

Terms and Conditions – Purchase of Services

1. Interpretation

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

1.1 Definitions:

Affiliate: In respect of a person, Affiliates are any persons that Controls, are controlled by or are under common Control with that person from time to time.

Applicable Laws: any statute, statutory instrument, byelaw, order, regulation, directive, treaty, decree, decision any legally binding rule or policy and any guidance, recommendation, code of conduct or guideline which is binding on a party in force from time to time (and as amended from time to time) which relate to this agreement and/or the activities of a party.

Bentley: Bentley Motors Limited (registered in England and Wales with company number 9928987 with a registered office of Pyms Lane, Crewe, Cheshire, United Kingdom, CW1 3PL)

Bentley Materials: has the meaning set out in clause 3.3(l)

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

Charges: the charges payable by Bentley for the supply of the Services in accordance with clause 6.

Commencement Date: has the meaning provided in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.5.

Contract: the contract between Bentley and the Supplier for the supply of Services in accordance with these Conditions and the Purchase Order.

Control: in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contract powers or otherwise and “Controlled” is construed accordingly.

CSBR or Cyber Security Basic Requirements: Bentley’s standard requirements in relation to automotive cyber security, a copy of which is available on the VW Supply Portal.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications)

Deliverables: all documents, products, goods and materials developed or provided by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including (but not limited to) items such as drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Free and Open Source Software (FOSS): means any software subject to a version of the General Public License, together with any other 'open source' software falling within the Open Source Definition issued by the Open Source Initiative (www.opensource.org/docs/osd) and any 'free software' as defined by the Free Software Foundation (www.gnu.org/philosophy/free-sw.html) at the date of this Agreement and as amended from time to time.

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.

Mandatory Policies: the business policies which are available on the VW Supply Portal (as amended from time to time).

Personal Data: as defined within the Data Protection Legislation.

Purchase Order: the document headed 'Purchase Order' which accompanies these terms and which details Bentley's order for the Services.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract, as set out in the Specification.

Specification: the description or specification for the Services outlined in the Purchase Order or documents referred to in the Purchase Order.

Supplier: the person, company, firm or entity identified in the Purchase Order from whom Bentley purchases the Services.

VW Supply Portal: the online business platform, available to all Bentley suppliers at www.vwgroupsupply.com

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) 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.

- (e) Unless expressly stated otherwise in these Conditions, a reference to **writing** or **written** includes emails.

2. Basis of contract

- 2.1 The Purchase Order constitutes an offer by Bentley to purchase Services in accordance with these Conditions. The offer may be withdrawn by Bentley at any time before the Supplier's acceptance in accordance with **Clause 2.2**.
- 2.2 The Purchase Order shall be deemed to be accepted on the earlier of:
 - (a) the Supplier issuing written acceptance of the Purchase Order;
 - (b) the Supplier commencing Services; or
 - (c) any act by the Supplier consistent with fulfilling the Purchase Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

- 2.3 Subject to any variation under **Clause 16.5**, these Conditions apply to the Contract to the exclusion of any other terms that the parties seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of a Purchase Order, specification or similar document shall form part of the Contract and the Supplier waives any right which it might have to rely on such terms and conditions. If such a document is referred to in the Purchase Order, unless stated otherwise it exists to support the Specification of the Services only and where there is a conflict between these Conditions and such a document, these Conditions shall prevail..
- 2.4 The parties agree that nothing in this Contract shall prevent the Supplier from providing any services whatsoever to any other entity, and that nothing in this Agreement shall prevent Bentley from obtaining the same or similar services to those which the Supplier may provide under the terms of this Agreement from any other source (including providing such services itself).

