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Terms and Conditions for the Sale or Hire of Goods and/or Sale of Services by Sonae (UK) Limited

1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

"Contract" – the Purchase Order and the Vendor's acceptance of the Purchase Order incorporating these terms and conditions.

"Goods" – any goods agreed in the Contract to be purchased/hired by the Purchaser from the Vendor (including any part or parts of them).

"Insolvency Event" means the passing of a resolution for the Purchaser's winding-up (other than for the purpose of and followed by a solvent reconstruction or amalgamation) or summoning a meeting to pass any such resolution; or

the Purchaser having a petition for a winding-up order presented against it; or

a petition for an administration order being presented in relation to the Purchaser; or

a receiver, administrator, administrative receiver, receiver and manager or similar officer being appointed by any person of all or substantially all of the Purchaser's property, assets or undertakings; or the Purchaser making a proposal for or becoming the subject of a voluntary arrangement as defined in section 1 of the Insolvency Act 1986; or

the Purchaser entering into any other arrangement with its creditors or substantially all of them; or

the Purchaser being unable to pay its debts for the purposes of Section 123 of the Insolvency Act 1986, ignoring Section 123(1)(a) thereof, or any distress, execution or other process being levied upon the whole or substantially all of the Vendor's assets.

"Purchase Order" – the Purchaser's written instruction to supply the Goods/Services, incorporating these conditions.

"Purchaser" means the person, firm or Purchaser who accepts the Vendor's quotation and purchases the Goods/Services subject to these terms and conditions.

"Price" – the amount stated in the Purchase Order as the purchase/hire price of the Goods/Services.

"Services" means the services if any as stated in the Purchase Order.

"Vendor" – Sonae (UK) Limited.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3, these conditions are the only conditions upon which the Vendor is prepared to deal with the Purchaser and they shall govern the Contract to the entire exclusion of all other terms and conditions.

2.2 Each purchase Order for Goods/Services from the Purchaser to the Vendor shall be deemed to be an offer by the Purchaser to purchase/hire Goods/Services subject to these conditions and no Purchase Order shall be accepted until the Vendor either expressly by giving notice of acceptance, or impliedly by fulfilling the Purchase Order, in whole or in part accepts the offer.

2.3 These conditions apply to all the Vendors Contracts and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by an authorised signatory of the Vendor.

3. QUALITY AND DEFECTS

3.1 The Goods (if any) shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Purchase Order and specification and/or patterns supplied or advised by the Purchaser to the Vendor. The Vendor shall provide the services (if any) with all reasonable care and skill and shall meet the Purchaser's requirements.

3.2 The Vendor's rights under these conditions are in addition to the statutory conditions implied in favour of the Vendor by the Sale of Goods Act 1979 and all other statutory rights.

3.3 If on delivery any of the Goods are defective in any material respect and the Purchaser rejects the delivery of defective goods or if they are signed on delivery as 'not checked' the Purchaser shall give written notice of such defect to the Vendor within 7 days of delivery, the Vendor shall at its option;

(a) replace the defective Goods within 30 days of receiving the Purchaser's notice; or

(b) refund the Purchaser the Price of the said Goods or parts thereof which are defective.

The Vendor shall have no further liability to the Purchaser in respect thereof and the Purchaser shall not be entitled to reject the Goods if delivery is not refused or notice given as set out above.

3.4 Any Goods returned which the Vendor is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or at the Vendor's absolute discretion, refund or credit to the Purchaser the price of such defective Goods.

3.5 The Vendor shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, failure to follow manufacturers instructions, misuse or alteration of the Goods or omission on the part of the Purchaser, its employees, agents or any third party.

3.6 The defects liability period shall apply 12 months from the date of practical completion.

3.7 The Vendor shall make good all defects (if any) notified by the Purchaser with quality of workmanship, material specification and/or non-compliance issues at his own expense, within a reasonable time during the defects liability period. The Vendor shall be under no liability in respect of any latent defect identified beyond the defect liability period.

3.8 Manufacturers warranty shall be passed from the Vendor to the Purchaser for any products supplied under the Contract. The Vendor liability shall be in lieu of any warranty or condition implied by law as to the quality for any particular purpose of the Goods and shall not be under a liability, whether in Contract, tort or otherwise, in respect of any defects in Goods delivered or for any injury, damage or loss resulting from such defects or from anything done or omitted in connection with the Goods or from any work done in connection therewith.

