

# Terms for the supply of services

## 1. Introduction

1.1 In these Terms “Kene” means Kene Partners Limited, a company incorporated and registered in England and Wales, with company number 10813376, whose registered office is at Tintagel House, 92 Albert Embankment, London SE1 7TY.

1.2 These Terms, together with Kene’s engagement letter (the “Engagement Letter”), sets out the basis upon which Kene will provide services to you (“Services”). In the event of any inconsistency between these Terms and the Engagement Letter, the terms of the Engagement Letter shall prevail.

1.3 No director, officer, employee, consultant, agent or subcontractor of Kene shall have any personal liability for the work undertaken for you. This clause 1.3 shall survive termination of the Engagement Letter and these Terms.

1.4 In these Terms the following definitions shall apply: -

(a) **Business Day:** shall mean a day, other than a Saturday or Sunday or public holiday in England, when banks in London are open for business.

(b) **Tax Benefit:** shall mean: -

- (i) any tax credit amount; and / or
- (ii) any expenditure credit (net of withholding tax); and / or
- (iii) any reduction in corporation tax liability; and / or
- (iv) any increase or generation of tax losses available.

(c) **Tax Relief:** shall mean a **Tax Benefit** afforded pursuant to the following legislation: -

(i) R&D Tax Relief, under Part 13 of the Corporation Tax Act 2009 (the “CTA”);

(ii) R&D Tax Credits for loss making small or medium sized enterprises, under Chapter 2 of Part 13 of the CTA;

(iii) R&D Expenditure Credits, under Chapter 6A of Part 3 of the CTA;

(iv) R&D Allowances, under Part 6 of the Capital Allowances Act 2001.

## 2. Services

2.1 Kene shall provide professional advice to you in relation to a claim to be made on your behalf for Tax Relief, as detailed more fully in the Engagement Letter (the “Claim”).

2.2 You understand that, to enable Kene to properly advise you in relation to this matter, you are required to provide full and accurate information to Kene and you agree to do so.

2.3 If any part of a Tax Relief is disallowed by HMRC, Kene shall refund to you any charges paid to Kene by you exclusively with regard to the disallowed relief. Under no circumstances shall Kene be liable for any penalties levied by HMRC or for any loss or damage sustained by you in this regard. This clause 2.4 shall survive termination of the Engagement Letter and these Terms.

2.4 Kene will take out and maintain appropriate professional indemnity and public liability insurance.

## 3. General

3.1 Kene will be free to use such directors, officers, employees, consultants, agents or subcontractors in connection with the provision of Services to you as Kene considers appropriate.

3.2 You will provide Kene with sufficient information, and access to personnel and property, as may be required by Kene, to enable Kene to provide the Services to you. Such information

and access shall be provided as soon as possible, and all information provided shall be complete, true, accurate and not misleading.

3.3 You will keep Kene updated as to any changes to the information provided by you as soon as possible and shall promptly provide copies of all correspondence received by you from HMRC, or sent from you to HMRC, with regard to the Claim.

3.4 Your papers and documents may be reviewed by external auditors and, in order to defend Kene against any actual or threatened legal or regulatory proceedings, Kene may also disclose any relevant information to their insurers, insurance brokers, and other advisers.

3.5 It is acknowledged that Kene may pay third party direct or indirect introducers a fee in certain situations. This shall not affect the charges paid by you under the terms of this Agreement.

## 4. Term

4.1 These Terms between you and Kene shall come into force and be binding upon you on signature of the Engagement Letter relating to the Services (“Commencement Date”) and shall continue until termination by either party, in accordance with the provisions of the Engagement Letter or these Terms.

## 5. Costs

5.1 Kene’s charges shall be calculated on an agreed percentage fee of the value of the Tax Benefit that is afforded to you by HMRC as a result of the claim and shall be paid by you, in cleared funds, to be received by Kene within 30 days (Invoice 1) of the date of Kene’s invoice in this regard. Invoice 2 is due upon presentation. The

- agreed percentage fee is as per your Engagement Agreement.
- 5.2 Where your agreement with Kene is terminated by either party before all the work is completed in respect of any Claim, Kene reserves the right to charge you for the Services provided to you up to the date of termination, on the basis of chargeable time spent by Kene's directors, officers, employees, consultants, agents or subcontractor in relation to the Claim as an alternative to the charges provided in clause 5.1. Such time shall be charged on the basis of a rate of £350.00 per hour, or such other rate as shall be notified to you from time to time plus any disbursements incurred by Kene in providing the Services. Such charges shall be payable by you to Kene in cleared funds, within 14 days of the date of the invoice detailing such charges.
- 5.3 All amounts payable by you to Kene under this Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under this Agreement by Kene to you, you shall, on receipt of a valid VAT invoice from Kene, pay 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.
- 5.4 If you fail to make a payment due to Kene under this Agreement by the due date, then, without limiting Kene's remedies under clause 9, you 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 5.4 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%.
- 5.5 All amounts due under this Agreement 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 You grant Kene a fully paid-up, non-exclusive, royalty-free, non-transferable licence to:
- (a) copy and modify any materials provided by you to Kene for the term of the Engagement Letter and these
- Terms for the purpose of providing the Services to you; and
- (b) use your logo and other non-confidential information relating to the Services provided to you, for the purpose of testimonials and other promotional material of Kene.
- 7. Data protection and data processing**
- 7.1 You and Kene acknowledge that for the purposes of the Data Protection Act 2018, you are the data controller and Kene is the data processor in respect of any personal data.
- 7.2 Kene shall process the personal data only in accordance with your instructions from time to time and shall not process the personal data for any purposes other than those expressly authorised by you.
- 7.3 Kene 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 Kene warrants that, having regard to the state of technological development and the costs of implementing any measures, it will:
- (a) take appropriate technical and organisational 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; 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 You acknowledge that Kene is reliant upon you for direction as to the extent to which Kene is entitled to use and process the personal data. Consequently, Kene will not be liable for any claim brought by a data subject arising from any action or omission by Kene, to the extent that such action or omission resulted directly from your instructions.
- 7.8 Kene may authorise a third party (subcontractor) to process the personal data provided that the subcontractor's contract:
- (a) is on terms which are substantially the same as those set out in these Terms in respect of data protection and data processing; and
- (b) terminates automatically on termination of these Terms for any reason.
- 7.9 Kene shall be permitted to change the provisions of this clause 7, upon written notice to you, to reflect changes in legislation.
- 8. Limitation of liability:**
- 8.1 Nothing in these Terms shall limit or exclude Kene's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its directors, officers, employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1, Kene shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Engagement Letter or these Terms for:
- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) any indirect or consequential loss.