3. Supply of Services

- 3.1 The Supplier shall from the Commencement Date (or the date specified on the Purchase Order for the start of Services, where later) and for the duration of the Contract provide the Services to Bentley in accordance with the terms of the Contract.
- 3.2 The Supplier shall meet any performance dates for the Services or that Bentley notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 3.3 In providing the Services, the Supplier shall:
 - (a) co-operate with Bentley in all matters relating to the Services, and comply with all reasonable instructions of Bentley;

- (b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
- (d) ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that Bentley expressly or impliedly makes known to the Supplier;
- (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (f) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Bentley, will be free from defects in workmanship, installation and design;
- (g) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply from time to time to the provision of the Services, and with the Mandatory Policies;
- (i) (unless confirmed by Bentley in writing as not being applicable) comply with the requirements set out in the CSBR;
- (j) to the extent that the Services involve the provision of software, the software be incapable of being sabotaged or accessed and/or modified by third parties who have not been authorised to do so and shall be protected from unintended alterations, and remain so for as long as the Services are provided;
- (k) observe all health and safety rules and regulations and any other security requirements that apply at any of Bentley's premises;
- (l) hold all materials, equipment and tools, drawings, specifications and data supplied by Bentley to the Supplier (**Bentley Materials**) in safe custody at its own risk, maintain Bentley Materials in good condition until returned to Bentley, and not dispose or use Bentley Materials other than in accordance with Bentley's written instructions or authorisation;
- (m) not do or omit to do anything which may cause Bentley to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that Bentley may rely or act on the Services;
- (n) immediately notify Bentley of any information or of any changes in its organisation or method of doing business which might reasonably affect the performance of its duties and obligations under the Contract;
- (o) not act or omit to act in a way or associate with any third party which does or may, in Bentley's reasonable opinion, bring Bentley's name into disrepute or would have a materially

adverse impact on Bentley's good name, reputation or public image, or be damaging to Bentley's business, including causing or permitting anything which is offensive, immoral or illegal; and

(p) comply with any additional obligations as set out in the Specification.

3.4 In addition to the general requirement at Clause 3.3(h), the Supplier warrants that if any products and packaging are produced as part of the Deliverables then the material composition and formula of such products and packaging shall comply with the requirements of the United States Toxic Substances Control Act ("TSCA"). The Supplier shall conform to all TSCA certification requirements and shall provide to Bentley a certificate of conformity on demand. The Supplier shall immediately inform Bentley of any information and notifications it has made to courts, authorities or other official bodies regarding the material composition and formula of such product and any packaging. Upon request the Supplier shall provide Bentley with the results of a random sample of the material composition and formulation carried out by an independent testing laboratory for validation of the data supplied. Furthermore the Supplier shall support Bentley, on request, in any random sampling tests carried out by Bentley itself.

3.5 Bentley may make changes to the Specification which the Supplier shall be required to implement. Bentley shall pay the reasonable costs of the Supplier in implementing such changes.

4. Bentley Remedies

4.1 If the Supplier fails to perform the Services by the applicable dates, Bentley shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (c) to recover from the Supplier any costs incurred by Bentley in obtaining substitute services from a third party;
- (d) to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided; and
- (e) to claim damages for any additional costs, loss or expenses incurred by Bentley which are in any way attributable to the Supplier's failure to meet such dates.

4.2 If the Supplier has supplied Services that do not comply with the requirements of clause 3.3 then, without limiting or affecting other rights or remedies available to it, Bentley shall have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- (b) to return the Deliverables to the Supplier at the Supplier's own risk and expense;

- (c) to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
- (d) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (e) to recover from the Supplier any expenditure incurred by Bentley in obtaining substitute services or deliverables from a third party; and
- (f) to claim damages for any additional costs, loss or expenses incurred by Bentley arising from the Supplier's failure to comply with **clause 3.3**.

4.3 These Conditions shall extend to any substituted or remedial services provided by the Supplier.

4.4 Bentley's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

5. Bentley's obligations

Bentley shall:

- (a) Where necessary, provide the Supplier with reasonable access at reasonable times to Bentley's premises for the purpose of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

6. Charges and payment

6.1 The Charges for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing (not email) by Bentley, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services. No extra charges or increase in price shall be effective unless agreed in writing (not email). An increase in price will require a new purchase order.

