

## TERMS AND CONDITIONS OF PURCHASE OF SERVICES

### 1 DEFINITIONS

#### 1.1 Definitions

In this Agreement:

**"Applicable Laws"** means all applicable laws, regulations, regulatory requirements and codes of practice of any jurisdiction, as amended and in force from time to time.

**"BAFTA Marks"** means the trade marks, logos and other branding of the Purchaser as notified by the Purchaser to the Supplier from time to time.

**"Charges"** means the charges for the Services as specified on the Order.

**"Conditions"** means the standard terms and conditions of purchase set out in this document.

**"Contract"** means any contractual arrangement relating to the supply of services to the Purchaser by the Supplier

**"Confidential Information"** means information in any form (whether written, electronic, graphic, oral or otherwise) that is designated as 'confidential' or which a reasonable person would deem to be confidential given the nature of the information. Confidential Information includes (without limitation) any information concerning the technology, technical processes, business processes, procedures, personal data, business affairs, financial affairs and finance of either party.

**"Deliverables"** means the deliverables to be provided by the Supplier to the Purchaser in accordance with the terms of this Agreement and as specified in an Order.

**"Force Majeure Event"** means any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events or omissions beyond its reasonable control, including acts of God, fire, flood, riots, war, acts of terrorism, storm or earthquake, governmental actions, labour disputes but excluding, in the case of the Supplier, any industrial dispute relating to the Supplier or any other delay or failure in the Supplier's supply chain or any difficulties which the Supplier may have with its financing.

**"Good Industry Practice"** means that the Services will be performed in an efficient, effective, reliable, professional and safe manner and with the standard of skill, care, knowledge and foresight which would reasonably and ordinarily be expected from an experienced person engaged in providing services which are the same as, or similar to, the Services.

**"Intellectual Property Rights"** means all vested and future rights of copyright and related rights, design rights, database rights, patents, rights to inventions, trade marks and get-up (and goodwill attaching to those trade marks and that get up), domain names, applications for and the right to apply for any of the above, moral rights, goodwill (and the right to sue for passing off and unfair competition), rights in know-how, rights in confidential information, rights in computer software and semiconductor topographies, and any other intellectual or industrial property rights or equivalent forms of protection, whether or not registered or capable of registration, and all renewals and extensions of such rights, whether now known or in future subsisting in any part of the world.

**"Law"** means any of the following, to the extent that it applies to a party, the Subcontractors or the Service Beneficiaries: (a) any law (including any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time); (b) any binding court order, judgment or decree; (c) any applicable industry code, policy or standard enforceable by law; and (d) any applicable direction, policy, rule, regulation or order that is given by a Regulator.

**"Loss"** means any losses, liabilities, damages, costs, fines, claims, awards, and expenses (including legal and other professional fees on an indemnity basis), disbursements and settlements, judgments, interest and penalties.

**"Malpractice"** includes giving or receiving any financial or other advantage that may be construed as a bribe, whether for the purpose of the Bribery Act 2010 or any other Applicable Law.

