

## TVS SCS TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

(these "Terms and Conditions")

### 1. Interpretation

In this Agreement:

1.1. the following terms shall have the following meanings unless the context otherwise requires:

**"Agreement"**: these Terms and Conditions together with the relevant Order Form and any document referred to in these Terms and Conditions or the Order Form;

**"Assigned Materials"**: any and all Materials created, devised, made, designed, invented or supplied by or on behalf of you in connection with the Deliverables;

**"Background Materials"**: the Materials used or delivered by you as part of the Deliverables which are already in existence prior to your provision of the Deliverables and which do not specifically relate solely to the Deliverables;

**"Background IPR"**: any IPR in any Background Materials;

**"Business Day"**: any day other than: (i) a Saturday; (ii) a Sunday; or (iii) a day when the clearing banks in the City of London are not physically open for business;

**"Confidential Information"**: any information in any form or medium obtained by or on behalf of either Party from or on behalf of the other Party in relation to this Agreement which is expressly marked as confidential or which a reasonable person would consider to be confidential, and which may concern the other Party's business, plans, ideas, methodologies, specifications, data, financial condition or clients and whether any of the foregoing information is disclosed or obtained before, on or after the date of this Agreement, together with any reproductions of such information or any part of it (and our **"Confidential Information"** shall include the Assigned Materials and Our Materials);

**"Deliverables"**: the Goods and/or the Services;

**"Delivery Location"**: the site where we are based, or such other site as we stipulate in the Order Form for delivery of the Deliverables;

**"Fees"**: the Goods Fees and the Services Fees;

**"Goods"**: any goods provided or to be provided to us by you pursuant to this Agreement, as may be set out in the Order Form;

**"Goods Fees"**: the fees payable by us to you for your supply to us of the Goods, as may be set out in the Order Form, and subject always to the Pricing Schedule;

**"IPR"**: copyright and related rights, trade marks and service marks, trade names and domain names, rights under licences, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, patents, rights to inventions, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**"Materials"**: any and all materials, works of authorship, deliverables, software (including source code and object code), routines, algorithms, files, multimedia and audiovisual material, tools, processes, systems, methodologies, charts, flowcharts, manuals, databases, database structures, a website's "look and feel", content, catalogues, descriptions, products, documents, notes, records, results, reports, ideas, concepts, discoveries, know-how, information, text, data, research, lists, inventions, creations, diagrams, artwork, designs, sketches, models, pictures, photographs, screenshots, drawings, plans, descriptions, specifications, images, logos, styles, graphics, names, devices, domain names and marks (in whatever form and on whatever media); including any additions, enhancements, changes, alterations, modifications or amendments to any of the foregoing;

**"Normal Working Hours"**: the normal working hours at each Delivery Location, of which we will inform you prior to delivery;

**"Order Form"**: the written document we issue to you, advising of the particular goods and/or services that are to be supplied by you to us, and which may be in various forms, including a purchase order and schedule;

**"Our Materials"**: any and all Materials provided or to be provided by us in relation to the Services;

**"Party"**: us or you, and **"Parties"** means both of us and you;

**"Pricing Schedule"**: the schedule setting out the pricing and Fees for Goods and Services from time to time, as approved by us at our absolute discretion; where there is no such pricing schedule, the Fees will be as set out on the Order Form;

**"Services"**: any services provided or to be provided by you to us pursuant to this Agreement, as may be set out in the Order Form, and which may include services for the manufacture, delivery and installation of Goods;

**"Services Fees"**: the fees payable by us to you for your provision to us of the Services, as may be set out in the Order Form and subject always to the Pricing Schedule;

**"Specification"**: the specification for the Deliverables, as may be set out in the Order Form; and

**"you" or "your"**: the supplier of goods and/or services to us under this Agreement, as set out in the Order Form;

1.2. references to **"Clauses"** are to clauses of these Terms and Conditions;

1.3. the headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement;

1.4. a **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.5. a reference to a Party includes its personal representatives, successors or permitted assigns;

1.6. words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm, partnership, trust, association, government or local authority department or other authority or body (whether corporate or unincorporated);

1.7. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

- 1.8. any phrase introduced by the terms **"including"**, **"include"**, **"in particular"** or any similar expression, shall be construed as illustrative, shall not limit the sense of the words preceding or following those terms, and shall be deemed to be followed by the words "without limitation" unless the context requires otherwise; and
- 1.9. a reference to **"writing"** or **"written"** includes in electronic form and similar means of communication (except for the sending of notices under Clause 14).