6.2 Unless otherwise identified on the Purchase Order, the Supplier shall invoice Bentley on completion of the Services. Each invoice shall include such supporting information required by Bentley to verify the accuracy of the invoice, including the relevant Purchase Order number.

6.3 Unless agreed otherwise, Bentley shall pay correctly rendered invoices by the last working day of the month following the month in which the invoice for the Services is received. Payment shall be made to the bank account nominated in writing on letterhead (not email) by the Supplier.

6.4 All amounts payable by Bentley under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Bentley, Bentley shall, on receipt of a valid VAT invoice from the

Supplier, pay to the Supplier 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. The Supplier shall ensure that the invoice includes the date and number of the Purchase Order, the invoice number, the delivery note number, the Supplier's VAT registration number (where applicable) and any supporting documents that Bentley may reasonably require.

- 6.5 If a deduction or withholding of tax is required, Bentley shall pay any such amount to the relevant authority as is required by law and, upon request, shall provide the Supplier with an official receipt or certificate in respect of the payment if available.
- 6.6 If a reduced or nil rate of withholding tax is available under a relevant double taxation treaty, the parties shall provide all reasonable co-operation to make the relevant application/applications to achieve this.
- 6.7 Where relevant, the Supplier will provide all reasonable assistance to Bentley to facilitate a claim for relevant R&D tax incentives by Bentley. This could include, but is not limited to, providing information in respect of the work done in response to questions by Bentley, or providing financial data including relevant labour and material costs involved in the R&D.
- 6.8 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party 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 will accrue each date at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from 30 days after the dispute is resolved until payment.
- 6.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow Bentley to inspect such records at all reasonable times on request.
- 6.10 Bentley may at any time, without notice to the Supplier, set off any liability of the Supplier to Bentley against any liability of Bentley to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, Bentley may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Bentley of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

7. Intellectual property rights

- 7.1 Unless agreed and documented in the Specification, the Supplier assigns to Bentley, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables. In this instance:

- (a) The Supplier shall obtain waivers of all moral rights in the Deliverables, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction; and
- (b) the Supplier warrants that it has full clear and unencumbered title to the Deliverables, and that at the date of delivery of the Deliverables to Bentley, it will have full and unrestricted rights to transfer all such items to Bentley.

- 7.2 Where it has been agreed that the Intellectual Property Rights in some or all of the Deliverables is not to be transferred to Bentley, the Supplier grants to Bentley, or shall procure the direct grant to Bentley of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to use, copy and modify the Deliverables for the purpose of receiving and using the Services and the Deliverables.
- 7.3 The Supplier shall, promptly at Bentley's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Bentley may from time to time require for the purpose of securing for Bentley the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Bentley in accordance with clause 7.1. or to provide the licence referred to in clause 7.2.
- 7.4 Notwithstanding the fact that all Intellectual Property Rights shall belong to Bentley, it may be appropriate to name the employee/s and/or contractors as inventors as inventors on any IPR application. The Supplier shall provide Bentley with such names on request. The Supplier will be responsible for any applicable inventor remuneration.
- 7.5 The Supplier warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding Bentley Materials) by Bentley and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party.
- 7.6 All Bentley Materials are the exclusive property of Bentley and will be stored by the Supplier in safe custody at its own risk and will be returned to Bentley at the end of the Contract or sooner if required by Bentley.
- 7.7 To the extent that it is needed, Bentley grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by Bentley to the Supplier for the term of the Contract for the purpose of providing the Services to Bentley.
- 7.8 Unless stated otherwise in writing (not email) the Supplier shall not be permitted to use any Bentley trademarks or promote or otherwise refer to the fact that it is a supplier and/or has a commercial relationship with Bentley.
- 7.9 The Supplier is directly responsible for ensuring the license-compliant use of Free and Open-Source Software ("FOSS") within the Services under this Contract. The Supplier must guarantee that FOSS

usage does not impair the intended use of the Services, Deliverables, results, and/or Intellectual Property Rights. Specifically, the Supplier must ensure that:

