

Terms and Conditions for the supply of SYCOL Ltd services

1. Interpretation

The following definitions and rules of interpretation apply in these Terms and Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in UK, when banks in London are open for business.

Charges: the charges payable by the Organisation/Organisation Group for the supply of the Services as set out in the accepted Order together with the expenses or any variations in accordance with clause 5.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 0.

Contract: the contract between SYCOL and the Organisation/Organisation Group for the supply of Services in accordance with these Conditions and which comprises the Proposal, accepted Order and these Terms and Conditions.

Organisation/Organisation Group: the person, company, institution who purchases Services from SYCOL.

Organisation/Organisation Group Default: has the meaning set out in clause 4.2.

Data Controller: has the meaning set out in section 1(1) of the Data Protection Act 1998.

Data Subject: an individual who is the subject of Personal Data.

Deliverables: the deliverables set out in the Order.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Organisation/Organisation Group's order for Services as set out in an order form signed for and on behalf of the Organisation/Organisation Group.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Organisation/Organisation Group is the Data Controller and in relation to which SYCOL is providing Services under the Contract.

Processing and process: have the meaning set out section 1(1) of the Data Protection Act 1998.

Programme: the programme described in the Proposal.

Proposal: the description of the Services provided in writing by SYCOL to the Organisation/Organisation Group and which have been incorporated into an Order and accepted as provided in Clause 2.2.

Services: the services, including the Deliverables, agreed to be supplied by SYCOL to the Organisation/Organisation Group as set out in the Proposal as may be varied by agreement in writing.

SYCOL: SYCOL Limited registered in England and Wales with number 05484049 and whose registered office is at Regus House, Falcon Drive, Cardiff, CF10 4RU.

SYCOL Materials: has the meaning set out in clause 4.1(e).

Year: a period of 12 months commencing on the Commencement Date or any anniversary of the Commencement Date.

1.2 Interpretation:

1.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

- 1.4 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 A reference to **writing** or **written** includes email but not fax.
- 1.6 In the event of any inconsistency between the Proposal, the accepted Order and these Terms and Conditions the inconsistency shall be resolved in accordance with the following order of precedence:
- (a) these Terms and Conditions
 - (b) the accepted Order
 - (c) the Deliverables set out in the Proposal
 - (d) the Proposal.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Organisation/Organisation Group to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when SYCOL issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**) and continue for the term set out in the accepted Order and as may be extended by agreement.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by SYCOL, and any descriptions or illustrations contained in SYCOL's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force. Only the Proposal and accepted Order shall together with these Terms constitute the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Organisation/Organisation Group seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by SYCOL shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.

3. Supply of Services

- 3.1 SYCOL shall supply the Services to the Organisation/Organisation Group in accordance with the Proposal in all material respects.
- 3.2 SYCOL shall use all reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 SYCOL reserves the right to amend the Proposal if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services and SYCOL shall notify the Organisation/Organisation Group in any such event.
- 3.4 SYCOL warrants to the Organisation/Organisation Group that the Services will be provided using reasonable care and skill.

4. Organisation/Organisation Group's obligations

4.1 The Organisation/Organisation Group shall:

- (a) ensure that the terms of the Order and any information it provides to SYCOL are complete and accurate;
- (b) co-operate with SYCOL in all matters relating to the Services and support and promote the Programme with all staff members of the Organisation/Organisation Group;
- (c) provide SYCOL, its employees, agents, consultants and subcontractors, with access to the Organisation/Organisation Group's premises, office accommodation and other facilities as reasonably required by SYCOL;
- (d) provide SYCOL with such information and materials as SYCOL may reasonably require in order to supply the Services;
- (e) keep all materials, equipment, documents and other property of SYCOL (**SYCOL Materials**) at the Organisation/Organisation Group's premises in safe custody at its own risk, maintain the SYCOL Materials in good condition until returned to SYCOL, and not dispose of or use the SYCOL Materials other than in accordance with SYCOL's written instructions or authorisation; and
- (f) comply with any additional obligations as set out in the Proposal.