## **2. Agreement**

- 2.1. The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by you in whatever form and at whatever time. These Terms and Conditions apply to all Deliverables.
- 2.2. Save as expressly provided in this Agreement, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between us and you preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated in this Agreement except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each Party acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.
- 2.3. This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter of this Agreement and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to in this Agreement.
- 2.4. This Agreement shall be legally formed and the Parties shall be legally bound when you agree to supply the Deliverables in accordance with the terms of the Order Form (as may be varied by us in writing). Submission of an Order Form by us to you shall be deemed to be an offer by us to purchase or obtain Deliverables subject to these Terms and Conditions. Your acceptance of that Order Form shall be deemed to have taken place (and this Agreement entered into) on the earlier of:
  - 2.4.1. the date on which you agree to provide the Deliverables in accordance with the terms of the Order Form; or
  - 2.4.2. the date on which you commence the provision of the Deliverables.
- 2.5. If you provide to us any quotation, order confirmation, sales order or any other document, such document (and any terms and conditions attached or referred to in it) shall be purely for your administrative purposes and shall not form part of this Agreement.
- 2.6. In the event of a conflict between these Terms and Conditions and the Order Form and any documents referred to in these Terms and Conditions or the Order Form, then the following order of precedence shall apply:
  - 2.6.1. the Order Form prevails over
  - 2.6.2. any mutually signed agreement, where applicable, which prevails over
  - 2.6.3. these Terms and Conditions, which prevail over
  - 2.6.4. any other document.
- 2.7. Each Order Form constitutes a separate agreement. There may be more than one such agreement between the Parties in force at the same time as this Agreement.

## **3. Our obligations**

- 3.1. We will use our reasonable endeavours to:
  - 3.1.1. co-operate with, and be available at all reasonable times for discussion and meetings with, you;
  - 3.1.2. carry out our obligations under this Agreement in order to enable you to perform your obligations under this Agreement; and
  - 3.1.3. in respect of the Delivery Location:
    - 3.1.3.1. prepare the Delivery Location for receipt and provision of the Deliverables;
    - 3.1.3.2. inform you of any rules and regulations pertaining to the Delivery Location that are relevant to your provision of the Deliverables and any timings for provision of the Deliverables; and
    - 3.1.3.3. ensure that our relevant staff and representatives are ready and present at the Delivery Location at any time agreed by us to enable you to perform your obligations under this Agreement.
- 3.2. We do not warrant that we will make any minimum orders for any Deliverables over any given period, and you acknowledge that we may use other suppliers to supply any goods and/or services from time to time.

## **4. The Services**

- 4.1. You will provide the Services in accordance with this Agreement including any Specification. Time for performance of the Services shall be of the essence. You warrant and undertake that:
  - 4.1.1. you will provide the Services in a professional manner with the care, skill and diligence required in accordance with best practice and standards prevailing in the industry for similar services;
  - 4.1.2. you will provide the Services in a safe manner and comply with all health and safety laws, regulations and codes of practice;
  - 4.1.3. you have the necessary skill and expertise to provide the Services;
  - 4.1.4. if you use any of our equipment or access any part of our premises, you shall take good care of them, not damage them and restore them, and shall leave them in clean and tidy condition;
  - 4.1.5. you will work and co-operate with all of our staff and make yourself available at all reasonable times for discussion and meetings with us and our staff and representatives;
  - 4.1.6. you shall ensure that, if at any point during your provision of the Services, any of your staff or representatives need to attend our premises in order to provide the Services, you shall submit to us a request not less than three Business Days prior to the requirement for such attendance (and we may provide or withhold our consent, or make our consent subject to any conditions, at our absolute discretion). If we grant your request, you shall ensure that, and shall procure that your staff and representatives ensure that, whilst at our premises:
    - 4.1.6.1. you conform to all rules and regulations and procedures applicable to our premises and our normal codes of practice
    - 4.1.6.2. for security, health and safety and dress practice and any other reasonable requirements, all as we advise to you;

