giphy will seek the consent or approval in writing.

11.2. Any application by Meta or Giphy for the CMA's consent or approval must make full disclosure of every fact and matter within its knowledge that it reasonably believes is relevant to the CMA's decision (the '**Relevant Information**'). Where the CMA considers that full disclosure has not been provided, it shall inform Meta or Giphy, and Meta or Giphy must promptly provide such additional information as the CMA requires.

11.3. Where the CMA grants consent or approval on the basis of misleading or incomplete information, the consent or approval is voidable at the election of the CMA.

11.4. In the event that Meta or Giphy discovers that an application for consent or approval has been made without full disclosure of the Relevant Information to the CMA, Meta or Giphy must:

- (a) inform the CMA in writing, identifying the Relevant Information that it omitted to include in the application for consent within two working days of becoming aware that the Relevant Information is incomplete or incorrect; and

(b) at the same time, or no later than two working days starting with the date on which Meta or Giphy has informed the CMA of the omission or inaccuracy, provide to the CMA an application for consent that includes the missing and/or correct Relevant Information.

11.5. Meta or Giphy must use all reasonable endeavours to make each application for consent or approval so that it is received by the CMA at least 15 working days, or such lesser period as the CMA may allow, before the day on which the CMA's consent or approval is necessary to avoid a breach of this Order.

## **12. Severability**

12.1. If any provision of this Order is or becomes contrary to law or invalid for any reason, Meta and Giphy shall continue to observe the remaining provisions.

12.2. Meta shall not rely on any default or want of authority on the part of Meta or Giphy or of any officer or employee of Meta or Giphy in the execution of this Order unless directed so to do by the CMA.

## **13. Provision of Information to the CMA**

13.1. Any person to whom this Order applies shall promptly provide to the CMA such information as the CMA may reasonably require for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order; to review the effectiveness of the operation of this Order, or any provision of this Order; or perform any of its functions under this Order or sections 84 and 92, 93 or 94 of the Act.

13.2. Any person to whom this Order applies may be required by the CMA to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of this Order.

13.3. Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.

13.4. Subject always to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

13.5. If Meta or Giphy has any reason to suspect that any provision of this Order has been breached or is likely to be breached it shall immediately write to the CMA to advise the CMA of the circumstances of such suspicions.

## **14. Service**

- 14.1. Any communication from Meta or Giphy to the CMA under this Order shall be addressed to Adam Cooper, Competition and Markets Authority, The Cabot, 25 Cabot Square, London E14 4QZ, [adam.cooper@cma.gov.uk](mailto:adam.cooper@cma.gov.uk) or to such other person or address as the CMA may notify to Meta or Giphy in writing.

## **15. Powers of direction**

- 15.1. The CMA may give directions falling within this Order to:
- (a) A person specified in the directions; or
  - (b) A holder for the time being of an office so specified in any body or person corporate or unincorporated.
- 15.2. Directions fall within this Article if they are written directions:
- (a) To take such steps as may be described in the directions for the purpose of carrying out or ensuring compliance with this Order; or
  - (b) To do, or refrain from doing, anything so described which the person might be required by this Order to do or refrain from doing.
- 15.3. The CMA may vary or revoke any directions so given.
- 15.4. Meta shall comply and, where necessary, to procure that its subsidiaries comply, with all Directions the CMA may issue relating to this Order and will promptly take such steps as may be specified or described in the Directions.

## **16. Acceptance of Service**

- 16.1 Meta hereby authorises its legal representatives David Little ([David.Little@lw.com](mailto:David.Little@lw.com)) and Greg Bonné ([Greg.Bonne@lw.com](mailto:Greg.Bonne@lw.com)) of Latham & Watkins, 99 Bishopsgate, London, EC2M 3XF to accept service of all documents, orders, requests, notifications or other communications connected with this Order (including any such document which falls to be served on or sent to Meta or its subsidiaries or Affiliates in connection with proceedings in court in the UK).
- 16.2 Giphy hereby authorises its legal representatives, Jackie Holland ([jaholland@cgsh.com](mailto:jaholland@cgsh.com)) of Cleary Gottlieb Steen & Hamilton LLP (2 London Wall, London, EC2Y 5AU) and Bruce Kilpatrick ([Bruce.Kilpatrick@addleshawgoddard.com](mailto:Bruce.Kilpatrick@addleshawgoddard.com)) of Addleshaw Goddard LLP (60 Chiswell St, London, EC1Y 4AG) to accept service of all documents, orders, requests, notifications or other communications connected with this Order

(including any such document which falls to be served on or sent to Giphy or its subsidiaries or Affiliates in connection with proceedings in court in the UK).

