

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

These terms and conditions apply to the delivery of services to be provided under this contract (**Services**) by Incidium Limited (company number 05676982) (**incidium**) to the Client.

These conditions shall apply to and be incorporated in the Contract and prevail over any inconsistent terms or conditions contained in, or referred to in, the Client's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Incidium unless in writing and signed by a duly authorised representative of Incidium.

1. Interpretation

The definitions and rules of interpretation in this clause apply in these terms.

1.1 Definitions:

Contract: the Client's purchase order and Incidium's acceptance of it under condition 2.

Client: the person, firm or company who purchases Services from Incidium.

Client Marks: the trade marks to be used in the supply of Services by Incidium together with any associated artwork, design, slogan, text and other collateral marketing signs of the Client that are to be used in connection with the Project.

Client Marks Guidelines: the Client's guidelines setting out the technical requirements for the reproduction of the Client Marks, as these guidelines may be amended by the Client from time to time.

Deliverables: all products and materials developed by Incidium in relation to the Project in any media, including, without limitation, computer programs, data, diagrams, reports, specifications, graphic, interface and functional designs (including drafts).

Event: where applicable the event named in the Project Plan.

Event Marks: the event organiser's marks and/or venue's marks and used singularly or collectively in association with the Event.

Input Material: all documents, information and materials to be provided by the Client relating to the Services.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Project: the project as described in the Project Plan.

Project Plan: the detailed plan provided to the Client describing the scope of services required to complete the Project and setting out the estimated timetable and responsibilities for the provision of the Services by Incidium in accordance with the Contract (as amended from time to time in accordance with condition 6).

incidium's Equipment: tools, systems, equipment and/or facilities, provided by Incidium or its subcontractors and used directly or indirectly in the supply of the Services.

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

2. Effect of purchase order

The Client's purchase order constitutes an offer by the Client to purchase the Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by Incidium, or Incidium's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions. The Client's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

3. Supplier's obligations

- 3.1 Incidium shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Client, in accordance in all material respects with the Project Plan.
- 3.2 Incidium shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 3.3 Incidium shall appoint a project manager (**Incidium's Project Manager**) who shall have authority to contractually bind Incidium on all matters relating to the Project. Incidium shall use reasonable endeavours to ensure that the same person acts as Incidium's Project Manager throughout the Project, but may replace him/her from time to time where reasonably necessary in the interests of Incidium's business.
- 3.4 Incidium shall use the Client Marks and Event Marks and other branding materials provided by the Client in accordance with the Client Marks Guidelines (where provided) and to apply any legal notices as required by the Client or as set out in the Client Marks Guidelines on applicable Deliverables.
- 3.5 Incidium shall not be liable for any modification or alteration to the Deliverables made by the Client and does not warrant that the Deliverables will be uninterrupted and error free.
- 3.6 Incidium shall not be responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communication networks and facilities, including the internet and the Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communication facilities.

4. Client's obligations

- 4.1 The Client shall:
- (a) co-operate with Incidium in all matters relating to the Project and appoint the project manager (**Client's Project Manager**), who shall have the authority to contractually bind the Client on matters relating to the Project;
 - (b) provide Incidium with necessary login and access details to any network, portal, data feed or other similar programme necessary for it to perform the Services;
 - (c) provide, in a timely manner, such In-put Material, assets and other information as Incidium may reasonably require, and ensure that it is accurate in all material respects;
 - (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services;
 - (e) maintain all necessary licences and consents and comply with all relevant legislation required for Incidium to perform the Services;
 - (f) keep, insure (if requested by Incidium) and maintain Incidium's Equipment in good condition and shall not dispose of or use Incidium's Equipment other than in accordance with the Supplier's written instructions or authorisation;
 - (g) to provide to Incidium (at its own cost) the Client Marks and where necessary the Event Marks and any associated guidelines;

- (h) ensure that tools, systems, equipment and facilities, required by Incidium for the Services are in good working order and suitable for the purposes for which they are used in relation to the Services and conform to all relevant safety standards;
 - (i) be responsible (at its own cost) for the access to the relevant premises and areas within the premises required to be accessed for the supply of Services;
 - (j) be solely responsible for procuring and maintaining its network connections and telecommunications links as required for the Services and be responsible for any delays, delivery failures and all problems arising from or relating to its network and telecommunication links; and
 - (k) provide all technical requirements specified by Incidium including but not limited to power outlets and access to the internet required for the supply of the Services.
- 4.2 If Incidium's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client or the Client's agents, sub-contractors or employees, the Client shall in all circumstances be liable to pay to Incidium on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere).
- 4.3 The Client shall not, without the prior written consent of Incidium, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from Incidium or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Incidium.
- 4.4 Any consent given by Incidium in accordance with condition 4.3 shall be subject to the Client paying to Incidium a sum equivalent to 20% of the then current annual remuneration of Incidium's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Client to such employee or sub-contractor.