- (a) no copyleft effect mandates the publication of closed source software (including proprietary code developed by a third party or code components thereof) under the FOSS license;
- (b) no licenses require the provision of signature keys, authentication keys, or similar for systems with sequence checks, including for their reinstall or execute modified software (tivoisation),
- (c) FOSS licenses do not contain a user's right to exchange software if it's not guaranteed in the supplied software,
- (d) No delivery (signature) keys or similar (e.g. "installation information") is required,
- (e) commercial use is not excluded,
- (f) no incompatibility arises between different FOSS licenses used; and
- (g) no additional obligations beyond mandatory information (e.g. copyright notices, acknowledgements, relevant license texts) are imposed.

Deviations from the provisions provided for in this clause 7.9 require prior written agreement with Bentley. If within the framework of the provision of the Services or Deliverables, Supplier proposes use of FOSS with atypical licenses requirements, the Supplier will agree this with Bentley before any usage thereof.

7.10 If FOSS is used as part of the Services or Deliverables the Supplier undertakes to:

- (a) provide Bentley with all necessary information and materials for FOSS license-compliant use (e.g. compulsory statements such as component name, copyright information and license texts), and enable Bentley to verify the license-compliant use as appropriate to the individual case;
- (b) make all information and materials required under clause 7.10(a) available to Bentley when requested and in the format requested,
- (c) hand over the FOSS source, including modifications, to Bentley when requested and in any event no later than the time of provision of the Services; and
- (d) grant Bentley the right to modify FOSS contained in the Services and or Deliverables as well as related proprietary software and perform reverse engineering for debugging purposes if mandated by a relevant FOSS license. In this case, the Supplier ensures the same right for third-party software components.

7.11 Bentley shall, at any point be able to request evidence from the Supplier that it has complied with the requirements of Clauses 7.10 and 7.11, and shall indemnify Bentley against any claims of third parties, irrespective of amount, and against any costs associated with any FOSS.

8. Indemnity

- 8.1 The Supplier shall indemnify Bentley against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Bentley arising out of or in connection with:
- (a) any claim brought against Bentley for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Services (excluding Bentley Materials); and
 - (b) any claim made against Bentley by a third party arising out of, or in connection with, the supply of the Services to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors
 - (c) any loss incurred by Bentley (including any fines) as a result of the Supplier's breach of Clause 9 (Compliance) or Clause 10 (Data Protection);
- 8.2 The Supplier will indemnify and keep indemnified Bentley and any new supplier against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by Bentley or any new supplier in connection with or as a result of any claim or demand arising out of the Supplier's own failure to comply with clause 9.18 and/or any requirements of TUPE, or from any claims arising from employees who transferred to a new supplier under TUPE or ought reasonably to have transferred under TUPE.
- 8.3 This clause 7.9 shall survive termination of the Contract.

9. Compliance with relevant laws and policies

- 9.1 The Supplier shall take all reasonable steps to ensure that its directors, managers, employees, agents and subcontractors comply with the terms of this clause.
- 9.2 In performing its obligations under this Contract, the Supplier shall comply with all Applicable Laws and the Mandatory Policies.
- 9.3 Notwithstanding the generality of Clause 9.2, the Supplier shall:
- a) operate an equality, diversity and inclusion policy at all times and supply Bentley with a copy of its policy upon request. The Supplier shall comply with all legislation in relation to this including, but not limited to, the Equality Act 2010;
 - b) comply with all relevant laws, regulations, codes and sanctions relating to anti-money laundering including but not limited to the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017 and the Proceeds of Crime Act 2002;