- 16.3 Unless Meta or Giphy informs the CMA that their legal representatives have ceased to have authority and have informed the CMA of an alternative to accept and acknowledge service on their behalf, any document, written directions, order, request, notification or other communication connected with this Order shall be deemed to have been validly served, as applicable, on Meta or Giphy if it is served on their applicable respective legal representatives, and service or receipt shall be deemed to be acknowledged by email from Meta's or Giphy's legal representatives to the CMA.
- 16.4 Paragraphs 16.1 and 16.2 have effect irrespective of whether, as between Meta and its legal representatives, or Giphy and its legal representatives, their respective legal representatives have or continue to have any authority to accept and acknowledge service on their behalf (unless they inform the CMA that Meta's or Giphy's legal representatives have ceased to have authority to accept and acknowledge service on their behalf), and no failure or mistake by Meta's or Giphy's legal representatives (including a failure to notify, as applicable, Meta or Giphy, of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of this Order, including any proceeding or judgment pursuant to this Order.

## **17. Governing Law**

- 17.1 This Order shall be governed and construed in all respects in accordance with English law.
- 17.2 Any dispute arising concerning this Order shall be subject to the jurisdiction of the courts of England and Wales.
- 17.3 Any contractual obligations arising out of or in connection with this Order shall be governed and construed in all respects in accordance with English law.

## **18. Termination**

- 18.1 This Order shall continue in force until such time as it is varied or revoked under the Act.
- 18.2 The variation or revocation of this Order shall not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.

## Schedule 1: Suitable Purchaser Criteria

The criteria on which the suitability of a Potential Purchaser of the Divestment Business will be assessed are as follows:

*(a) Independence:*

- i. The Potential Purchaser must have no significant connection to Meta or conflicts of interest that could reasonably be expected to compromise its incentives to compete effectively with Meta (eg financial, management, reciprocal commercial arrangements, equity interest, common significant shareholders, shared directors).

*(b) Capability:*

- i. The Potential Purchaser must have access to appropriate financial resources, expertise (including managerial, operational and technical capability) and assets to enable Giphy to be an effective competitor in the market and to continue to innovate and supply GIF products and content. This access should be sufficient to enable Giphy to continue to develop as an effective competitor.
- ii. The CMA will also consider the ability of the Potential Purchaser to complete the transaction in a timely manner and within the agreed divestiture process timetable.

*(c) Commitment:*

The CMA will wish to satisfy itself that the Potential Purchaser has:

- i. an appropriate business plan for the further development of Giphy's pre-Merger strategy, including the monetisation of its products, and its plans for activities in the UK; and
- ii. the incentive and long-term commitment to maintain and operate the Giphy business as a supplier of GIFs and as an active business in competition with Meta and other competitors in the relevant market.

*(d) Absence of competition concerns:*

The CMA must be confident that the Potential Purchaser does not itself create a realistic prospect of competition concerns within any market or markets in the UK, and that it would not expect to investigate an acquisition of Giphy by this Potential Purchaser regardless of whether or not the transaction constitutes a relevant merger situation under the Act. The CMA will also consider whether the terms of the Transaction Agreement would give rise to a

material risk that the sale of the Divestment Business to the Potential Purchaser would not remedy the SLC and any adverse effects likely to arise from it.



## Schedule 2: Appointment and Functions of the Divestiture Trustee

### *Nomination of a Divestiture Trustee*

1. Within the period of five working days following the day on which the CMA issues a direction pursuant to Article 8 of this Order, Meta shall submit to the CMA for approval a list of two or more persons whom Meta proposes to appoint as Divestiture Trustee.
2. Each person on the list referred to in paragraph 1 above shall be independent of and unconnected to Meta and Giphy, possess the qualifications necessary for the performance of the Divestiture Trustee Mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
3. The CMA may approve or reject any or all of the proposed persons (such approval not to be unreasonably withheld) and may approve the proposed Divestiture Trustee Mandate subject to any modifications it deems necessary for the Divestiture Trustee to fulfil the Divestiture Trustee Obligation. If only one proposed person is approved, Meta shall use its reasonable endeavours to appoint the person concerned as Divestiture Trustee in accordance with the Divestiture Trustee Mandate approved by the CMA. If more than one proposed person is approved, Meta shall decide which person to appoint as Divestiture Trustee from among the approved persons. Meta shall appoint the Divestiture Trustee within two working days from the CMA's approval and on the terms of the Divestiture Trustee Mandate.
4. If all the proposed Divestiture Trustees are rejected by the CMA, Meta shall submit the names of at least two further persons within four working days from being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 1 to 3 above.
5. The provisions of paragraph 6 shall apply if:
  - (a) Meta fails to nominate further persons in accordance with paragraph 4;
  - (b) Those further persons nominated by Meta in accordance with paragraph 4 are rejected by the CMA, acting reasonably; or
  - (c) Meta is unable for any reason to conclude the appointment of the Divestiture Trustee within the time limit specified by the CMA.
6. The CMA shall nominate one or more persons to act as Divestiture Trustee, and Meta shall appoint one of those Divestiture Trustees within two working

