

# vismedia.agency Terms and Conditions

These Terms and Conditions apply to and form part of the Contract between the Supplier and the Customer.

## 1 Definitions and interpretation

1.1 In these Terms and Conditions, the following definitions apply:

**Agency:** means an agency (including but not limited to public relations, advertising or marketing agencies) who contracts with the Supplier under this Contract to deliver a Project to the End Client.

**App:** means the application identified in the SOW as the mobile or web-based App in object code form;

**Augmented Reality:** an enhanced version of reality where live direct or indirect views of physical environments are augmented with superimposed computer-generated images over a user's view of the environment, thus enhancing the current perception of reality;

**Brief:** means the Customer's non-binding instructions to the Supplier relating to the Project, which may be delivered either orally or in writing;

**Business Day:** means 9.00 am to 6.00 pm on a day other than a Saturday, Sunday or bank or public holiday in the country where the Services are to be performed;

**Confidential Information:** means any commercial, financial or technical information, information relating to the Services, plans, know-how or trade secrets which is obviously confidential or has been identified as such, or which is developed by a party in performing its obligations under, or otherwise pursuant to the Contract;

**Contract:** means this agreement between the Supplier and the Customer, including the Quotation and any applicable SOW, for the delivery of the Services;

**Controller:** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**Customer:** means the person who purchases the Services for the delivery of the Project from the Supplier and whose details are set out in the Quotation;

**Customer Materials:** means any Intellectual Property Rights and other materials owned, created or supplied by the Customer or End Client and made available to the Supplier under this Contract;

**Data Protection Laws:** means, as binding on either party or the Services: (a) the GDPR; (b) the Data Protection Act 2018; (c) any laws which implement any such laws; and (d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;

**Data Subject:** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**Deliverables:** means Services and/or End Product that will be delivered by the Supplier as part of a Project, which may include Images, Footage and/or Digital Content;

**Digital Content:** means any form of content delivered in digital form, which include Software, Mobile Apps and websites and any other applications delivered by the Supplier as part of the Project;

**End Client:** where an Agency contracts with the Supplier for delivery of a Project for the benefit of a third-party, that third-party is referred to in this Contract as the End Client.

**End Product:** means the successful achievement of all the Deliverables agreed to be delivered as part of the Project;

**Footage:** means any moving images, animations, films or other audio/visual representations, excluding still Images, recorded in any format, delivered as part of the Project;

**Force Majeure:** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract;

**GDPR:** means the General Data Protection Regulation, Regulation (EU) 2016/679;

**Health and Safety Laws:** means the Health and Safety at Work etc Act 1974, and all other applicable UK legislation, statutory instruments and regulations in relation to health and safety;

**Image(s):** means any photographs, vectors, drawings or the like, delivered as part of the Project;

**Intellectual Property Rights:** means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: (a) whether registered or not; (b) including any applications to protect or register such rights; (c) including all renewals and extensions of such rights or applications; (d) whether vested, contingent or future; (e) to which the relevant party is or may be entitled; and (f) in whichever part of the world existing;

**International Organisation:** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**Personal Data:** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**Price:** has the meaning set out in clause 5.1;

**Processing:** has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including **process**, **processing**, **processed**, and **processes** shall be construed accordingly);

**Processor:** shall have the meaning given to it in applicable Data Protection Laws from time to time;

**Project:** means the schedule of work agreed between the parties to deliver the End Product based on the Brief (which may be detailed in a SOW);

**Quotation:** means the quotation for the Project delivered by the Supplier to the Customer;

**Services:** means the Services to be performed by the Supplier to deliver the Project to the Customer;

**Software:** means the software or applications including all code written to produce Virtual Reality and Augmented Reality experiences, which the Supplier owns or is authorised to licence to the Customer or End Client, in accordance with the terms of this Contract.

**Statement of Work (SOW):** means the description or specification of the Project as agreed between the parties;

**Sub-Processor:** means any agent, sub-contractor or other third-party (excluding its employees) engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of the Personal Data;

**Supplier:** means Visual Media Services Limited, Registration No. 3716338 (trading as vismedia.agency) of registered address 26 Church Street, Bishops Stortford, Hertfordshire, CM23 2LY;

**Third-party Materials:** means (excluding all Customer Materials) all software, materials and Intellectual Property Rights identified in the SOW, made available to the Customer by the Supplier under this Contract which are licensed to the Supplier or otherwise not owned by the Supplier;

**VAT:** means value added tax under the Value Added Tax Act 1994 or any other similar sale or fiscal tax applying to the sale of the Services;

**Virtual Reality:** is the term used to describe a three-dimensional, computer generated environment which can be explored and interacted with by a person.