5. Grant of rights and reservations

- 5.1 The Client grants and Incidium accepts:
- (a) a licence to use the Event Marks in production of the Deliverables during the delivery of the Services; and
 - (b) a licence to use the Client Marks in production of the Deliverables during the delivery of the Services,
- in accordance with these conditions.
- 5.2 Incidium acknowledges and agrees that all rights in the Client Marks shall remain in the Client.
- 5.3 The Client represents to Incidium that it owns or controls the Client Marks and has the necessary consent to licence the Client Marks and the Event Mark's in accordance with the provisions of this Contract and that neither the use of the Client Marks or the Event Marks by Incidium will infringe the rights of any third party.
- 5.4 The Client shall indemnify Incidium against all liabilities, costs, expenses, damages and losses (including but not limited to any interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Incidium arising out of or in connection with any claim made against Incidium by a third party for actual or alleged infringement of a third party's Intellectual Property Rights or moral rights arising out of or in connection with Incidium's use of the Client Marks and/or Event Marks.

6. Change control

- 6.1 The Client's Project Manager and Incidium's Project Manager shall be available at reasonable times and on reasonable notice to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 6.2 If either party requests a change to the scope or execution of the Services, Incidium shall, within a reasonable time, provide a written estimate to the Client of:
- (a) the likely time required to implement the change;
 - (b) any variations to Incidium's charges arising from the change;
 - (c) the likely effect of the change on the Project Plan; and
 - (d) any other impact of the change on the terms of the Contract.
- 6.3 If Incidium requests a change to the scope of the Services, the Client shall not unreasonably withhold or delay consent to it.
- 6.4 If the Client wishes Incidium to proceed with the change, Incidium has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

7. Charges and payment

- 7.1 The charges payable for the Services shall be calculated in accordance with Incidium's standard daily fee rates as amended from time to time. In addition Incidium may charge the Client;
- (a) a license fee to cover the cost of hosting the Client's digital media content, the rental of onsite servers for the Project and a charge per connection to Incidium's servers; and
 - (b) a hire fee at a daily rate for the hire of Incidium's Equipment.
- 7.2 Incidium shall invoice the Client 50% of the amount set out in the Project Plan in advance of the Services being carried out (**Initial Payment**) and the balance of all funds due after completion of the Project (**Final Payment**). The Final Payment shall include any overtime, time, expenses and materials, calculated as provided in this condition 7.
- 7.3 The Final Invoice shall provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 7.4 All amounts due under this agreement shall be paid by the Client to Incidium in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7.5 Any price contained in the Project Plan excludes:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Incidium for the supply of the Services. Such expenses, materials and third party services shall be invoiced by Incidium at cost; and
 - (b) VAT, which Incidium shall add to its invoices at the appropriate rate.
- 7.6 The Client shall pay each invoice submitted to it by Incidium in full, and in cleared funds, within 30 days of receipt.
- 7.7 Without prejudice to any other right or remedy that Incidium may have, if the Client fails to pay Incidium on the due date Incidium may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
- (b) suspend all Services until payment has been made in full.

7.8 Time for payment shall be of the essence of the Contract.

7.9 All payments payable to Incidium under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

7.10 Incidium may, without prejudice to any other rights it may have, set off any liability of the Client to Incidium against any liability of Incidium to the Client.

8. Event cancellation

8.1 If the Event is cancelled for any reason (including, without limitation, by reason of a force majeure event). The Client shall promptly notify Incidium and the parties agree that:

- (a) the Client shall not be in breach of this agreement by virtue of that cancellation; and
- (b) on the Client notifying Incidium this agreement shall terminate save that the Client will be liable to pay a cancellation fee to Incidium in accordance with condition 8.2.