days starting with the date of nomination under the terms of the Divestiture Trustee Mandate.

7. The function of the Divestiture Trustee is distinct from the function of the Monitoring Trustee, although the two functions may be performed by the same person subject to that person meeting the requirements of paragraph 2.
8. Meta shall remunerate and reimburse the Divestiture Trustee for all reasonable costs properly incurred in accordance with the terms and conditions of his or her appointment and in accordance with the directions or instructions given in paragraph 10, in such a way so as not to impede the Divestiture Trustee's independence or ability to effectively and properly fulfil the Divestiture Trustee Obligation.

#### *Divestiture Trustee Obligation*

9. The Divestiture Trustee shall undertake such preparatory matters as it considers necessary to discharge the Divestiture Trustee Obligation and for these purposes may give written directions, approved by the CMA, to Meta. Meta shall comply with any such written directions.
10. The CMA may, on its own initiative or at the request of the Divestiture Trustee or Meta, give written directions or instructions to the Divestiture Trustee in order to assist it in the discharge of the Divestiture Trustee Obligation (including directions as to the divestiture of such property, assets, rights, consents, licences, privileges or interests as the CMA considers necessary to bring about Final Disposal).
11. The Divestiture Trustee may enter into such agreements, deeds, instruments of transfer and other instruments and documents as are necessary for the performance of its Divestiture Trustee Obligation, on such terms and conditions as it reasonably considers appropriate and approved by the CMA.
12. The Divestiture Trustee shall protect the legitimate financial interests of Meta subject to the Divestiture Trustee's overriding obligation to give effect to the Divestiture Trustee Obligation which may include the Final Disposal of the Divestment Business [X].
13. The Divestiture Trustee shall take such steps and measures as it considers necessary to discharge the Divestiture Trustee Obligation. To that end the Divestiture Trustee may give written directions to Meta. Meta shall comply with such directions and take such steps as the Divestiture Trustee may specify.

14. The Divestiture Trustee shall act solely on the instructions of the CMA in the performance of the Divestiture Trustee Obligation and shall not be bound by any instruction of Meta. Meta shall not seek to create or vary the obligations and duties of the Divestiture Trustee except with the CMA's prior written consent.
15. The Divestiture Trustee shall every two weeks until the date on which Final Disposal takes place, report to the CMA on its progress towards Final Disposal, compliance with Article 6.2 of this Order and any other matter specified by the CMA.

*Divestiture Trustee – obligations of Meta*

16. Meta shall do all things necessary and expedient to enable the Divestiture Trustee to carry out the Divestiture Trustee Obligation.
17. Meta shall provide the Divestiture Trustee with all such cooperation, assistance and information (including the production of financial or other information whether or not such information is in existence at the time of the request but excluding any material subject to legal privilege) as the Divestiture Trustee may reasonably require in the discharge of the Divestiture Trustee Obligation.
18. The Divestiture Trustee shall be entitled, subject to the duty of confidentiality, to full and complete access to the books, records, documents, management or other personnel, facilities, sites and technical information necessary for the fulfilment of its duty (save where material is subject to legal privilege). Meta shall provide the Divestiture Trustee with copies of any such document upon request. On the request of the Divestiture Trustee, Meta shall (i) subject to Meta's COVID 19 policies, make available to the Divestiture Trustee one or more offices on its premises and (ii) in any event ensure that personnel are available where necessary for meetings in order to provide the Divestiture Trustee with all information necessary for the performance of the Divestiture Trustee Obligation.
19. Meta shall grant reasonable and comprehensive powers of attorney to the Divestiture Trustee on terms approved by the CMA to enable the Divestiture Trustee to discharge the Divestiture Trustee Obligation. Meta shall, upon the reasonable request of the Divestiture Trustee, execute the documents required to give effect to the Divestiture Trustee Obligation. The powers of attorney shall include the appointment of advisers to assist with the divestiture process. Before appointing any advisers, the Divestiture Trustee will consider using the advisers already appointed by Meta and will only appoint advisers (whether in replacement of, or in addition to Meta's advisers) if it reasonably

considers the appointment of such advisers necessary or appropriate in the discharge of the Divestiture Trustee Obligation. The CMA may issue directions requiring any action specified in this paragraph.