4. QUOTATIONS

4.1 Any quotation in whatever form issued to the Purchaser is issued subject to these terms and conditions as an invitation to treat and does not constitute an offer to sell.

- 4.2 The Vendor reserves the right to refuse the Purchaser's acceptance of a quotation unless such a quotation is stated to be open for a specific validity period and is not withdrawn in such period.
- 4.3 All prices quoted shall be exclusive of value added tax but inclusive of all other charges and fees.

5. PRICE

- 5.1 The price of the Goods/Services shall be stated in the Order Confirmation and unless otherwise agreed in writing by the Vendor shall be exclusive of value added tax but inclusive of all other charges.
- 5.2 The Vendor reserves the right, by giving written notice to the Purchaser from time to time to increase the price of Goods/Services to reflect any increase in cost to the Vendor subject to any of Variation to Contract under condition 5.1.

6. VARIATIONS TO CONTRACT

- 6.1 The following events shall be construed as Variations to Contract under these conditions:
- (a) The Purchaser gives an instruction changing the Works Information, Design and/or Specification.
 - (b) The Purchaser does not allow access to and use of a part of the site by the later of its access date and the date shown on the accepted programme.
 - (c) The Purchaser does not provide something which he is to provide by the date for providing it on the accepted programme
 - (d) The Purchaser gives an instruction to stop or not to start any work or to change a key date.
 - (e) The Purchaser does not reply to a communication from the Vendor within two weeks from the date of correspondence, unless expressly agreed otherwise in writing by the Vendor.
 - (f) The Purchaser changes a decision which he previously communicated to the Vendor.
 - (g) Any work by a third party causing unnecessary delay due to work not identified on the accepted programme or Works Information and/or work not undertaken within the times shown on the accepted programme.
 - (h) The Vendor encounters physical conditions which are within the site, are not weather conditions and an experienced contractor would have judged at pre-contract award to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.

7. INDEMNITY AND LIABILITY

- 7.1 The Vendor will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under these terms and conditions, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims whether caused by the Vendor's servants, agents or otherwise, which arise out of or in connection with the supply of Goods and/or Services.
- 7.2 The Vendor shall not be liable to the Purchaser for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever howsoever arising out of or in connection with the contract.
- 7.3 The Vendor's liability to the Purchaser under the contract howsoever arising shall be limited to the Contract Price.
- 7.4 The Purchaser shall indemnify the Vendor against all damages, costs, claims and expenses arising from loss or damage to any equipment including that of third parties, caused by the Purchaser, its agent or employees.
- 7.5 The Vendor shall not be liable to the Purchaser or deemed to be in breach of these terms and conditions by reason of delay in performing, or any failure to perform any of the Vendor's obligations if the delay or failure was due to a cause beyond the Vendor's reasonable control.

8. DELIVERY AND PERFORMANCE

- 8.1 The Goods shall be delivered, carriage paid, to the Purchaser's place of business or to such other place of delivery as is agreed by the Purchaser in writing prior to delivery of the Goods or as stated in the Purchase Order. The Vendor shall off-load the Goods at its own risk as directed by the Purchaser.
- 8.2 The date for delivery shall be specified in the Order Confirmation, or if no such date is specified then delivery shall take place within 28 days of the Purchase Order.
- 8.3 The Vendor shall invoice the Purchaser upon, but separately from, delivery of the Goods to the Purchaser.
- 8.4 The Vendor shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding back order to be delivered.
- 8.5 Unless otherwise stipulated by the Purchaser in the Works Information, deliveries shall only be carried out by the Vendor in normal business hours.
- 8.6 If the Purchaser fails to take delivery of the Goods or any part of them on the delivery date and/or fails to provide any instructions, documents, licenses, consents or authorisation required to enable the Goods to be delivered on that date, the Vendor shall be entitled upon giving written notice to the Purchaser to store or arrange for the storage of Goods and then notwithstanding the provisions of clause 9.1 risk in the Goods shall pass to the Purchaser, delivery shall be deemed to have taken place and the Purchaser shall pay to the Vendor all costs and expenses including storage and insurance charges arising from such failure.
- 8.7 With effect from the commencement date the Vendor shall, in consideration of the price being paid in accordance with these terms and conditions and accepted the order provide the Services expressly identified in the order confirmation.
- 8.8 Where the Purchaser agrees in writing to accept delivery by instalments the Contract shall be construed as a single Contract in respect of each instalment.
- 8.9 If the Goods are delivered to the Purchaser in excess of the quantities ordered the Purchaser shall not be bound to pay for the excess and any excess shall be and shall remain at the Vendor's risk and shall be returnable at the Vendor's expense.
- 8.10 The Purchaser shall not be deemed to accept the Goods until it has had 7 days to inspect them following delivery. The Purchaser shall also have the right to reject the Goods as though they had not been accepted for 30 days after any latent defect in the Goods has become apparent.