8.2 If the Event is cancelled the Client shall pay to Incidium the Initial Payment, any expenses or commitments that Incidium has incurred or that it is bound to pay in relation to the Services and part or the whole of the Final Payment based on the following:

- (a) if the Client gives notice to Incidium at least 30 working days prior to the date when Services are due to commence for an Event the Final Payment will not be payable;
- (b) if the Client gives notice to Incidium between 29 – 15 working days prior to the date when Services are due to commence for an Event the Client will be required to pay 25% of the Final Payment;
- (c) if the Client gives notice to Incidium between 14 – 5 working days prior to the date when Services are due to commence for an Event the Client will be required to pay 50% of the Final Payment;
- (d) if the Client gives notice to Incidium which is less than 5 working days prior to the date when Services are due to commence for an Event the Client will be required to pay 75% of the Final Payment plus any expenses incurred by Incidium in undertaking.

9. Intellectual Property Rights

All Intellectual Property Rights and all other rights in the Deliverables shall be owned by Incidium (excluding the Client Marks and Event Marks). Incidium hereby licenses all such rights to the Client on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services as is envisaged by the parties. On termination of this agreement for whatever reason this licence will automatically terminate. Notwithstanding, any other condition Incidium may use the Client Marks and Event Marks for promotional or other uses.

10. Confidentiality and Incidium's property

10.1 The Client shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by Incidium or its agents, and any other confidential information concerning Incidium's business or its products which the Client may obtain. The Client shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Client's obligations to Incidium, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Client.

10.2 All materials, equipment and tools, drawings, specifications and data supplied by Incidium to the Client shall at all times be and remain the exclusive property of Incidium, any equipment that is to be stored/held

by the Client, shall be stored/held in safe custody by the Client at the Client's risk and maintained and kept in good condition by the Client until returned to Incidium, and shall not be disposed of or used other than in accordance with Incidium's written instructions or authorisation.

10.3 This condition 10 shall survive termination of the Contract, however arising.

11. Limitation of liability

11.1 The following provisions set out the entire financial liability of Incidium (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

- (a) any breach of the Contract howsoever arising;
- (b) any use made by the Client of the Services, the Deliverables or any part of them; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these conditions excludes the liability of Incidium:

- (a) for death or personal injury caused by Incidium's negligence; or
- (b) for fraud or fraudulent misrepresentation.

11.4 Subject to condition 11.2 and condition 11.3:

- (a) Incidium shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill or similar losses; or
 - (iv) loss of contract; or
 - (v) loss or corruption of data or information; or
 - (vi) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) Incidium's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

12. Termination

12.1 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;

- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party suffers an insolvency event meaning any formal insolvency proceedings whether in or out of court, including proceedings or steps leading to any form of bankruptcy, liquidation, administration, receivership, arrangement or scheme with creditors, moratorium, stay or limitation of creditors' rights, interim or provisional supervision by a court or court appointee, winding up or striking off, dissolution or distress, execution or other process levied or event analogous to any of the event mentioned in this definition in any jurisdiction.

12.2 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

13. Consequences of Termination

On termination or expiry of this agreement:

- (a) subject to condition 9, the licence granted by the Client to Incidium for use of the Client Marks shall immediately terminate;
- (b) the licence granted by Incidium to the Client in condition 9 shall immediately terminate;
- (c) each party shall promptly return to the other any property of the other within its possession;
- (d) each party shall pay to the other any sums that are outstanding and to be accounted for under these conditions; and
- (e) 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.

14. Force majeure

incidium shall not in any circumstances have any liability to the Client under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Incidium or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

15. Waiver

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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17. Severance

17.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any

modification to or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of the Contract.

- 17.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. Entire agreement

- 18.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 18.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

- 18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

19. Assignment

- 19.1 The Client shall not, without the prior written consent of Incidium, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

- 19.2 Incidium may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20. No partnership or agency

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. Third party rights

No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

22. Notices

Any notice required or permitted to be given hereunder shall be in writing and shall either be sent to the other party at its registered office or its principal place of business, or by fax or email. Any such notice may be delivered personally or by first class prepaid letter and shall be deemed to have been served if by delivery when delivered if by first class post 48 hours after posting (and proof that the envelope containing the notice was properly addressed and sent prepaid shall be sufficient evidence of service). If sent by fax, it shall be deemed served at 9.00 am on the next business day after transmission or if sent by email, at the time the e-mail was sent on a business day.

23. Governing law and jurisdiction

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).