20. Meta shall hold the Divestiture Trustee, its employees, agents or advisers harmless against any liabilities arising out of the proper performance of the Divestiture Trustee Obligation. The Divestiture Trustee, its employees, agents or advisers shall have no liability to Meta for any liabilities arising out of the performance of the Divestiture Trustee Obligation, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Divestiture Trustee, its employees, agents or advisers.
21. Meta shall make no objection to the fulfilment by the Divestiture Trustee of the Divestiture Trustee Obligation or any part thereof save on the grounds of bad faith by the Divestiture Trustee or failure of the Divestiture Trustee to reasonably protect the legitimate financial interests of Meta, subject always to the Divestiture Trustee Obligation; and where Meta wishes to make an objection on these grounds it shall submit to the CMA a notice setting out its objections promptly and no later than two working days from the day on which it became aware of the facts giving rise to its objection.
22. Meta shall be entitled to a monthly statement from the Divestiture Trustee of all professional fees and expenses properly incurred by the Divestiture Trustee and its advisers. Any individual items of costs or expenses in excess of an amount at a level set in advance by the CMA in consultation with the Divestiture Trustee shall not be properly incurred unless with the prior written consent of the CMA, Meta having had prior opportunity to comment to the CMA on both the level to be set in advance and any individual items of cost or expense that exceed that amount, on the condition that Meta shall provide such comments to the CMA within a timescale specified by the CMA that shall be reasonable in all the circumstances.
23. Meta shall remunerate and reimburse the Divestiture Trustee for all professional fees, expenses and reasonable costs properly incurred in accordance with the terms and conditions of its appointment. This may include all costs, expenses and professional fees of financial or legal advisers appointed to assist with the fulfilment of the Divestiture Trustee Obligation in accordance with paragraph 19.

#### *Divestiture Trustee – replacement, discharge, and reappointment*

24. If the Divestiture Trustee ceases to perform the Divestiture Trustee Obligation, or for any other good cause, including the exposure of the Divestiture Trustee

to a conflict of interest, the CMA may issue directions to dismiss the Divestiture Trustee.

25. If the Divestiture Trustee is removed under paragraph 24 above, the Divestiture Trustee may be required to continue in its post until a new Divestiture Trustee is in place to whom the Divestiture Trustee has effected a full handover of all relevant information. The new Divestiture Trustee shall be appointed in accordance with the procedure in paragraphs 1 to 6.
26. Other than in accordance with paragraph 25 the Divestiture Trustee shall cease to act as Divestiture Trustee only after the CMA has discharged it from its duties at a time when all the functions with which the Divestiture Trustee has been entrusted have been met.

## **Schedule 3: Appointment and Functions of the Hold Separate Manager**

### *Nomination of a Hold Separate Manager*

In the event that the Hold Separate Manager originally appointed pursuant to the IEO and reappointed under the Interim Order is not reappointed pursuant to Article 9.1 or is terminated before the Completion Date, paragraphs 1- 6 will apply.

1. Meta shall within the period of five working days starting with the day on which a direction is made by the CMA pursuant to Article 9 of this Order, submit to the CMA for approval a list of two or more persons who they propose to appoint as Hold Separate Manager. The proposal shall contain sufficient information for the CMA to verify that each proposed person fulfils the requirements set out in paragraph 2 below and shall include a schedule of the steps to be taken to give effect to the Hold Separate Manager Mandate.
2. Each person on the list referred to in paragraph 1 above shall be independent of and unconnected to Meta, possess the qualifications necessary for the performance of the Hold Separate Manager Mandate and shall on appointment and thereafter be free of any conflict of interest including any conflict of interest that might arise by virtue of the terms of remuneration.
3. The CMA may approve or reject any or all of the proposed persons (such approval not to be unreasonably withheld) and may approve the proposed mandate subject to any modifications it deems necessary for the Hold Separate Manager to fulfil the Hold Separate Manager Obligation. If only one proposed person is approved, Meta shall use its reasonable endeavours to appoint the person concerned as Hold Separate Manager in accordance with the Hold Separate Manager Mandate. If more than one proposed person is approved, Meta shall decide which person to appoint as Hold Separate Manager from among the approved persons. Meta shall appoint the Hold Separate Manager within two working days from the CMA's approval and on the terms of the Hold Separate Manager Mandate.
4. If all the proposed Hold Separate Managers are rejected by the CMA, Meta shall submit the names of at least two further persons within four working days from being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 1 to 3 above.
5. The provisions of paragraph 6 shall apply if:
  - (a) Meta fails to nominate further persons in accordance with paragraph 4;