- 4.1.6.3. you shall use your best endeavours to cause minimum disruption to us, including minimising any noise and distractions and interference with machinery, not obstructing any right of way and only accessing such parts of our premises as is necessary;
- 4.1.6.4. you shall take all reasonable precautions to maintain the security of our premises and protect it from unauthorised access at any time; and
- 4.1.6.5. you shall not remove anything from our premises that does not belong to you;
- 4.1.7. you will immediately advise us with as much notice as possible if you become aware of any circumstances that may cause delay, disruption or failure to perform the Services and you shall use all reasonable endeavours to mitigate against such problems;
- 4.1.8. you have all necessary rights to enter into and perform this Agreement and you have all relevant licences and authorisations;
- 4.1.9. you will provide independent and unbiased advice to us in accordance with best industry practice;
- 4.1.10. the provision of the Services, the Assigned Materials and the Background Materials, and their content and design, will comply with the requirements of all applicable laws, statutes, regulations, bye-laws, licences and codes of practice;
- 4.1.11. you will, without charge and upon request, provide such training and instructions as we reasonably require to make full use of the Services;
- 4.1.12. you will ensure that all people involved with the provision of the Services are fully trained and qualified, and that they shall be fully supervised (where appropriate) in their performance of the Services;
- 4.1.13. you will comply with all of our reasonable directions, requests, instructions and requirements in relation to the performance of the Services;
- 4.1.14. (before any assignment to us under Clause 9.1) to the extent that we are not the owner, you are the sole and absolute legal and beneficial owner of the entire IPR in the Services, the Background Materials and the Assigned Materials;
- 4.1.15. no third party assisted, or will assist, you with creating, devising, making, designing, inventing or supplying the Services, the Background Materials or the Assigned Materials;
- 4.1.16. you have not assigned, transferred, licensed, charged, dealt with or in any way encumbered any of the Assigned Materials and will not do so;
- 4.1.17. nothing in the Materials or the Services provided by or made available by you contains or will contain any computer programs or programming routines that may be detrimental in any way to us or third parties, including any viruses, trojan horses, trap doors, back doors, easter eggs, worms, time bombs, cancelbots or anything else that is intended to, or may, damage or detrimentally interfere with any system, data or personal information;
- 4.1.18. nothing in the Services, the Background Materials or the Assigned Materials infringes the IPR or any other rights of any nature of any person anywhere in the world; and
- 4.1.19. nothing in the Services, the Background Materials or the Assigned Materials violates any law, statute, regulation, statutory instrument or bye-law of any jurisdiction or infringes the rights of any third party.
- 4.2. You warrant that you operate a suitable quality assurance and control system in respect of all Deliverables.

## **5. The Goods**

- 5.1. You shall ensure that, in addition to conforming in all respect to the relevant provisions of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982 and with all other statutory and legal requirements, and warrant that:
  - 5.1.1. the Goods shall be without fault;
  - 5.1.2. the Goods shall not be "defective" within the meaning of the Consumer Protection Act 1987 and shall be safe to use;
  - 5.1.3. when used with other products which are reasonably foreseeable that we may make available to our staff and third parties (whether customers or otherwise), the Goods shall not cause those other products to be "defective" within the meaning of the Consumer Protection Act 1987 or unsafe to use;
  - 5.1.4. the Goods shall conform in all respects to the Order Form (including any Specification) and all samples provided or given by you to us, and all written descriptions published by you (whether specifically to us or generally) in respect of the Goods;
  - 5.1.5. the Goods shall be capable of any standard of performance as may be specified in this Agreement or otherwise agreed in writing between the Parties;
  - 5.1.6. the Goods shall be of good design compared with other designs found in your industry;
  - 5.1.7. the Goods shall be of excellent quality, material and workmanship; and
  - 5.1.8. the Goods and the intended use of them by us and any anticipated user:
    - 5.1.8.1. conform in all respects with all applicable laws, rules, regulations, bye-laws and codes of practice;
    - 5.1.8.2. do not infringe the privacy rights or IPR of any third party;
    - 5.1.8.3. are not defamatory, malicious, abusive, obscene, indecent, discriminatory or harassing;
    - 5.1.8.4. could not be reasonably considered by us to be inappropriate; and
    - 5.1.8.5. do not contain any material detrimental to us or any anticipated user.
- 5.2. You shall deliver the Goods carriage paid to us to the Delivery Location (and inclusive of all charges for packaging, packing, shipping, insurance, carriage and delivery) by the due date that we may require (and amend) from time to time. Time for delivery shall be of the essence.
- 5.3. You shall provide to us a statement of origin and commodity code for any Goods on our request.
- 5.4. Unless otherwise stipulated by us in writing, deliveries of Goods will only be accepted in Normal Working Hours. You shall off-load the Goods at the place and in the manner directed by us.
- 5.5. All Goods shall be subject to our testing and inspection. Without prejudice to any rights that we may have (whether under this Agreement, under statute or anything else) in relation to the delivered Goods, we shall not be deemed to have accepted any Goods until after such testing and inspection have been completed to our satisfaction.