**"Order"** means the Purchaser's purchase order number issued by it with respect to the Services.

**"The Purchaser"** means the British Academy of Film and Television Arts and/or BAFTA Management Limited.

**"Services"** means the Services to be provided by the Supplier as specified on the Order.

**"Supplier"** means the entity supplying the Services as specified on the Order.

**"Supplier Personnel"** means the employees, agents, sub-contractors or invitees of the Supplier from time to time

**"Term"** means the period during which the Services are provided to the Purchaser as specified on the Order.

2	<b>APPLICATION OF CONDITIONS</b>	4	<b>PRICES</b>
2.1	The Order is an offer by the Purchaser to purchase the Services subject to these Conditions. Acceptance of an Order by the Supplier constitutes unconditional acceptance of these Conditions.	4.1	The prices payable for the Services shall be the prices stated in the Order. If no prices are stated, the prices shall be the lowest price currently quoted or charged at the date of the Order by the Supplier.
2.2	Performance of the Services by the Supplier shall (without affecting any other manner in which acceptance of these Conditions may otherwise be evidenced) be deemed to constitute unqualified acceptance of these Conditions.	4.2	Unless otherwise stated:
2.3	These Conditions shall govern and be incorporated into every Contract.		(a) the prices for the Services (together with any applicable VAT) are the only amounts payable by the Purchaser under a Contract;
2.4	If there is any conflict between the terms of an Order and these Conditions, these Conditions shall prevail.		(b) all prices shall be exclusive of any applicable VAT (which shall be payable by the Purchaser subject to receipt of a VAT invoice); and
2.5	These Conditions shall apply to the exclusion of, and shall prevail over, any terms or conditions contained in or referred to in the Supplier's acceptance of an Order, or in any other documentation submitted by the Supplier, or in any correspondence or elsewhere, or implied by trade custom, practice or course of dealing, unless specifically excluded or varied in writing by a director or other authorised representative of the Purchaser.		(c) all other costs, charges and expenses which relate to the performance of the Supplier's obligations and the supply of the Services shall be borne by the Supplier. The fact that a particular provision of an Order does not state that the Supplier must perform the obligations "at no additional charge" may not be taken as implying that the Supplier may charge extra for complying with the obligation.
2.6	If, subsequent to any Contract which is subject to these Conditions, a Contract is made with the Supplier in any form without reference to any conditions of sale or purchase, these Conditions shall apply to the new Contract.	4.3	No increase in the prices for the Services may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Purchaser.
3	<b>SERVICES</b>	4.4	The Purchaser shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale.
3.1	The Supplier will provide the Services in accordance with:	5	<b>TERMS OF PAYMENT</b>
	(a) these Conditions; and	5.1	The Supplier shall invoice the Purchaser for the Charges in accordance with the provisions (and in the currency) specified in the Order.
	(b) Good Industry Practice.	5.2	The Purchaser shall only be obliged to make payments which are supported by accurate invoices, referencing the Order and including details of the Services, and where the Purchaser is satisfied that the Services have been performed properly.
3.2	The Supplier shall apply such time, attention, resources, trained personnel and skill as may be necessary for the due and proper performance of the Services to the standard to be expected in accordance with Good Industry Practice.	5.3	Unless the subject of a genuine dispute or otherwise stated in the Order, the Purchaser shall pay the Charges within 45 days of receipt of an accurate and valid VAT invoice. The Purchaser shall only be obliged to make payments where the Purchaser is satisfied that the Services have been supplied in accordance with the Contract and these Conditions.
3.3	The Supplier will advise the Purchaser immediately in writing on becoming aware:	5.4	The Purchaser may set off, deduct or withhold from any liability owed to the Supplier under or in connection with any Contract any liability of the
	(a) that it may be unable to perform the Services in accordance with this Agreement; or		
	(b) of any development that may have a material impact on its ability to perform the Services in accordance with this Agreement.		

Supplier to the Purchaser in connection with any Contract whether present or future, actual or contingent, liquidated or unliquidated, disputed or undisputed and whether owed jointly or severally or in any other capacity and irrespective of the currency of its denomination (and for this purpose may convert the currency of any liability).

5.5 If a party fails to pay in full on the due date any sum payable by it under or in connection with a Contract, interest on the outstanding amount shall accrue on a daily basis from the due date until the date of payment (whether before or after judgment) at the rate of 1% per annum above the base rate of Nat West Bank PLC from time to time. The parties agree that this is a substantial remedy and is fair for the purposes of section 8 of the Late Payment of Commercial Debts (Interest) Act 1998.

## 6 CANCELLATION

The Purchaser may cancel any Order, in whole or in part, by giving written notice to the Supplier at any time prior to delivery, in which event the Purchaser's sole liability shall be to pay the Supplier the price for the Services in respect of which the Purchaser has exercised its right of cancellation, less the Supplier's net saving of cost arising from cancellation.

## 7 INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in the Deliverables shall vest in the Purchaser unconditionally and immediately on the creation thereof. The Supplier hereby assigns, or will procure the assignment of all present and future rights and interest with full title guarantee (free from all liens, charges and encumbrances) in and to the Deliverables. The Supplier agrees to do all acts and execute all documents (and procure the same to the extent required from any third party) necessary to give effect to the provisions of this Clause 7.1.

7.2 The Supplier shall ensure that it has all the rights necessary to assign all Intellectual Property Rights in accordance with this Clause 7 (*Intellectual Property Rights*) and that the use by The Purchaser of the Deliverables, the performance of the Services by the Supplier, or the receipt of the Services by the Purchaser shall not constitute an infringement or misappropriation of any Intellectual Property Rights of any third party.