4.2 If SYCOL's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Organisation/Organisation Group or failure by the Organisation/Organisation Group to perform any relevant obligation (**Organisation/Organisation Group Default**):

- (a) SYCOL shall not be liable for any costs or losses sustained or incurred by the Organisation/Organisation Group arising directly or indirectly from SYCOL's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (b) the Organisation/Organisation Group shall reimburse SYCOL on written demand for any costs or losses sustained or incurred by SYCOL arising directly or indirectly from the Organisation/Organisation Group Default.

5. Charges and payment

5.1 The charges shall be set out in the accepted Order.

5.2 SYCOL shall be entitled to charge the Organisation/Organisation Group for any expenses provided in the accepted Order and reasonably incurred by the individuals whom SYCOL engages in connection with the Services.

5.3 SYCOL shall be entitled to invoice the Organisation/Organisation Group on the following basis except as may otherwise be set out in the Proposal:

- (a) in respect of the first Year of the Programme at any time following receipt of the accepted Order, and
- (b) in respect of the second Year of the Programme at any time following the first anniversary of the Commencement Date, and
- (c) in respect of the third Year of the Programme at any time following the second anniversary of the Commencement Date.

5.4 The Organisation/Organisation Group shall pay each invoice submitted by SYCOL:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by SYCOL and confirmed in writing to the Organisation/Organisation Group; and

(b) in full and in cleared funds to a bank account nominated in writing by SYCOL, and

time for payment shall be of the essence of the Contract.

- 5.5 All amounts payable by the Organisation/Organisation Group under the Contract are exclusive of amounts in respect of any value added tax which may be chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by SYCOL to the Organisation/Organisation Group, the Organisation/Organisation Group shall, on receipt of a valid VAT invoice from SYCOL, pay to SYCOL such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.6 If the Organisation/Organisation Group fails to make a payment due to SYCOL under the Contract by the due date, then, without limiting SYCOL's remedies under clause 9, the Organisation/Organisation Group shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 0 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. Intellectual property rights

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Organisation/Organisation Group) shall be owned by SYCOL.
- 6.2 SYCOL grants to the Organisation/Organisation Group, or shall procure the direct grant to the Organisation/Organisation Group of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Organisation/Organisation Group) for the purpose of receiving and using the Services and the Deliverables in its own activities but not for the purposes of any third party exploitation.
- 6.3 The Organisation/Organisation Group shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 The Organisation/Organisation Group grants SYCOL a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Organisation/Organisation Group to SYCOL for the term of the Contract for the purpose of providing the Services to the Organisation/Organisation Group.

7. Data protection and data processing

- 7.1 The Organisation/Organisation Group and SYCOL acknowledge that for the purposes of the Data Protection Act 1998, the Organisation/Organisation Group is the Data Controller and SYCOL is the data processor in respect of any Personal Data.
- 7.2 SYCOL shall process the Personal Data only in accordance with the Organisation/Organisation Group's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Organisation/Organisation Group.
- 7.3 SYCOL shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 7.4 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

- 7.5 SYCOL warrants that, having regard to the state of technological development and the costs of implementing any measures, it will:
- (a) Take appropriate technical and Organisation/Organisation Group all measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
 - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - (ii) the nature of the data to be protected including any security measures that may be notified to it by the Organisation/Organisation Group; and
 - (b) take reasonable steps to ensure compliance with those measures.
- 7.6 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 7.
- 7.7 The Organisation/Organisation Group acknowledges that SYCOL is reliant on the Organisation/Organisation Group for direction as to the extent to which the SYCOL is entitled to use and process the Personal Data. Consequently, SYCOL will not be liable for any claim brought by a Data Subject arising from any action or omission by the SYCOL, to the extent that such action or omission resulted directly from the Organisation/Organisation Group's instructions.
- 8. Limitation of liability**
- 8.1 Nothing in the Contract shall limit or exclude SYCOL's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1, SYCOL shall not be liable to the Organisation/Organisation Group, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of agreements or contracts;
 - (b) loss of anticipated savings;
 - (c) loss of use or corruption of software, data or information;
 - (d) loss of or damage to goodwill; and
 - (e) any indirect or consequential loss.
- 8.3 Subject to clause 8.1, SYCOL's total liability to the Organisation/Organisation Group, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid under the Contract.
- 8.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.5 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 This Agreement may not be terminated except as provided in the following clauses.