- 5.6. You shall package, store and deliver the Goods in the form and manner stipulated in accordance with the Specification and any other instructions provided by us from time to time. You shall securely package the Goods in the package of a type normally used by similar suppliers for the same or similar Goods. We shall not be obliged to return any packaging materials to you.
- 5.7. You shall set out the following information on the outside of every package (where applicable for the relevant type of Goods):
  - 5.7.1. Goods description;
  - 5.7.2. quantity in package;
  - 5.7.3. any special direction for storage and opening; and
  - 5.7.4. your name and address.
- 5.8. You shall not allow any unauthorised people to have access to any Goods or part-made Goods which are being provided to us.
- 5.9. You shall ensure that, at all times before delivery, the Goods being made, or that have been made, are:
  - 5.9.1. segregated adequately from material deemed to be rejected material; and
  - 5.9.2. protected from contamination or infestation.
- 5.10. Unless we agree otherwise in writing, you shall not deliver Goods that are the subject of an Order Form by instalments. Where we agree to accept delivery by instalments, failure by you to deliver any one instalment in accordance with this Agreement shall entitle us to treat the whole Agreement as repudiated, at our option.
- 5.11. If the Goods are delivered to us in quantities that exceed the quantities ordered, we shall not be bound to pay for the excess. Any excess shall be and will remain at your risk and will be returnable to you at your risk and expense.
- 5.12. Risk in the Goods shall remain with you and shall pass to us on completion of delivery (including off-loading and stacking).
- 5.13. Without prejudice to any right of rejection which we may be entitled to exercise, equitable and legal title in the Goods shall pass to us upon the earlier of payment in full (where payment is in one instalment) or in part (where payment is in more than one instalment), or delivery. Title to rejected Goods shall revert back to you upon the later of receipt by you of the rejected Goods and full repayment to us of the Fees in respect of those rejected Goods.
- 5.14. You shall ensure that a delivery note accompanies each delivery of the Goods, confirming the date, quantity and type of Goods delivered together with the relevant Order Form reference. In the event that any delivery does not carry such a delivery note, the Goods shall be considered as non-compliant with this Agreement and the provisions of Clause 6.1 shall apply.
- 5.15. You shall allow us access, on our request, to inspect and test any Goods during manufacture, processing or storage at your premises or those of any permitted third party prior to dispatch, and you shall provide us with all facilities reasonably required for inspection and testing. If, as a result of such inspection or testing, we are not satisfied that the Goods will comply in all respects with this Agreement, and we inform you of the same, you shall take such steps as are necessary to ensure compliance.
- 5.16. We reserve the right to reject deliveries of Goods that you attempt to make earlier than the agreed time and day for delivery.