9. RISK/PROPERTY (GOODS ONLY)

- 9.1 The Goods shall remain at the risk of the Vendor until delivery to the Purchaser is complete (including off-loading and stacking) when risk in and ownership (where the Goods are being purchased outright) of the Goods shall pass to the Purchaser. If the Purchaser is hiring the Goods, risk in the Goods shall revert to the Vendor once the Goods have been off-hired to the Vendor and an off-hire number confirmed.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these terms and conditions, legal and beneficial title to the Goods shall not pass to the Purchaser from the Vendor until the Vendor receives cleared payment in full for the price of Goods.

10. PAYMENT

- 10.1 The assessment interval is per calendar month. The amount invoiced is the Price of work completed to date (SERVICES ONLY).
- 10.2 The Vendor shall invoice the Purchaser once the Vendor has delivered the Goods to the Purchaser (GOODS ONLY).
- 10.3 The Purchaser shall pay each valid invoice within 30 days from the date of invoice.

- 10.4 Without prejudice to any other right or remedy, the Vendor reserves the right to set off any amount owing at any time to it from the Purchaser against any refund amount payable by the Vendor to the Purchaser under the Contract.
- 10.5 If any sum under the Contract is not paid when due then, without prejudice to the parties other rights under the Contract that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 3% per annum over the HSBC Bank plc base rate from time to time. The Vendor shall be entitled to suspend deliveries of the Goods/performance of the services as a result of any disputed sums being outstanding.

11. CONFIDENTIALITY

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

12. INTELLECTUAL PROPERTY

- 12.1 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Purchaser to the Vendor shall at all times be and remain the exclusive property of the Purchaser but shall be held by the Vendor in safe custody at its own risk and maintained and kept in good condition by the Vendor until returned to the Purchaser and shall not be disposed of other than in accordance with the Purchaser's written instructions, nor shall such items be used otherwise than as authorised by the Purchaser in writing.
- 12.2 (GOODS ONLY) The Vendor shall licence the Purchaser all intellectual property rights (belonging to the Vendor or to any third parties) as necessary to enable the Purchaser to freely use the Goods.
- 12.3 (SERVICES ONLY) The Vendor shall assign all intellectual property rights arising in respect of the services to the Purchaser.

13. TERMINATION

- 13.1 The Vendor shall have the right at any time to terminate the Contract forthwith, in whole or in part by giving the Purchaser written notice whereupon all work on the Contract shall be discontinued and the Purchaser shall pay to the Vendor fair and reasonable compensation for work-in-progress at the time of termination including loss of anticipated profits or any consequential loss in the event of;
- (a) the Purchaser commits a material breach of any of the terms and conditions of the Contract and does not remedy such breach (where remediable) within 7 days; or
 - (b) any distress, execution or other process is levied upon any of the assets of the Purchaser; or
 - (c) the Purchaser suffers and Insolvency Event; or
 - (d) the Purchaser ceases or threatens to cease to carry on its business; or
 - (e) the financial position of the Purchaser deteriorates to such an extent that in the opinion of the Vendor the capability of the Purchaser to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13.2 The Vendor shall be under no obligation whatsoever to accept any cancellation of an order once accepted. In the event the Vendor agrees to accept any such cancellation, the Vendor may levy such charges at its absolute discretion.
- 13.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Vendor accrued prior to termination. The conditions which expressly or impliedly

have effect after termination shall continue to be enforceable notwithstanding termination.