7.3 The Supplier will not incorporate any materials owned by a third party ("**Third Party Materials**") into any Deliverable, or use any Third Party Materials to provide the Services without the Purchaser's prior written consent. The Supplier shall procure a licence for the Purchaser to use any such Third Party Materials on terms which shall be acceptable to the Purchaser.

7.4 The Purchaser grants to the Supplier a non-exclusive, royalty-free, revocable, limited licence for the term of this Agreement to use such of the BAFTA Marks as are approved for use in writing by

the Purchaser solely for the purpose of providing the Services and the Deliverables in accordance with this Agreement.

7.5 The Supplier shall:

- (a) use the BAFTA Marks solely in accordance with the written instructions of the Purchaser;
- (b) not use or permit the use of the BAFTA Marks in a manner which in the reasonable opinion of the Purchaser is or might be prejudicial or derogatory to the image of the Purchaser and not knowingly do or cause or permit anything to be done which may endanger the Purchaser's rights and title in the BAFTA Marks; and
- (c) not seek to acquire any right, title or interest in the BAFTA Marks or apply to register any of the BAFTA Marks or any trade mark that is confusingly similar to a BAFTA Mark.

7.6 The Supplier will also notify the Purchaser promptly of any breach of its obligations with respect to the Purchaser's Intellectual Property Rights or any other infringement of such rights that it becomes aware of in the course of providing the Services.

7.7 The Supplier shall on demand indemnify the Purchaser from and against all Losses incurred by the Purchaser arising out of or in connection with any claim, demand or action against the Purchaser, alleging that the performance of the Services and use of the Deliverables has infringed any Intellectual Property Rights of a third party.

## 8 CONFIDENTIALITY

8.1 Each party shall safeguard the other party's Confidential Information as it would its own confidential information, and shall use, copy and disclose that Confidential Information only in connection with the proper performance of the Agreement.

8.2 Nothing in these Conditions shall be construed so as to prevent one party from disclosing the other's Confidential Information where required to do so by a court or other competent authority, provided that, unless prevented by law, the first party promptly notifies the other party in advance and discloses only that part of the other party's Confidential Information that it is compelled to disclose.

8.3 Each party shall tell the other immediately if it discovers that this Clause 8 has been breached and shall, on request, return to the other all of the other party's Confidential Information which is in a physical form and destroy any other records containing Confidential Information.

9	<b>FRAUD, BRIBERY AND CORRUPTION</b>		of Applicable Laws or otherwise objectionable);
9.1	The Supplier shall notify the Purchaser immediately if it becomes aware of or has grounds for suspecting any fraud or Malpractice relating to the supply of the Services.		(d) the Services and the Deliverables shall comply with all Applicable Laws; and
9.2	Without prejudice to any other remedy it may have, if the Purchaser has grounds for believing that the Supplier or any of the Supplier Personnel has committed a fraud or Malpractice relating to supply of the Services, the Purchaser may, in its absolute discretion suspend supply of the Services, and/or withhold payment of any Charges falling due to the Supplier.		(e) the Supplier has full power and authority to enter into this Agreement and to perform its obligations hereunder.
9.3	The Purchaser shall permit the Supplier to resume supply of the Services if it is established that the Supplier Personnel were not responsible for any fraud or Malpractice.	11	<b>INDEMNITIES</b>
9.4	If it is subsequently found that none of the Supplier Personnel was responsible for any fraud or Malpractice, the Purchaser shall pay the Supplier any amounts which have been withheld	11.1	The Supplier shall indemnify the Purchaser from and against all Losses incurred by the Purchaser as a result of or in connection with
10	<b>WARRANTIES AND UNDERTAKINGS</b>	12	<b>INSURANCE</b>
10.1	The Supplier warrants and undertakes to the Purchaser that:	12.1	Without prejudice to the indemnities given by the Supplier, the Supplier shall for so long as it is party to a Contract with the Purchaser maintain in force at its own expense such insurances as are appropriate for the nature of the Services to be provided under a Contract and as required by Applicable Law.
	(a) the Services will be performed in an efficient, effective and safe manner in accordance with Good Industry Practice;	12.2	The Purchaser may require the Supplier to provide details of the insurance policies that it holds, may inspect such policies at any time on reasonable notice and shall be supplied with the current premium receipt from time to time on demand.
	(b) the provision of the Services and the use of the Deliverables by the Purchaser shall not infringe the rights (including Intellectual Property Rights) of any third party;	12.3	The above policies shall be maintained in force for the Term and for a period of six years thereafter.
	(c) the Deliverables (where such Deliverables consist of software) shall not contain any:	13	<b>TERMINATION</b>
	(i) mechanisms for the covert distribution of unsolicited electronic communications (i.e. spam);	13.1	The Purchaser may terminate a Contract with immediate effect by giving the Supplier notice if:
	(ii) mechanisms for the covert installation, alteration or deletion of cookies without the end user's consent;		(a) the Supplier commits any breach of any of these Conditions or of any other provisions of any Contract;
	(iii) virus, worm, logic bomb, Trojan, spyware, adware or other malicious or unwanted software program ("Malware"); or		(b) the Supplier commits a persistent breach regardless of whether such breach is minor, trivial or capable of being remedied;
	(iv) mechanisms to enable the distribution (directly or indirectly) of any Malware or any unrequested software programme or content (including any material which is in breach		(c) the Supplier becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as amended); the Supplier ceases or threatens to cease to carry on the whole or a substantial part of its business; any distress or execution is levied upon the Supplier's property or