## **6. Quality**

- 6.1. Without prejudice to any other right or remedy that we may have, if we reasonably believe that any Deliverables which have been or should have been supplied to us are not or were not supplied in accordance with, or you have not complied in any way with, any of the terms of this Agreement, we may (without prejudice to any other rights or remedies, whether under this Agreement or at law) exercise any one or more of the following remedies at our discretion, whether or not any part of the Deliverables has been accepted or already received by us:
  - 6.1.1. to reject the Deliverables (in whole or in part, regardless of whether some of the rejected Deliverables comply with this Agreement) on the basis that a full refund for the rejected Deliverables shall be paid promptly by you. You shall, at your own expense within seven days from the date of receipt of notice of rejection (or such other period as is agreed in writing between us and you), remove the rejected Deliverables (if applicable). If applicable, if the rejected Deliverables have not been removed within that period, we may return to you or destroy the rejected Deliverables at your risk and expense;
  - 6.1.2. to rescind this Agreement (in whole or in part);
  - 6.1.3. at our option and at your expense, to give you the opportunity within a given period stipulated by us to remedy any defect in the Deliverables or to supply or provide replacement Deliverables and carry out any other necessary work to ensure that the terms of this Agreement are fulfilled;
  - 6.1.4. to refuse to accept any further provision of the Deliverables (under this Agreement or any agreement) but without any liability of us to you;
  - 6.1.5. to carry out at your expense any work necessary to make the Deliverables comply with this Agreement;
  - 6.1.6. to recover from you any expenditure reasonably incurred by us in obtaining the Deliverables or related goods and/or services other than from you; and
  - 6.1.7. to claim such losses and damages as may have been sustained in consequence of your breaches of this Agreement (including additional expenditure incurred as a result of us obtaining replacement goods and/or services).
- 6.2. Without prejudice to any other right or remedy, whether under this Agreement or at law, we may require the removal from the Delivery Location of any individuals upon our reasonable request.
- 6.3. You shall indemnify us, and keep us fully indemnified, against all liabilities, demands, claims, proceedings, charges, judgments, fines, costs, expenses, damages and losses (in each of the aforementioned cases including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) which we (or our customer in respect of any Deliverables) may incur or suffer as a result of:
  - 6.3.1. any defective Deliverables, workmanship, quality or materials; or
  - 6.3.2. any infringement or alleged infringement of any IPR of any nature in any way relating to the use, manufacture or supply of Goods;
  - 6.3.3. any breach of Clause 12 or Clause 13; or
  - 6.3.4. any direct or indirect breach or negligent performance or failure or delay in performance of this Agreement by you or your staff or representatives.

## **7. Insurance**

During the term of this Agreement and for a minimum of seven years after its termination, you shall take out and maintain in full force and effect, at your own expense and cost, insurance operating on a worldwide basis with a well-established insurance company of repute to cover your potential liabilities under or in connection with this Agreement with a sufficient and appropriate limit of indemnity for each and every claim.

## **8. Confidentiality**

- 8.1. Each Party shall keep the other Party's Confidential Information confidential and shall not:
- 8.1.1. use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement; or
  - 8.1.2. disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Agreement.
- Each Party shall use adequate procedures and security measures to protect the other Party's Confidential Information from inadvertent disclosure or release to unauthorised persons.
- 8.2. A Party may disclose the other Party's Confidential Information to those employees, agents and subcontractors who need to know such Confidential Information provided that:
- 8.2.1. it informs such employees, agents and subcontractors of the confidential nature of the Confidential Information before disclosure; and
  - 8.2.2. it does so subject to obligations equivalent to those set out in this Clause 8.
- 8.3. A Party may disclose the Confidential Information of the other Party to the extent such Confidential information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 8.3, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 8.4. The obligations of confidentiality in this Agreement shall not extend to any matter which either Party can show:
- 8.4.1. is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or
  - 8.4.2. was independently developed by it; or
  - 8.4.3. was independently disclosed to it by a third party entitled to disclose the same; or
  - 8.4.4. was in its written records prior to receipt.
- 8.5. Each Party reserves all rights in its Confidential Information. No rights or obligations in respect of a Party's Confidential Information other than those expressly stated in this Agreement are granted to the other Party, or to be implied from this Agreement.
- 8.6. On termination or expiry of this Agreement, each Party shall:
- 8.6.1. return to the other Party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other Party's Confidential Information;
  - 8.6.2. erase all the other Party's Confidential Information from its computer systems (to the extent possible); and
  - 8.6.3. certify in writing to the other Party that it has complied with the requirements of this Clause 8.6, provided that a recipient Party may retain documents and materials containing, reflecting, incorporating or based on the other Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. This Clause 8 shall continue to apply to any such documents and materials retained by a recipient Party following termination of this Agreement for any reason.
- 8.7. You shall not refer to us or this Agreement, or the fact that we purchase any Deliverables from you, in any marketing, advertisement or publicity without our prior written consent.
- 8.8. This Clause 8 shall continue to apply after termination or expiry of this Agreement.