14. DISPUTE RESOLUTION

- 14.1 In the event of a dispute arising under or in connection with the Contract either party may give written notice of at any time of its intention to refer said dispute or difference to adjudication.
- 14.2 The appointment of an Adjudicator shall be agreed between the parties within 7 days of the date of notice. The Adjudicator nominating body, Royal Institute of Chartered Surveyors (RICS) shall appoint the Adjudicator within 4 days of request in the event of failure to appoint an Adjudicator within the time set out above.
- 14.3 The Adjudicator will settle the dispute or difference by notifying the parties of his decision together with his reasons within 28 days of referral to him. In reaching his decision the Adjudicator shall act impartially, set his own procedure and at his absolute discretion may take the initiative in ascertaining the facts and the law as he considers necessary in respect of the referral.
- 14.4 Unless and until the Adjudicator's decision is issued, the Vendor and the Purchaser shall proceed as if the subject matter of the dispute or difference was not in issue and the decision of the Adjudicator is final and binding notwithstanding the provision of clause 14.7 below.
- 14.5 In settling the dispute or difference the decision of the Adjudicator is enforceable as a matter of contractual obligation between the Vendor and the Purchaser and is not an arbitral award. The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith and this protection from liability shall similarly extend to any employee or agent of the Adjudicator.
- 14.6 If either the Vendor or Purchaser are dissatisfied with the decision of, or failure to make a decision by the Adjudicator, he must notify the other party of his intention to refer the matter to tribunal within 4 weeks of the decision of, or failure to decide by the Adjudicator provided always that the tribunal proceedings shall not commence before the completion date (or equivalent) or earlier termination.
- 14.7 The tribunal is arbitration. The tribunal settles the dispute referred to it and has the powers to reconsider any decision of the Adjudicator and review and revise any action or inaction of the parties related to the dispute.
- 14.8 The appointment of an Arbitrator shall be agreed between the parties within 7 days of the date of notice. The Arbitrator nominating body, Royal Institute of Chartered Surveyors (RICS) shall appoint the Arbitrator within 4 days of request in the event of failure to appoint an Adjudicator within the time set out above.
- 14.9 Each party shall bear their own legal and professional fees unless agreed otherwise in relation to the adjudication. The Adjudicator shall decide who is to pay his fees and reasonable expenses incurred by appointment between the parties in his decision.

15. ASSIGNMENT

- 15.1 The Vendor shall not be entitled to assign or subcontract the Contract or any part of it without the prior written consent of the Purchaser. If the Purchaser does approve any subcontracting, the Vendor shall remain responsible as prime contractor.
- 15.2 The Purchaser shall not be entitled to assign and/or subcontract the Contract or any part of it to any person, firm or company.

16. FORCE MAJEURE

The Vendor reserves the right to defer the date of the delivery if it is prevented from or delayed in carrying on its business due to circumstances beyond the reasonable control of the Vendor including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

17. MISCELLANEOUS

- 17.1 The Vendor shall maintain adequate insurance protection against the risks it is assuming under the Contract.
- 17.2 (SERVICES ONLY) The Vendor shall complete the services within the timescale advised by the Purchaser.
- 17.3 (HIRE OF GOODS ONLY) The Purchase Order (or as otherwise agreed by the parties) shall detail the hire period for the hire of any plant or equipment. The Vendor shall provide the Purchaser with operating instructions to enable the Company to safely use or operate the Goods.

18. GENERAL

- 18.1 Each right or remedy of the Vendor under the Contract is without prejudice to any other right or remedy of the Vendor whether under the Contract or not.
- 18.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidability, unenforceability or unreasonableness, be deemed

severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

- 18.3 Failure or delay by the Vendor in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 18.4 Any waiver by the Vendor of any breach of, or any default under, any provision of the Contract by the Purchaser shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 18.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 18.6 The Vendor warrants and represents on behalf of its self and its subcontractors (if any) that it has not, and shall not, carry out any offence under the Bribery Act 2010, and that it has adequate procedures in place to prevent such an occurrence.
- 18.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English courts.