1.2 In this Contract, unless the context requires otherwise:

1.2.1 any clause or other headings in this Contract is included for convenience only and shall have no effect on the interpretation of this Contract;

1.2.2 a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;

1.2.3 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.2.4 a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established;

1.2.5 a reference to a gender includes each other gender;

1.2.6 words in the singular include the plural and vice versa;

1.2.7 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words.

## 2 Performance

2.1 The Project shall be delivered in accordance with the Contract. All variations to the Contract must be agreed in writing by both parties. If the Supplier is required to amend the Project due to technical or legal reasons, the Supplier shall notify the Customer of such variations and the reasons and the Customer shall have the option to terminate the Project and/or Contract within 30 days of notice if the Customer disagrees with the variation.

2.2 A full day is defined as 8 hours and a half day as 4 hours during a standard Business Day. Any Services performed outside the working hours of a standard Business Day or on a non-Business Day shall be chargeable at 1.5 times the hourly individual charge-out rate for that particular Service.

- 2.3 Unless specified in writing in the SOW, time of performance of the Services is not of the essence. The Supplier shall use its reasonable endeavours to meet estimated dates for performance, but any such dates are approximate only.
- 2.4 Whilst the Supplier shall use reasonable endeavours to mitigate any effects to the Project, the Supplier shall not be liable for any delay in or failure of performance or the quality of the Service delivered which is caused by:
- 2.4.1 External activities with the working environment which may affect the quality of the Deliverable, such as but not limited to, location, light, sound or third-party interference;
  - 2.4.2 Delays caused by the Customer or the Customer's third-party suppliers or equipment;
  - 2.4.3 Force Majeure; or
  - 2.4.4 The Customer breaches any of the terms of this Contract.
- 2.5 The Project shall be deemed completed upon the successful completion of the Deliverables by the Supplier.

### **3 Customer Obligations**

- 3.1 The Customer shall pay for the Price for the Project or Services in accordance with the Contract.
- 3.2 The Customer shall provide and procure access to the relevant personnel to ensure a satisfactory level of cooperation and as well as all necessary information and access to facilities and locations, to enable the Project to be delivered, including but not limited to:
- 3.2.1 a detailed Brief of the Customer's requirements;
  - 3.2.2 access to physical locations in advance of performance of the Services;
  - 3.2.3 communication of the correct Project information and requirements including but not limited to point of contact details, time at location, lighting at the location, access requirements and all other material and relevant details to support the filming process;
  - 3.2.4 access to the Customer Materials, access to premises and provision of specific know-how, as set out in SOW within the timescales set out in the SOW.
  - 3.2.5 communication and coordination with all personnel and third parties required, as detailed in the SOW;
  - 3.2.6 all necessary licences and permissions required to ensure no infringement of a third-party's Intellectual Property Rights.
- 3.3 Where the Customer is an Agency and contracting on behalf on an End Client, the Customer shall ensure all licence terms, including for Third-party Materials, set out in the SOW are incorporated into the Customer's contract with the End Client.
- 3.4 Unless expressly agreed between the parties to the contrary, where the End Product is required to be hosted on a server, it shall be the Customer's responsibility to procure such hosting services.

## **4 Health and Safety**

- 4.1 Each party shall comply with applicable Health and Safety Laws and Customer policies (as notified to the Supplier prior to commencement of the Project), and each shall use all reasonable endeavours to ensure that all of that party's personnel, subcontractors and all others associated with that party, involved in performing services for or on behalf of that party or otherwise involved with this Contract so comply.
- 4.2 Each party shall immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in clause 4.1 including but not limited to where there has been a health and safety incident, or such an incident is threatened.

## **5 Price**

- 5.1 The Price for the Services set out in the Quotation is an estimate of the costs involved in providing the Services for the Project, based on the assumptions set out in the Quotation or the SOW.

5.2 Where:

5.2.1 any of the assumptions set out in the Quotation or the SOW proves to be incorrect; or

5.2.2 Customer requires a change to the scope or nature of the Project or Services; or

5.2.3 additional work is required to meet the Customer's requirements in addition to what was agreed in the Contract;

the Supplier will inform the Customer of any consequential change to the Price and wherever reasonably possible, will do so prior to carrying out any additional work or incurring further costs.