- c) comply with all relevant laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including, but not limited to, the Bribery Act 2010;
 - d) comply with all relevant laws, regulations, codes and sanctions relating to modern slavery and human rights, including but not limited to, the Modern Slavery Act 2015, and the German Supply Chain Due Diligence Act “Lieferkettensorgfaltspflichtengesetz” (LkSG).
- 9.4 Unless confirmed otherwise by Bentley, the Supplier must comply with the VW Group Code of Conduct for Business Partners which is available on the VW Supply Portal and will supply a copy of the Code of Conduct to all relevant persons within its organisation.
- 9.5 Bentley is a member of the VW Group which has set requirements for sustainable development to be met by its business partners. These requirements can be found on the VW Supply Portal under the section Cooperation and sub-section Supply Chain Sustainability. The Supplier will at all times during the term of this agreement ensure that it is aware of these requirements and will comply with them.
- 9.6 The Supplier shall cooperate and support Bentley with complying with the due diligence requirements incumbent upon it. The Supplier may be subject to a Business Partner Due Diligence check, (BPDD IT-supported process), which is conducted prior to concluding a contract and renewed at regular intervals. The checks are carried out by Bentley and/or an Affiliate of Bentley.
- 9.7 The Supplier shall designate a person within its organisation to act as a single point of contact for Bentley in relation to compliance topics. This person shall undertake the training available under the section Cooperation and sub-section Supply Chain Sustainability on the VW Supply Portal or upon request to Bentley.
- 9.8 The Supplier will ensure that there are adequate operational measures in place within its organisation to ensure adherence to compliance obligations and to maintain a culture of compliance and integrity. Such measures should include (but are not necessarily limited to):
- (a) Ensuring that appropriate training is made available to and completed by all relevant persons within its organisation;
 - (b) Maintaining reasonable and understandable documentation of its compliance measures, including any records of training undertaken;
 - (c) Having controls in place to identify parties who are public officials and have in place for how to deal with them; and
 - (d) Having a method to enable people within its organisation to report any violation of compliance obligations (including those under this agreement) - for example by setting up an effective whistleblower system.
- 9.9 The Supplier shall comply with all reasonable instructions in relation to compliance topics issued by Bentley.

- 9.10 The Supplier shall notify Bentley immediately it suspects there to be a breach of this clause 9 'Compliance Obligations' or where the Supplier is subject to an audit and/or investigation by a governmental or regulatory body.
- 9.11 As part of the VW Group, Audi AG maintains a Whistleblower System on behalf of Bentley. The Supplier is requested to encourage people within their organisation to raise any concerns regarding violations of Applicable Law or misconduct by Bentley and/or complaints in relation to the LkSG supply chain due diligence obligations for human rights and the environment. The Supplier can access the information regarding the Whistleblower System, reporting channels, and the Ombudspersons on Bentley's corporate webpage or on request to Bentley.
- 9.12 The Supplier shall permit Bentley and/or its Affiliates (or a competent third party appointed by one of them), to check on the fulfilment of this clause 9 'Compliance Obligations' or conduct audits either remotely or in-person.
- 9.13 Where applicable, the Supplier shall make all payments to Bentley using the bank account nominated in accordance with Clause 6.3. Any deviation from this specified account shall be agreed in writing by Bentley prior to any payments being made. Cash payments or cash-like payments, in particular by cheque, are not permitted. Payments made by third parties on behalf of the Supplier are not permitted without prior written agreement from Bentley.
- 9.14 The Supplier agrees to promptly notify Bentley, the California Air Resources Board („CARB“) and the Attorney General of the State of California (the „California Attorney General“) when the Supplier providing, or performing work related to, engine control unit hardware or software has reason to believe that a Defeat Device, as defined in US Regulation 40 C.F.R. § 86.1803-01 and US Regulation 42 U.S.C. § 7522(a)(3)(B), has been included in, designed for or requested for a vehicle.
- 9.15 If the subject matter of this contract includes creating or modifying engine control unit software and that is anticipated to be the subject of any filing with CARB, the Supplier agrees to (a) disclose, in the documentation for the software, for; and to (b) maintain a change log of, any feature, that is known or reasonably should be known to detect emissions testing or function as an AECD (Auxiliary Emission Control Device), as defined in US Regulation 40 C.F.R. § 86.1803-01.
- 9.16 The Supplier shall ensure that it is aware of any changes to applicable laws, statutes, regulations and codes and will take immediate steps necessary to ensure continued compliance. The Supplier will notify Bentley of any such relevant changes.
- 9.17 Where the Supplier enters onto Bentley's premises in connection with the supply of the Services, the Supplier will observe all health and safety rules and regulations and any other security requirements that apply at any of Bentley's premises.
- 9.18 To the extent that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") apply at the end of the Contract to the transfer of the Services (or any services) from the Supplier to Bentley or new supplier:-