assets; the Supplier makes or offers to make any voluntary arrangement or composition with its creditors; any resolution to wind up the Supplier (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) is passed, any petition to wind up such other party is presented or an order is made for the winding up of the Supplier; the Supplier is the subject of a notice of intention to appoint an administrator, is the subject of a notice of appointment of an administrator, is the subject of an administration application, becomes subject to an administration order, or has an administrator appointed over it; a receiver or administrative receiver is appointed over all or any of the Supplier's undertaking property or assets; any bankruptcy petition is presented or a bankruptcy order is made against the Supplier; an application is made for a debt relief order, or a debt relief order is made in relation to the Supplier; the Supplier is dissolved or otherwise ceases to exist; or the equivalent of any of the events described in this Condition occurs in relation to the Supplier under the laws of any jurisdiction.

13.2 Termination shall not affect either of the parties' accrued rights or liabilities, or the coming into force or the 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.

#### 14 **FORCE MAJEURE**

Neither the Purchaser nor the Supplier will be liable for any delay in performing their obligations under this Agreement where such delay is directly caused by a Force Majeure Event.

#### 15 **GENERAL**

15.1 The Supplier shall not, without the written consent of the Purchaser assign, transfer, grant any security interest over or hold on trust any of its rights or obligations under these Conditions or under any Contract or any interest in them.

15.2 The Supplier may not subcontract any of its rights or obligations (or both) under these Conditions or under any Contract without the prior written consent of the Purchaser. The Supplier shall remain responsible for all obligations that are performed by the Supplier Personnel as if they were acts or omissions of the Supplier.

15.3 Nothing in these Conditions is intended to or shall operate to create a partnership or joint venture of any kind between the parties. No party shall have the authority to bind the other party or to contract in the name of, or create a liability against, the other party in any way or for any purpose.

15.4 The parties do not intend any third party to have the right to enforce any provision of these Conditions or of any Contract under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

15.5 These Conditions together with any Orders placed and Contracts formed under them are the entire agreement between the parties, and replace all previous agreements and understandings between them, relating to their subject matter.

15.6 No variation of these Conditions or of any Order or Contract shall be effective unless it is in writing and signed by or on behalf of each party.

15.7 The rights and remedies expressly conferred by these Conditions or by any Contract are cumulative and additional to any other rights or remedies a party may have.

15.8 Any notices required to be given under these Conditions or under any Contract must be delivered personally or sent by pre-paid first class post or facsimile transmission to the address or fax number provided by the relevant party. A notice delivered by hand is served when delivered, a notice sent by first class post is served 48 hours after posting (as evidenced by a certificate of posting) and a notice served by fax is served when the fax is sent (as evidenced by a successful fax confirmation).

15.9 These Conditions and any Contracts formed under them, together with and any non-contractual obligations arising as a result, are governed by and construed in accordance with English law, and the English courts have exclusive jurisdiction to determine any dispute arising in connection with Conditions and any Contracts formed under them, including disputes relating to any non-contractual obligations.