- 5.3 The Supplier will charge the Customer for expenses reasonably incurred in connection with the provision of Services, including but not limited to, travel, accommodation and subsistence costs, procurement of additional equipment or the engagement of third-party suppliers ("Expenses").

- 5.4 The Supplier will charge a surcharge of 15% of the total cost paid, where the Supplier is required to:

5.4.1 pay for Expenses in advance; and/or

5.4.2 purchase stock footage from a third-party.

- 5.5 Where the Supplier is required to engage third-party suppliers of services for the delivery of the Services, the Customer shall be responsible for all costs associated with delivery of the services including costs associated with vetting and due diligence of the supplier.

- 5.6 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.

## **6 Payment**

- 6.1 The Supplier shall invoice the Customer for the Project at any time after commencement of the Project.

- 6.2 For Contracts with a total Price (excluding VAT and Expenses):

6.2.1 below £10,000, the Customer shall be invoiced the full Price on completion of the Project; or

6.2.2 of £10,000 and above, the Customer shall be invoiced in instalments to be agreed in advance and set out in the SOW and the Customer shall deliver a purchase order detailing the instalments prior to commencement of the Project.

6.3 The Customer shall pay all invoices:

6.3.1 in full without deduction or set-off, in cleared funds within thirty (30) days of the date of each invoice; and

6.3.2 to the bank account nominated by the Supplier.

6.4 Time of payment is of the essence. Where sums due under this Contract are not paid in full by the due date:

6.4.1 the Supplier may, without limiting its other rights, suspend performance of the Services, and/or

6.4.2 terminate the Contract.

## **7 Warranty**

7.1 The Customer warrants that it has provided the Supplier with all relevant, full and accurate information as to the Customer's business and needs including a detailed Brief.

7.2 The Supplier warrants that the Services shall be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II s 13.

7.3 Except as set out in this clause 7 the Supplier gives no warranties and makes no representations in relation to the Services and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

## **8 Indemnity and insurance**

8.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.

8.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under this Contract. On request, the Customer shall supply, so far as is reasonable, evidence of the maintenance of the insurance and all of its terms from time to time applicable.

## **9 Limitation of liability**

9.1 The extent of the Supplier's liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 9.

9.2 Subject to clauses 9.3 and 9.3:

9.2.1 the Supplier's total liability shall not exceed the Price.

9.2.2 the Supplier shall not be liable for consequential, indirect or special losses.

9.2.3 the Supplier shall not be liable for any of the following (whether direct or indirect): loss of profit, loss or corruption of data, loss of use, loss of opportunity, loss of business, harm to reputation or loss of goodwill.

9.3 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

9.3.1 death or personal injury caused by negligence;

9.3.2 fraud or fraudulent misrepresentation;

9.3.3 any other losses which cannot be excluded or limited by applicable law.

## **10 Intellectual property**

10.1 At all times before and after termination or expiry of this Contract, the Customer shall comply with all terms and restrictions in respect of all Intellectual Property Rights licensed or assigned by the Supplier under this Contract.

10.2 Subject to clause 10.4, on payment of the Price, the Supplier grants to the Customer a non-exclusive, worldwide, perpetual, non-transferable licence to use, print, copy, reproduce all Images and Footage produced pursuant to this Contract.

10.3 Subject to clause 10.4, on payment of the Price, the Supplier grants to the Customer a non-exclusive, worldwide, perpetual, non-transferable licence to download, load, execute, store, access, display, use and copy in object code form any Digital Content (excluding Third-Party Materials) produced pursuant to this Contract.

10.4 Where the End Product includes Third-party Materials, the Third-party Materials' licence terms shall be set out in the SOW.

10.5 Except as expressly permitted by law, the Customer shall not:

10.5.1 copy (except as reasonably necessary for back-ups), modify, adapt or create derivative works from the Digital Content;

10.5.2 decode, reverse-engineer, disassemble or decompile or otherwise translate or convert the Digital Content;

10.5.3 assign, sub-licence, lease, resell, distribute or otherwise deal in or encumber the Digital Content; or

10.5.4 remove or modify any copyright or similar notices, or any of the Supplier's or any other person's branding;

10.5.5 install or use the Digital Content or permit it to be installed or used, on behalf of a third-party or otherwise than in conjunction with the End Product.