- (a) the Supplier agrees to use its best endeavours to cooperate with Bentley and/or the new supplier to ensure that it complies in all respects with the requirements of TUPE, including but not limited to the provision of information, consultation, and transfer.
- (b) the Supplier will commence discussions with Bentley and/or the new supplier (as appropriate) not later than three (3) months before the Contract is due to terminate or expire with regards to its obligations under 9.18 (a) above and will do so in good faith.

9.19 Breach of this clause shall entitle the party who is not in breach to terminate this agreement forthwith upon written notice (not email) to the other.

10. Data protection

10.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 10 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

10.2 Where the Supplier intends to or is required to process Personal Data, the Supplier will execute a suitable data processing agreement or data sharing agreement (as applicable) in relation to the Services and the parties' obligations (the 'Data Agreement'). The Data Agreement will be based on Bentley's standard document.

10.3 What follows in this Clause 10 is supplementary to the requirement at 10.2. Where there is a conflict between this Clause 10 and a Data Agreement, the provisions of the Data Agreement shall take precedence.

10.4 Unless stated otherwise in any Data Agreement and subject to Clause 10.25, the parties acknowledge that for the purposes of the Data Protection Legislation, Bentley is the Data Controller and the Supplier is the Data Processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

10.5 The Supplier may process Personal Data as a Data Controller to:

- (a) comply with legal or regulatory requirements; or
- (b) keep records of the Services provided under the agreement, including emails and calls and other communications between Supplier's representatives and Bentley's members of staff, or contractors, (as applicable) (including but not limited to emails and calls to the Supplier's services support team).

10.6 Without prejudice to the generality of clause 10.1, and save where provided for by a Data Agreement entered into between the parties, the Supplier shall in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that Personal Data only on the written instructions of Bentley unless the Supplier is required by domestic laws applicable to the Supplier to process Personal Data. Where the

Supplier is relying on domestic laws as the basis for processing Personal Data, the Supplier shall promptly notify Bentley of this before performing the processing required by the applicable domestic law unless the domestic law prohibits the Supplier from so notifying Bentley;

- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Bentley upon Bentley's request, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK or European Economic Area unless the prior written consent of Bentley has been obtained and the following conditions are fulfilled:
 - (i) Bentley or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by Bentley with respect to the processing of the Personal Data;
- (e) assist Bentley in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify Bentley without undue delay on becoming aware of a Personal Data breach, and in any event within 24 hours of becoming aware of such breach;
- (g) at the written direction of Bentley, delete or return Personal Data and copies thereof to Bentley on termination of the agreement unless required by domestic law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 10 and allow for audits by Bentley or Bentley's designated auditor following the same procedure as specified in Clause 12; and

- (i) indemnify Bentley against any loss of damage suffered by Bentley in relation to any breach by the Supplier of its obligations under this clause 10.

10.7 The Supplier will not be entitled to appoint any third party processor of Personal Data under this agreement without the express written consent of Bentley. The Supplier confirms that if it has entered or (as the case may be) will enter with the third-party processor into a written agreement it shall incorporate terms which are substantially similar to those set out in this clause 10. As between Bentley and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 10.

11. Insurance

During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on Bentley's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. Audit

12.1 The Supplier shall maintain complete and accurate records relating to all matters relevant to the relationship between the parties described in the Contract including the calculation of the price and the provision of the Services. Subject always to the confidentiality provisions of this Contract, Bentley and/or its appointed auditors/professional advisors (whether internal or external to Bentley) shall have the right, exercisable by fourteen (14) days' prior written notice given to the Supplier, to audit and take copies of such records.