## **9. IPR**

- 9.1. Subject to Clause 8.2, in consideration of the payment by us to you of the Fees, to the extent that we are not already the owner, you hereby assign to us (by way of present and future assignment) absolutely with full title guarantee all IPR in all and any part of the world in the Assigned Materials (whether created, devised, made, designed, invented or supplied before, on or after the date of this Agreement), for the full term of such rights and all renewals and extensions, together with all accrued rights of action, including:
- 9.1.1. the right to file an application, claim priority from such application, and prosecute and obtain grant of any IPR in the Assigned Materials or similar protection in or in respect of any country or territory in the world;
  - 9.1.2. the right to extend to or register in or in respect of any country or territory in the world each and any of the IPR in the Assigned Materials, and each and any of the applications comprised in the IPR in the Assigned Materials or filed as set out above, and to extend or register in, or in respect of, any country or territory in the world any Intellectual Property Right registration or like protection granted on any such applications;
  - 9.1.3. the absolute entitlement to any IPR granted pursuant to any of the applications comprised in the IPR in the Assigned Materials or filed as set out above; and
  - 9.1.4. the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the IPR in the Assigned Materials or any IPR granted on any of the applications in the IPR in the Assigned Materials or filed as set out above, whether occurring before, on or after the date of this Agreement.
- 9.2. The Parties acknowledge that, as between them, you shall retain ownership of all Background IPR.
- 9.3. We hereby grant to you a non-exclusive, royalty-free licence to use the Assigned Materials and Our Materials to the extent necessary to provide the Deliverables. Such licence shall be non-transferable, non-assignable and non-sublicensable except to the extent that we give our express prior written consent (which may be provided or withheld or conditional, in our absolute discretion). You shall not use or permit the use of the Assigned Materials or Our Materials for any other purpose without our prior written consent (which may be provided or withheld or conditional, at our absolute discretion).

- 9.4. You hereby grant to us a royalty-free, worldwide, irrevocable, perpetual, non-exclusive, assignable, sub-licensable licence to use the Background IPR and Background Materials for any purpose in connection with the use and access of the Assigned Materials by us and anyone permitted by us.
- 9.5. You irrevocably waive any and all of your moral rights which you may have, and shall procure that any contributor does likewise, anywhere in the world in the Assigned Materials and the Background Materials, so that we and any third party may use and adapt all Assigned Materials and Background Materials in whatsoever way we or such third party determines without infringing such moral rights including the right to be identified, the right of integrity and the right against false attribution.
- 9.6. You shall fully and promptly execute all documents and instruments and do all acts, deeds and things as we may require from time to time to:
  - 9.6.1. vest absolute legal and beneficial ownership of IPR in the Assigned Materials in us or our nominee;
  - 9.6.2. perfect our or our nominee's titles to its IPR anywhere in the world; and
  - 9.6.3. enable us and our nominee to protect and enforce our IPR including, if requested, assisting in legal proceedings.
- 9.7. You will not do or omit to do any act, matter or thing in consequence of which the IPR's protection that might (but for such act or omission) otherwise have been available is or might be lost, forfeited or cease to be available.
- 9.8. Every week in which you have any involvement with any Assigned Materials or Background Materials, and in any event on our request, you will without fail disclose and deliver to us all Assigned Materials and Background Materials in complete form and all information, data and instructions as to such Materials and the Deliverables in such form and on such media as we may reasonably require and in any event to allow us or our licensees to be able to use, make available, invent, create, devise, make, design, supply, maintain, add to, enhance, change, alter, modify or amend any Assigned Materials.
- 9.9. Upon our request, you will delete all Assigned Materials from any computer disks, tapes or other material or media in your possession or under your control or deliver up or destroy all materials and tangible items in your possession or under your control which are derived from, contain or reflect, any Assigned Materials, and you will not retain any copies in any form or in any medium.
- 9.10. You shall indemnify us, and keep us fully indemnified, against all liabilities, demands, claims, proceedings, charges, judgments, fines, costs, expenses, damages and losses (in each of the aforementioned cases including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) which we may incur or suffer as a result of any third party's claim or suit alleging that the use or possession of any Materials provided or made available by you (including the Assigned Materials) infringes any IPR belonging to a third party. Without prejudice to such indemnity, in the event that the use or possession of such Materials infringes or, in our opinion, may be held to infringe any IPR of a third party, you may at your option and expense:
  - 9.10.1. procure for us to continue to use such Materials free from any liability for such infringement; or
  - 9.10.2. modify or replace such Materials so as to avoid the infringement but providing substantially the same functionality and performance.