10.6 The licence grants set out in clauses 10.2 to 10.4, shall not apply to the Customer where the Customer is an Agency that is procuring the Services for delivery of the Project to an End Client. In such instances, the Customer shall have no right to use the End Product and the restrictions set out in clause 10.5 shall apply.

- 10.7 The Customer hereby grants to the Supplier a worldwide, royalty free, irrevocable, sub-licensable (including by multi-tier) and non-exclusive licence to utilise all the Customer Materials to the extent reasonably required to perform the Supplier's obligations under this Contract.
- 10.8 Except as expressly agreed in this clause 10, no Intellectual Property Rights of either party are transferred or licensed (whether implied or otherwise) as a result of this Contract.
- 10.9 Each party shall be entitled to use in any way it deems fit any skills, techniques or know how acquired or developed or used in performance of this Contract, provided always that such skills, techniques or know how do not:
- 10.9.1 infringe the other party's Intellectual Property Rights now or in the future; or
- 10.9.2 disclose or breach the confidentiality of the other party's Confidential Information.

## **11 IPR Claim**

- 11.1 The Supplier shall indemnify the Customer from and against any losses, damages, liability, costs and expenses (including reasonable professional fees) incurred by it as a result of any action, demand or claim that the End Product infringes the Intellectual Property Rights of any third-party (**IPR Claim**), provided that the Supplier shall have no such liability if the Customer:
- 11.1.1 does not notify the Supplier in writing setting out full details of any IPR Claim of which it has notice as soon as is reasonably possible;
- 11.1.2 makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the Supplier;
- 11.1.3 does not let the Supplier at its request and own expense have the conduct of or settle all negotiations and litigation arising from the IPR Claim at its sole discretion;
- 11.1.4 does not take all reasonable steps to minimise the losses that may be incurred by it or by any third-party as a result of the IPR Claim;
- 11.1.5 does not, at the Supplier's request, provide the Supplier with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors or agents of the Customer.
- 11.2 If any IPR Claim is made or is reasonably likely to be made, the Supplier may at its option:
- 11.2.1 procure for the Customer the right to continue using the End Product; or
- 11.2.2 modify or replace the End Product so as to avoid the infringement or alleged infringement, provided the End Product remains in material conformance to its specification set out in the SOW.
- 11.3 The Supplier's obligations under clause 11.1 shall not apply to End Products modified or used by the Customer other than in accordance with the Contract or the Supplier's instructions. The Customer shall indemnify the Supplier against all losses, damages, liability, costs and expenses (including reasonable legal fees) incurred by the Supplier in connection with any claim arising from such modification or use.



## **12 Confidentiality and announcements**

12.1 The Customer shall keep confidential all Confidential Information of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:

12.1.1 any information which was in the public domain at the date of the Contract;

12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;

12.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier; or

12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract

except that the provisions of clauses 12.1.1 to 12.1.3 shall not apply to information to which clause 12.4 relates.

12.2 This clause shall remain in for the duration of the Contract and, if longer, two years after termination of the Contract.

12.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.

12.4 To the extent any Confidential Information is Personal Data (as defined in clause 13) such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any of the provisions of clause 13.1.

## **13 Processing of Personal Data**

13.1 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Personal Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Personal Data. The Customer shall ensure all instructions given by it to the Supplier in respect of Personal Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws. Nothing in this Contract relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.

13.2 The Supplier shall process Personal Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.

13.3 The Supplier shall:

13.3.1 only process the Personal Data in accordance with the processing instructions agreed between the parties (including when making any transfer to which clause 13.7 relates), except to the extent:

- (a) that alternative processing instructions are agreed between the parties in writing; or
- (b) otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and

- 13.3.2 if the Supplier believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall promptly inform the Customer and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.
- 13.4 Taking into account the state of technical development and the nature of processing, the Supplier shall implement and maintain appropriate technical and organisational measures to protect the Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 13.5 The Supplier shall not permit any processing of Personal Data by any agent, sub-contractor or other third-party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Personal Data) without the prior written authorisation of the Customer
- 13.6 The Supplier shall (at the Customer's cost):
- 13.6.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to the Supplier; and
- 13.6.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Personal Data.
- 13.7 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Personal Data in or to countries outside the United Kingdom or to any International Organisation without the prior written consent of the Customer.
- 13.8 The Supplier shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this clause 13 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of [one] audit request in any 12 month period under this clause 13.8).
- 13.9 At the end of the performance of the Services relating to the processing of Personal Data, at the Customer's cost and the Customer's option, the Supplier shall either return all of the Personal Data to the Customer or securely dispose of the Personal Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Supplier to store such Personal Data. This clause 13 shall survive termination or expiry of the Contract.