12.2 Any such audit shall take place during normal business hours, with minimal disruption to the Supplier, and the Supplier shall provide to Bentley and/or its appointed auditors/professional advisors such reasonable co-operation, assistance and access as Bentley may require. Any such audit shall be conducted at the cost of Bentley. The Supplier may, at its own expense, involve a person from its own auditors (whether internal or external to the Supplier) in such audit.

12.3 Bentley and its appointed auditors/professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.

12.4 Bentley shall establish the same right of audit in favour of Bentley in its contracts with third parties to whom it has subcontracted the performance of any obligations under this Contract with Bentley's consent.

13. Termination

13.1 Without limiting or affecting any other right or remedy available to it, Bentley may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) there is a change of control of the Supplier; or
- (b) the Supplier's financial position deteriorates to such an extent that in Bentley's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (c) the Supplier commits a breach of Clause 9 (Compliance), Clause 10 (Data Protection) or Clause 16.3 (Confidentiality).

13.2 Bentley may terminate the Contract for convenience on no less than three months written notice (not email).

13.3 Without limiting or 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 which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing (not email) to do so;
- (b) Where the material breach relates to non-payment of a legitimate, undisputed sum owed under the Contract, the other party fails to make payment within a period of 60 days after being notified in writing (not email) of the overdue sum;
- (c) the other party's conduct or relationship with any third party is such that in the reasonable opinion of the terminating party, that relationship or conduct will be detrimental to the reputation or business of the terminating party;
- (d) 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), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by Purchase 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; or
- (e) 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.

13.4 In any event and without limiting or affecting any other right or remedy available to it, Bentley may terminate the Contract by giving the Supplier three months' written notice.

14. Consequences of termination

14.1 On termination of the Contract for any reason or on expiry, the Supplier shall immediately deliver to Bentley all Deliverables whether or not then complete, and return all Bentley Materials. If the Supplier fails to do so, then Bentley may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

14.2 Termination or expiry of the Contract shall not affect any of the 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.

14.3 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.

15. Force majeure

15.1 Provided that it has complied with the requirements in clause 15.3, neither party shall be in breach of the Contract nor liable for a failure to perform any of its obligations under the Contract if such failure result from unforeseeable events, circumstances or causes beyond its reasonable control (a "Force Majeure Event").

15.2 In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

15.3 The party affected by the Force Majeure Event shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing (not email) of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

15.4 If the period of delay or non-performance continues for 28 days, the party not affected may terminate the Contract by giving at least 14 days written notice (not email) to the affected party.

15.5 The corresponding obligations of party not affected by the Force Majeure Event (including those in relation to payment) will be suspended, and the time for performance of such obligations extended, to the same extent as those of the affected party.

16. General

16.1 Assignment and other dealings

- (a) Bentley may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Bentley.

- 16.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent (not email) of Bentley. If Bentley consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.
- 16.3 **Confidentiality.**
- (a) Each party undertakes that it shall at any time during the Contract, and for a period of 5 years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.3(b).
 - (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - (c) Notwithstanding the provisions of this Clause 16.3, Bentley shall be entitled to disclose any information, including Confidential Information, received from the Supplier and relating to the Services to any company in the VWG Group, and its agents and or contractors.
 - (d) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 16.4 **Entire agreement.** 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.
- 16.5 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing (not email) and signed by Bentley or its authorised representatives. Certain variations may require a new purchase order.
- 16.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing (not email) and shall not be deemed a waiver of any subsequent right or remedy. 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.

16.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity or enforceability of the rest of the Contract. If any provision or part-provision of this Contract is deemed deleted under this clause 16.7 , the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provisions.

16.8 **Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing (not email) 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).
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address; or
 - (ii) 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.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.9 **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.

16.10 **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.

16.11 **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.