- (b) Those further persons nominated by Meta in accordance with paragraph 4 are rejected by the CMA, acting reasonably; or
  - (c) Meta is unable for any reason to conclude the appointment of the Hold Separate Manager within the time limit specified by the CMA.
- 6. The CMA shall nominate one or more persons to act as Hold Separate Manager, and Meta shall appoint one of those Hold Separate Managers within two working days starting with the date of nomination under the terms of the Hold Separate Manager Mandate.
- 7. The function of the Hold Separate Manager is distinct from the function of the Divestiture Trustee, although the two functions may be performed by the same person subject to that person meeting the requirements of paragraph 2.
- 8. Meta shall remunerate and reimburse the Hold Separate Manager for all reasonable costs properly incurred in accordance with the terms and conditions of his or her appointment and in accordance with the directions or instructions given in paragraph 12, in such a way so as not to impede the Hold Separate Manager's independence or ability to effectively and properly fulfil the Hold Separate Manager Obligation.

#### *Hold Separate Manager Obligation*

- 9. The primary obligation of the Hold Separate Manager will be to exercise day-to-day management and control of Giphy so as to preserve and, if necessary, restore effective competition in the markets affected by the Merger. The Hold Separate Manager will exercise management and control of Giphy in such a way as to ensure that it is held separate from the Meta Business.
- 10. The Hold Separate Manager Obligation shall include the performance of any other act or task necessary for the performance of the primary obligation of the Hold Separate Manager including the performance of the reporting obligations at paragraph 15 below.
- 11. The Hold Separate Manager shall take such steps as the Hold Separate Manager reasonably considers necessary including but not limited to:
  - (a) Giving such directions to the officers and staff of Meta or Giphy including any person holding such position on a temporary basis as are necessary for the fulfilment of the Hold Separate Manager Obligation;
  - (b) Attending such meetings of employees, officers (including board meetings, and meetings of any committee of the board) and members of Meta and

Giphy as the Hold Separate Manager considers necessary for the fulfilment of the Hold Separate Manager Obligation; and

- (c) Complying with such requests as the CMA may reasonably make for the purpose of ensuring Meta and Giphy enable the Hold Separate Manager to fulfil the Hold Separate Manager Obligation.
12. The CMA may, on its own initiative or at the request of the Hold Separate Manager or Meta, give written directions or instructions to the Hold Separate Manager in order to assist it in the discharge of the Hold Separate Manager Obligation (including directions as to the divestiture of such property, assets, rights, consents, licences, privileges or interests as the CMA considers necessary to bring about Final Disposal).
  13. The Hold Separate Manager may enter into such agreements, deeds, instruments of transfer and other instruments and documents on behalf of Giphy as are necessary for the performance of its duty, on such terms and conditions as it reasonably considers appropriate.
  14. The Hold Separate Manager shall work with the Divestiture Trustee, if applicable, to bring about Final Disposal in a timely manner.

#### *Hold Separate Manager Reporting Obligations*

15. The Hold Separate Manager will provide to the CMA:
  - (a) Within seven days from the date of his appointment a written report reporting on such matters as are specified by the CMA, including any events giving rise to their appointment as Hold Separate Manager; and
  - (b) Thereafter at such other times to be agreed with the CMA from the Hold Separate Manager's appointment to Final Disposal a written report on the matters set out in paragraphs 9 to 14 above.

#### *Hold Separate Manager – Meta and Giphy Obligations*

16. Meta and Giphy shall enable the Hold Separate Manager to carry out the Hold Separate Manager Obligation.
17. The Hold Separate Manager shall act solely on the instructions of the CMA in the performance of the Hold Separate Manager Obligation and shall not be bound by any instruction of Meta. Meta shall not seek to create or vary the Hold Separate Manager Obligation except with the CMA's prior written consent.