## **14 Force Majeure**

- 14.1 A party shall not be liable if delayed in or prevented from performing its obligations due to Force Majeure, provided that it:
- 14.1.1 promptly notifies the other of the Force Majeure event and its expected duration; and
- 14.1.2 uses best endeavours to minimise the effects of that event.

- 14.2 If, due to Force Majeure, a party:
- 14.2.1 is or shall be unable to perform a material obligation; or
  - 14.2.2 is delayed in or prevented from performing its obligations for a continuous period exceeding 14 days or a total of more than 30 days in any consecutive period of 60 days; the parties shall, within 30 days, renegotiate the Contract to achieve, as nearly as possible, the original commercial intent.

## **15 Termination**

- 15.1 Subject to the terms of clause 16, the Customer shall be entitled to terminate the Contract for convenience, on giving the Supplier 28 days' written notice.
- 15.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if:
- 15.2.1 the Customer commits a material breach of Contract and such breach is not remediable;
  - 15.2.2 the Customer commits a material breach of the Contract which is capable of being remedied and such breach is not remedied within 14 days of receiving written notice of such breach;
  - 15.2.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or
  - 15.2.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 15.3 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 15.3.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 15.3.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
  - 15.3.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 15.3.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 15.3.5 has a resolution passed for its winding up;
  - 15.3.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it.
- 15.4 If the Supplier becomes aware that any event has occurred, or circumstances exist, which may entitle the Customer to terminate the Contract under this clause 15, it shall immediately notify the Customer in writing.
- 15.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

## **16 Consequences of Termination**

- 16.1 In the event that the Customer terminates the Contract pursuant to clauses 2.1 or 15.1, the Customer shall be liable for and the Supplier shall invoice the Customer:
- 16.1.1 100% of all costs (including third-party costs and Expenses) incurred up to the date of termination; and
  - 16.1.2 75% of any outstanding balance of the Price for the Project.

## **17 Dispute resolution**

- 17.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 17.
- 17.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 17.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedures:
- 17.3.1 within 7 days of service of the notice, the contract managers of the parties shall meet to discuss the dispute and attempt to resolve it.
  - 17.3.2 if the dispute has not been resolved within 7 days of the first meeting of the [contract managers], then the matter shall be referred to the chief executives (or persons of equivalent seniority). The chief executives (or equivalent) shall meet within 7 days to discuss the dispute and attempt to resolve it.
- 17.4 The specific format for the resolution of the dispute under clause 17.3.1 and, if necessary, clause 17.3.2 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.
- 17.5 If the dispute has not been resolved within 14 days of the first meeting of the chief executives (or equivalent) under clause 17.3.2 then the matter shall be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.

## **18 Notices**

- 18.1 Any notice or other communication given by a party under this Contract shall:
- 18.1.1 be in writing and in English;
  - 18.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
  - 18.1.3 be sent to the relevant party at the address set out in the Contract
- 18.2 Notices may be given, and are deemed received:
- 18.2.1 by hand: on receipt of a signature at the time of delivery;
  - 18.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;

18.2.3 by email: on receipt of a read receipt email from the correct address.

18.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 18.1 and shall be effective:

18.3.1 on the date specified in the notice as being the date of such change; or

18.3.2 if no date is so specified, 2 Business Days after the notice is deemed to be received.

18.4 All references to time are to the local time at the place of deemed receipt.

18.5 This clause does not apply to notices given in legal proceedings or arbitration.

## **19 Cumulative remedies**

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

## **20 Entire agreement**

20.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

20.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

20.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

## **21 Variation**

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and is duly signed or executed by, or on behalf of, the Supplier.

## **22 Assignment**

22.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, such consent not to be unreasonably withheld.

## **23 No partnership or agency**

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

## **24 Severance**

- 24.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 24.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## **25 Waiver**

- 25.1 No failure, delay or omission by a party to the Contract in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 25.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.

## **26 Compliance with law**

The Customer shall comply with all laws, enactments, regulations, regulatory policies, guidelines and industry codes applicable to it and shall maintain such authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

## **27 Conflicts within contract**

If there is a conflict between the terms contained in the Contract and the SOW, the terms of the SOW shall prevail.

## **28 Third-party rights**

- 28.1 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

## **29 Governing law**

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

## **30 Jurisdiction**

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).