- 8.3 Subject to clause 8.1, Kene's total liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to the total charges paid to Kene under the Engagement Letter and these Terms.
- 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 Engagement Letter and these Terms.
- 8.5 This clause 8 shall survive termination of the Engagement Letter and these Terms.
- 9. Termination**
- 9.1 Subject to clause 9.2, without affecting any other right or remedy available to either party, Kene may terminate the Engagement Letter and these Terms upon written notice to you at any time without assigning any reason with regard to that same.
- 9.2 Notwithstanding the provisions of clause 9.1, Kene shall be permitted to terminate the Engagement Letter and these Terms, at its sole discretion, within two Business Days of the workshop. In this circumstance Kene shall not be liable to you in any regard, subject always to the provisions of clause 8.1.
- 9.3 Without affecting any other right or remedy available to it, either party may terminate the Engagement Letter and these Terms 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 Engagement Letter and these Terms and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
- (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;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Engagement Letter or these Terms has been placed in jeopardy.
- 9.4 Without affecting any other right or remedy available to it, Kene may suspend the supply of Services under the Engagement Letter and these Terms or any other contract between you and Kene if you fail to pay any amount due under the Engagement Letter or these Terms on the due date for payment, or if you become subject to any of the events listed in clause 9.3(b) to clause 9.3(d), or Kene reasonably believes that you are about to become subject to any of them.
- 9.5 If this Engagement Letter or these Terms are terminated, or suspended, under no circumstances will Kene be liable to you for the loss of any tax relief or benefit as a result of this termination or suspension. This clause 9.5 shall survive termination of the Engagement Letter or these Terms.
- 10. Consequences of termination**
- 10.1 On termination of the Engagement Letter or these Terms:
- (a) you shall immediately pay to Kene all of the outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Kene shall submit an invoice, which shall be payable by you immediately on receipt;
- (b) you shall return all documents and materials belonging to Kene. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Engagement Letter and these Terms.
- 10.2 Subject to clause 9.2, termination or expiry of the Engagement Letter and these Terms 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 Engagement Letter or these Terms which existed at or before the date of termination or expiry.
- 10.3 Any provision of the Engagement Letter or these Terms that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Engagement Letter or these Terms shall remain in full force and effect.
- 11. Miscellaneous provisions**
- 11.1 **Force majeure.** Neither party shall be in breach of the Engagement Letter or these Terms nor liable for delay in performing, or failure to perform, any of the obligations under the Engagement Letter or these Terms if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2 **Assignment and other dealings.**
- (a) Kene 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 Engagement Letter or these Terms.
- (b) You 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 Engagement Letter or these Terms without the prior written consent of Kene.
- 11.3 **Confidentiality.**
- (a) Subject to the provisions of clause 3.4 and except as permitted by this clause 11.3, each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs and know-how, of the other party.
- (b) Each party may disclose the other party's confidential information:
- (i) to its directors, employees, officers, consultants, agents, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Engagement Letter and these Terms. Each party shall ensure that its directors, employees, officers, consultants, agents, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and

- (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Kene shall have the right to disclose details of the Engagement Letter and these Terms, any charges invoiced to you pursuant to the Engagement Letter or these Terms and progress made with regard to services provided to under the Engagement Letter or these Terms to a third party, if your instructions are the subject of a direct or indirect introduction agreement, solely for the purposes of payment of commission to the third party.
- (d) Unless otherwise expressly provided for in the Engagement Letter or these Terms, neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Engagement Letter and these Terms.

**11.4 Entire agreement.**

- (a) These Terms, together with the Engagement Letter, 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 Engagement Letter and these Terms 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 Engagement Letter or these Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Engagement Letter or these Terms.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

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

**11.6 Waiver.** A waiver of any right or remedy under the Engagement Letter or these Terms 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 Engagement Letter or these Terms 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 Engagement Letter or these Terms or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**11.7 Severance.** If any provision or part-provision of the Engagement Letter or these Terms 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 Engagement Letter or these Terms.

**11.8 Notices.**

**11.9** Any notice or other communication given to a party under or in connection with the Engagement Letter or these Terms 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 the address specified in the Engagement Letter.

(a) 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.

(b) 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 Engagement Letter or these Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Engagement Letter or these Terms.
- (b) The rights of the parties to rescind or vary the Engagement Letter or these Terms are not subject to the consent of any other person.

**11.11 Governing law.** The Engagement Letter and these Terms 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.

**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 Engagement Letter and these Terms or their subject matter or formation.