18. Meta shall remunerate the Hold Separate Manager and reimburse the Hold Separate Manager in full for all reasonable costs and expenses properly incurred, in accordance with the terms and conditions of the Hold Separate Manager's appointment, provided that such remuneration and reimbursement shall not give rise to any conflict of interest or otherwise impair the ability of the Hold Separate Manager to discharge the Hold Separate Manager Obligation. For the avoidance of doubt such reimbursement shall include the fees and disbursements of such legal or other professional advisers, consultants and assistants as the Hold Separate Manager reasonably considers necessary for the discharge of the Hold Separate Manager Obligation.
19. The Hold Separate Manager may give written directions to Meta and/or Giphy. Meta and Giphy shall comply with such directions as the Hold Separate Manager may specify and cooperate fully with the Hold Separate Manager in its performance of the Hold Separate Manager Obligation.
20. Without prejudice to the generality of paragraph 19 above, that cooperation shall include:
  - (a) The grant to the Hold Separate Manager of all such rights, powers and authorities as are necessary for the performance of the Hold Separate Manager Obligation;
  - (b) Ensuring that personnel are available where necessary for meetings in order to provide the Hold Separate Manager with all information necessary for the performance of the Hold Separate Manager Obligation;
  - (c) The provision of such facilities as are necessary for the discharge by the Hold Separate Manager of the Hold Separate Manager Obligation; and
  - (d) The provision of full and complete access to all personnel, books, records, documents, facilities and information of Giphy as the Hold Separate Manager may reasonably require.

*Hold Separate Manager – replacement, discharge, and reappointment*

21. If the Hold Separate Manager ceases to perform the Hold Separate Manager Obligation, or for any other good cause, including the exposure of the Hold Separate Manager to a conflict of interest, the CMA may issue directions to dismiss the Hold Separate Manager.
22. If the Hold Separate Manager is removed under paragraph 21 above, the Hold Separate Manager may be required to continue in its post until a new Hold Separate Manager is in place to whom the Hold Separate Manager has

effected a full handover of all relevant information. The new Hold Separate Manager shall be appointed in accordance with the procedure in paragraphs 1 to 6.

23. Other than in accordance with paragraph 21, the Hold Separate Manager shall cease to act as Hold Separate Manager only after the CMA has discharged it from its duties at a time when all the functions with which the Hold Separate Manager has been entrusted have been met.

## Schedule 4: Compliance Statement for Meta

I [insert name] confirm on behalf of Meta that:

### *Compliance in the Relevant Period*

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Meta has complied with the Order made by the CMA in relation to the divestiture of Giphy on 6 January 2023 (the Order); and
  - (b) Meta's subsidiaries have also complied with this Order.
2. Except with the prior written consent of the CMA:
  - (a) No action has been taken by Meta that might prejudice the Final Disposal, the CMA's decisions in the Final Report or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating and preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC finding, including any action which might:
    - (i) Lead to the integration of the Giphy Business and the Meta Business;
    - (ii) Transfer the ownership or control of the Giphy Business or Meta Business or any of its subsidiaries except where strictly necessary to comply with this Order; or
    - (iii) Otherwise impair the ability of the Giphy Business or Meta Business to compete independently in any of the markets affected by the Merger;
  - (b) The Giphy Business has been carried on separately from the Meta Business and the Giphy Business's separate sales or brand identity has been maintained;
  - (c) The Giphy Business and the Meta Business have been maintained as a going concerns and sufficient resources have been made available for the development of the Giphy Business and the Meta Business, on the basis of their pre-Merger business plans;
  - (d) No substantive changes have been made to the organisational structure of the Giphy Business or the Meta Business, except in the ordinary course of business and except where strictly necessary to comply with this Order;
  - (e) No changes have been made to the organisational structure of the Meta Business which would alter, impede or frustrate the implementation,

carrying out or enforcement of the Order except where strictly necessary to comply with this Order;

- (f) No substantive changes are made to the management responsibilities within the Giphy Business and the Meta Business except in the ordinary course of business and where strictly necessary to comply with this Order;
- (g) The nature, description, range and quality of goods and/or services supplied by the Giphy Business and the Meta Business have been maintained and preserved;
- (h) Except in the ordinary course of business for the separate operation of the Giphy Business and the Meta Business or where strictly necessary to comply with this Order:
  - (i) All of the assets of the Giphy Business and the Meta Business, including facilities and goodwill, have been maintained and preserved;
  - (ii) None of the assets of the Giphy Business and the Meta Business have been disposed of; and
  - (iii) No interest in the assets of the Giphy Business and the Meta Business has been created or disposed of;
- (i) There has been no integration of the information technology of the Giphy Business and the Meta Business, and the software and hardware platforms of the Giphy Business and the Meta Business have remained essentially unchanged, except for routine changes and maintenance, except where strictly necessary to comply with this Order;
- (j) The customer and supplier lists of the Giphy Business and the Meta Business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Giphy Business have been carried out by the Giphy Business alone and the Meta Business has not negotiated on behalf of the Giphy Business (and vice versa) or entered into any joint agreements with the Giphy Business (and vice versa);
- (k) All existing contracts of the Giphy Business and the Meta Business have been serviced by the business to which they were awarded;
- (l) No changes have been made to key staff of the Giphy Business and the Meta Business except where strictly necessary to comply with this Order;
- (m) No key staff have been transferred between the Meta Business and the Giphy Business except where strictly necessary to comply with this Order;