9.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so (and for the purposes of this provision “material breach” on the part of SYCOL means any failure on its part to provide the Deliverables); or
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

9.3 Without affecting any other right or remedy available to it, SYCOL may terminate the Contract with immediate effect by giving written notice to the Organisation/Organisation Group if the Organisation/Organisation Group fails to pay any amount due under the Contract on the due date for payment.

10. Consequences of termination

10.1 On termination of the Contract:

- (a) The Agreement incorporating these SYCOL Terms may be terminated by the Organisation/Organisation Group/Organisation/Organisation Group giving 30 days written notice to SYCOL, however the Organisation/Organisation Group/Organisation/Organisation Group shall remain liable to pay SYCOL in full any remaining unpaid Fees/Instalments of the 3 year programme (e.g. years 2 and 3 if terminating in year 1) and expenses due under clause 11.1 regardless whether all the Services and/or the Licence Rights have been supplied or granted by SYCOL.
- (b) the Organisation/Organisation Group shall immediately pay to SYCOL all of SYCOL's outstanding sums/unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, SYCOL shall submit an invoice, which shall be payable by the Organisation/Organisation Group immediately on receipt;
- (c) the Organisation/Organisation Group shall return all of the SYCOL Materials and any Deliverables which have not been fully paid for. Until they have been returned, the Organisation/Organisation Group shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

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

10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11. General

11.1. Fees, Expenses and Payment Terms

- (a) In relation of the Services to be delivered by SYCOL and the IP rights granted in clause 3 and 6, the Organisation/Organisation group shall pay SYCOL the fees specified in the Agreement together with reasonable expenses to reimburse SYCOL's reasonable costs in the delivery of Services, in accordance with the terms outlined in section (b), upon receipt of an invoice.

- (b) Fees exclude reasonable expenditure incurred in delivery of Service by SYCOL, including essential travel and accommodation. These expenses incurred by SYCOL will be recharged to the Organisation/Organisation group at cost. Upon request, SYCOL will provide proof of expenses including original receipts. The Organisation/Organisation group may choose to arrange flights and accommodation on behalf of SYCOL, so long as they to SYCOL terms as follows: (i) SYCOL Associates and SYCOL Staff shall travel on the most time-efficient mode of transport and wherever possible on the cheapest fare available; (ii) in the case of an overall flight-time of 6 or more hours, SYCOL personnel shall travel premium economy class; (iii) SYCOL Associates and Staff shall stay in international standard hotels usually within the IHG group of hotels; (iv) mileage shall be charged at 45p/mile (v) essential car parking (e.g. at airport terminal); (vi) standard-class train fare. The Organisation/Organisation group will also cover any reasonable costs of travel to and from airports/rail stations.
 - (c) Any services in addition to those specified in clause (a) and (b) and agreed in advance shall be invoiced by SYCOL upon completion of the work and payable by the Organisation/Organisation group in accordance with clause (d).
 - (d) The Organisation/Organisation group shall pay the fees and SYCOL's expenses in the delivery of Services by invoice provided by SYCOL within 30 days of invoice date.
- 11.2 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.3 **Assignment and other dealings.**
 - (a) SYCOL may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
 - (b) The Organisation/Organisation Group shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of SYCOL.
- 11.4 **Confidentiality.**
 - (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five Years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, Organisation/Organisation Groups, clients or suppliers of the other party, except as permitted by clause 0.
 - (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11(b); and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 11.5 **Entire agreement.**
 - (a) The Contract 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.
 - (b) Each party acknowledges that in entering into the Contract 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 the Contract. Each party agrees that it shall have no

claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- (c) Nothing in this clause shall limit or exclude any liability for fraud.

11.6 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.7 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.8 **Severance.** If any provision or part-provision of the Contract 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 under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.9 **Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to accounts@sycol.com in the case of notices to SYCOL and to the email address specified in the accepted Order in the case of the Organisation/Organisation Group.
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 9.00 am on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.10 **Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

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

11.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.