## **10. Fees**

- 10.1. In consideration for obtaining the Deliverables provided by you pursuant to this Agreement, we will pay to you the relevant Fees. The Fees shall always be subject to the Pricing Schedule.
- 10.2. Unless the Order Form provides otherwise:
  - 10.2.1. you will invoice us for the Fees upon completion of provision of the Deliverables to our satisfaction;
  - 10.2.2. you shall provide us with a proper invoice for the Fees showing VAT separately, together with details of the Order Form reference number and a full description of the Deliverables to which the invoice relates; and
  - 10.2.3. we shall pay you for all undisputed Fees by the end of the second month following the month in which we have received your proper invoice with any relevant accompanying documentation.
- 10.3. Unless we specifically agree in writing in advance to specific expenses, you will not charge for expenses.
- 10.4. Unless we and you otherwise agree in writing, all sums due to you are inclusive of VAT and of any sales, import and export taxes, customs and duties.
- 10.5. Payment of the Fees shall not constitute a waiver of our rights and remedies.
- 10.6. You will be solely responsible for all taxes, national insurance or other contributions which may be payable out of, or as a result of, the receipt of any Fees or other monies paid or payable in respect of the Deliverables. You will indemnify us against all costs, claims, expenses or proceedings arising out of or in connection with such payments.
- 10.7. If we fail to make any payment due to you under this Agreement by the due date for payment, and such payment remains outstanding 30 days following your provision of notice to us of such outstanding payment, then we shall pay interest on the overdue amount at the rate of 2% per annum above The Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. We shall pay the interest together with the overdue amount.
- 10.8. You agree that:
  - 10.8.1. if at any time you sell any Deliverable to a comparable customer for less than the Fees then in force for that Deliverable, you shall reduce the relevant Fees to match the lower price for so long as the lower price is available and refund to us the difference between the Fees and the lower price in respect of our purchases of the Deliverables after you began charging the lower price. For these purposes, "comparable" means a customer that purchases goods and/or services in substantially similar volumes as us on broadly similar terms and conditions; and
  - 10.8.2. we shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase that you customarily grant.
- 10.9. We may set off against all amounts due to you under this Agreement any present or future sums owed by you to us whether arising in connection with this Agreement or otherwise. You will pay any credit balance to us without delay on our request.

## **11. Termination**

- 11.1. This Agreement will commence on the date on which it is entered into and, unless terminated earlier in accordance with the termination provisions under this Agreement, will continue in full force and effect until the latest of:
  - 11.1.1. the conclusion of the provision of the Deliverables in accordance with this Agreement; or

- 11.1.2. the conclusion of payment of all sums due under this Agreement.
- 11.2. We may terminate this Agreement immediately by notice to you if:
- 11.2.1. you are in material breach of any of your obligations under this Agreement, or any other agreement between us and you, which is incapable of remedy;
  - 11.2.2. you fail to remedy, where capable of remedy, any material breach of any of your obligations under this Agreement, or any other agreement between us and you, after having been required in writing to do so within a period of no less than 10 Business Days;
  - 11.2.3. you are in persistent breach of any of your obligations under this Agreement or any other agreement between us and you;
  - 11.2.4. you breach Clause 8, Clause 12 or Clause 13;
  - 11.2.5. you undergo a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010); or
  - 11.2.6. you give notice to any of your creditors that you have suspended or are about to suspend payment or if you shall be unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for your winding-up or an administration order is made or an administrator is appointed to manage your affairs, business and property or a receiver and/or manager or administrative receiver is appointed in respect of all or any of your assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator or which entitle the court to make a winding-up or bankruptcy order or you take or suffer any similar or analogous action in consequence of debt in any jurisdiction.
- 11.3. Termination or expiry of this Agreement shall be without prejudice to any of our accrued rights or remedies.
- 11.4. Termination or expiry of this Agreement shall not affect the coming into force, or continuance in force, of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 11.5. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