- (n) All reasonable steps have been taken to encourage all key staff to remain with the Giphy Business and the Meta Business;
- (o) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Giphy Business (or any of its employees, directors, agents or Affiliates) to the Meta Business (or any of its employees, directors, agents or Affiliates), or vice versa;
- (p) Except for ordinary course business GIF-related Activities or as listed in paragraph (r) below, Meta has not entered into any GIF-related Activities in the reporting period;
- (q) Except as listed in paragraph (r) below, there have been no:
  - (i) Changes to the key staff of the Giphy Business and the Meta Business;
  - (ii) Interruptions to the Giphy Business or the Meta Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that have prevented each from operating in the ordinary course of business for any period of time that could be expected to have a material and detrimental impact on Giphy or Meta and/or their customers;
  - (iii) Substantial customer volumes won or lost or substantial changes to the customer contracts for the Giphy Business and the Meta Business; or
  - (iv) Substantial changes in the Giphy Business' and the Meta Business' contractual arrangements or relationships with key suppliers.
- (r) *[list of material developments and GIF-related Activities, save for ordinary course of business GIF-related Activities]*

- 3. Meta and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Giphy or the Meta Businesses in accordance with Article 4 of the Order.

#### Interpretation

- 4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

5. it is a criminal offence under [section 117](#) of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in fines, imprisonment for a term not exceeding two years, or both.

FOR AND ON BEHALF OF META PLATFORMS, INC.

Signature .....

Name .....

Title .....

Date .....

## Schedule 5: Compliance Statement for Giphy

I [insert name] confirm on behalf of Giphy that:

### *Compliance in the Relevant Period*

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) Giphy has complied with the Order made by the CMA in relation to the divestiture of Giphy on 6 January 2023 (the Order); and
  - (b) Giphy's subsidiaries have also complied with this Order.
2. Except with the prior written consent of the CMA:
  - (a) No action has been taken by Giphy that might prejudice the Final Disposal, the CMA's decisions in the Final Report or otherwise impair the CMA's ability to take such action for the purpose of remedying, mitigating and preventing the SLC or any adverse effect which has resulted from, or may be expected to result from, the SLC finding, including any action which might:
    - (i) Lead to the integration of the Giphy Business and the Meta Business;
    - (ii) Transfer the ownership or control of the Giphy Business or any of its subsidiaries except where strictly necessary to comply with this Order;  
or
    - (iii) Otherwise impair the ability of the Giphy Business to compete independently in any of the markets affected by the Merger;
  - (b) The Giphy Business has been carried on separately from the Meta Business and the Giphy Business's separate sales or brand identity has been maintained;
  - (c) The Giphy Business has been maintained as a going concern and sufficient resources have been made available for the development of the Giphy Business, on the basis of its pre-Merger business plans;
  - (d) No substantive changes have been made to the organisational structure of the Giphy Business, except in the ordinary course of business or where strictly necessary to comply with this Order;
  - (e) No changes have been made to the organisational structure of the Giphy Business which would alter, impede or frustrate the implementation,

carrying out or enforcement of the Order, except where strictly necessary to comply with this Order;

- (f) No substantive changes are made to the management responsibilities within the Giphy Business except in the ordinary course of business or except where strictly necessary to comply with this Order;
- (g) The nature, description, range and quality of goods and/or services supplied by the Giphy Business in the UK have been maintained and preserved;
- (h) Except in the ordinary course of business for the separate operation of the Giphy Business and the Meta Business or except where strictly necessary to comply with this Order:
  - (i) All of the assets of the Giphy Business, including facilities and goodwill, have been maintained and preserved;
  - (ii) None of the assets of the Giphy Business have been disposed of; and
  - (iii) No interest in the assets of the Giphy Business has been created or disposed of;
- (i) There has been no integration of the information technology of the Giphy and Meta Businesses, and the software and hardware platforms of the Giphy Business have remained essentially unchanged, except for routine changes and maintenance, except where strictly necessary to comply with this Order;
- (j) Subject to integration which had occurred prior to 9 June 2020, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Giphy Business have been carried out by the Giphy Business alone and the Meta Business has not negotiated on behalf of the Giphy Business (and vice versa) or entered into any joint agreements with the Giphy Business (and vice versa);
- (k) All existing contracts of the Giphy Business and the Meta Business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to 9 June 2020;
- (l) No changes have been made to key staff of the Giphy Business, except where strictly necessary to comply with this Order;
- (m) No key staff have been transferred between the Meta Business and the Giphy Business except where strictly necessary to comply with this Order;



- (n) All reasonable steps have been taken to encourage all key staff to remain with the Giphy Business;
- (o) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the Giphy Business (or any of its employees, directors, agents or Affiliates) to the Meta Business (or any of its employees, directors, agents or Affiliates), or vice versa;
- (p) Except as listed in paragraph (q) below, there have been no:
- (i) Changes to the key staff of the Giphy Business except where strictly necessary to comply with this Order;
  - (ii) Interruptions of the Giphy Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
  - (iii) Substantial customer volumes won or lost or substantial changes to the customer contracts for the Giphy Business; or
  - (iv) Substantial changes in the Giphy Business's contractual arrangements or relationships with key suppliers.

(q) *[list of material developments]*

3. Giphy and its subsidiaries remain in full compliance with the Order and will continue actively to keep the CMA informed of any material developments relating to the Giphy Business in accordance with Article 4 of the Order.

#### Interpretation

4. Terms defined in the Order have the same meaning in this compliance statement.

I understand that:

6. it is a criminal offence under [section 117](#) of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in fines, imprisonment for a term not exceeding two years, or both.

FOR AND ON BEHALF OF Giphy, Inc.

Signature .....

Name .....

Title .....

Date .....

## **Schedule 6: Matters included with the divestiture of Giphy**

Meta shall dispose of Giphy in accordance with the following terms which may be varied at the election of the Approved Purchaser and with the consent of the CMA not to be unreasonably withheld:

### **Intellectual Property and Infrastructure**

1. Upon the Completion Date, Meta shall
  - 1.1 Effect or procure the transfer to the Approved Purchaser the entirety of the shares it holds in Giphy, Inc. and provide an assurance to the Approved Purchaser that Giphy owns all the properties, assets and rights necessary to operate the Giphy Business.
  - 1.2 In addition to the assurances in paragraph 1.1, demonstrate to the Approved Purchaser's satisfaction that all Giphy Intellectual Property, Giphy-Owned Intellectual Property, Software, Giphy Source Code, all Giphy Data and all Infrastructure extant at 4 May 2020 has remained the property of or registered to Giphy as the case may be and undertake to promptly transfer to the Approved Purchaser, any and all which has transferred to Meta since 4 May 2020.
  - 1.3 Promptly and without delay transfer the New Giphy Intellectual Property and New Infrastructure to Giphy.
  - 1.4 At the option of the Approved Purchaser, the Transaction Agreement shall include provision for the Approved Purchaser and Meta enter into a services agreement enabling Giphy to continue to supply Meta with Giphy Products in the ordinary course of business and shall reflect that the terms of any such agreement have been negotiated in good faith and the Approved Purchaser and Meta have used best endeavours to agree the terms. The services agreement shall be at the option of the Approved Purchaser.
  - 1.5 Transfer the exclusive global rights to the Giphy brand in perpetuity to the Approved Purchaser or as otherwise directed by the Approved Purchaser.

### **Senior management and staff**

[§<]

## Transaction Agreement

3. The Transaction Agreement shall include the following provisions:
  - 3.1 Following the transfer to Giphy in accordance with paragraph 1.3 and before the Completion Date, Meta shall, permanently delete from its Infrastructure all Giphy Intellectual Property, New Giphy Intellectual Property, Giphy Source Code, Giphy Data and any Giphy Products unless licensed to Meta in accordance with a service agreement with the Approved Purchaser, as specified in paragraph 1.4, or otherwise required in order to meet Meta's legal and regulatory obligations.
  - 3.2 At the option of the Approved Purchaser, a transitional services agreement pursuant to which Meta shall provide Back Office Functions for a period of no longer than [X] from the Completion Date, unless the CMA approves a further fixed term extension on the basis of a compelling need demonstrated by the Approved Purchaser.
  - 3.3 The retention of all liabilities of the Giphy Business by Meta arising from acts or omissions or other conduct (including breach of this Order) that occurred up to the Completion Date, subject to customary set-off provisions for amounts recovered from third parties or insurance proceeds, and provisions pertaining to the prompt compensation for any liabilities.
  - 3.4 On the Completion Date Meta shall deliver to Giphy [X] for the recapitalisation of Giphy.