## **12. Anti-bribery and corruption**

- 12.1. You shall:
- 12.1.1. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption, including the Bribery Act 2010 ("**Relevant Requirements**");
  - 12.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 12.1.3. comply with our ethics, anti-bribery and anti-corruption policies as we may provide to you, and update, from time to time ("**Relevant Policies**");
  - 12.1.4. have and maintain in place throughout the term of this Agreement your own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and Clause 12.1.2, and enforce them where appropriate;
  - 12.1.5. promptly report to us any request or demand for any undue financial or other advantage of any kind you receive in connection with the performance of this Agreement;
  - 12.1.6. immediately notify us if a foreign public official becomes an officer or employee of your business, or acquires a direct or indirect interest in your business, and you warrant that you have no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement); and
  - 12.1.7. within three months of the date of this Agreement, and annually thereafter, certify to us in writing signed by an officer of your business, compliance with this Clause 12 by you and all persons associated with you under Clause 12.2. You shall provide such supporting evidence of compliance as we may reasonably request.
- 12.2. You shall ensure that any person associated with you who is performing services or providing goods in connection with this Agreement (in accordance with this Agreement) does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on you in this Clause 12 ("**Relevant Terms**"). You shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to us for any breach by such persons of any of the Relevant Terms.
- 12.3. For the purpose of this Clause 12, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 12, a person associated with you includes any permitted subcontractor of you.

## **13. Anti-slavery and human trafficking**

- 13.1. In performing your obligations under this Agreement, you shall:
- 13.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force, including the Modern Slavery Act 2015, and have and maintain throughout the term of this Agreement your own policies and procedures to ensure your compliance;
  - 13.1.2. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
  - 13.1.3. include in your contracts with your subcontractors and suppliers, anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 13.
- 13.2. You represent and warrant that neither you nor any of your officers, employees or other persons associated with you:
- 13.2.1. have been convicted of any offence involving slavery and human trafficking; and
  - 13.2.2. to the best of your knowledge, have been or are the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 13.3. You shall:

- 13.3.1. implement due diligence procedures for your subcontractors, suppliers and other participants in your supply chains, to ensure that there is no slavery or human trafficking in your supply chains;
  - 13.3.2. notify us as soon as you become aware of:
    - 13.3.2.1. any breach, or potential breach, of this Clause 13; or
    - 13.3.2.2. any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement;
  - 13.3.3. prepare and deliver to us, once per year by the anniversary of this Agreement during each year of this Agreement, an annual slavery and human trafficking report setting out the steps you have taken to ensure that slavery and human trafficking is not taking place in any of your supply chains or in any part of your business;
  - 13.3.4. maintain a complete set of records to trace the supply chain of all Deliverables;
  - 13.3.5. permit us and our third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this Clause 13, to have access to and take copies of your records and any other information and to meet with your personnel to audit your compliance with your obligations in this Clause 13;
  - 13.3.6. implement annual audits of your compliance, and your subcontractors' and suppliers' compliance, with this Clause 13;
  - 13.3.7. implement a system of training for your employees, suppliers and subcontractors to ensure compliance with this Clause 13; and
  - 13.3.8. keep a record of all training offered and completed by your employees, suppliers and subcontractors to ensure compliance with this Clause 13, and make a copy of the record available to us on request.
- 13.4. You represent, warrant and undertake that you conduct your business in a manner that is consistent with this Clause 13.

#### **14. Notices**

- 14.1. Any notice given to either Party under or in connection with this Agreement shall be in writing, addressed to the relevant Party at its registered office or such other address as that Party may have specified to the other Party in writing, and shall be delivered personally, sent by pre-paid first class post, recorded delivery or commercial courier.
- 14.2. A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 14.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 14.3. The provisions of Clauses 14.1 and 14.2 shall not apply to the service of any proceedings or other documents in any legal action.

#### **15. Assignment**

- 15.1. You may not assign, transfer, charge or otherwise encumber, create any trust over, or deal in any manner with, this Agreement or any right, benefit or interest under it, nor transfer, novate or sub-contract any of your obligations under it, without our prior written consent (such consent not to be unreasonably withheld or delayed).
- 15.2. If, with our consent, you subcontract any of your obligations to a subcontractor, you will be, and remain, fully liable for the performance of any subcontractor you appoint.

#### **16. Changes**

Subject to Clause 2.4, no change to this Agreement shall be binding unless it is agreed in writing signed by each of us and you.

#### **17. Severance**

- 17.1. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 17.2. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### **18. Waiver**

- 18.1. A waiver of any right or remedy under this Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 18.2. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

#### **19. Third party rights**

A person who is not a Party shall not have any rights under or in connection with this Agreement.

#### **20. No partnership**

Nothing in this Agreement shall constitute a partnership or employment or agency relationship between the Parties.

#### **21. Governing law and jurisdiction**

- 21.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England.
- 21.2. The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation.