

**DTG Testing Limited**

**Terms and Conditions for the provision of Testing Services ("Conditions")**

**1. Definitions**

1.1 In this Agreement the following terms will have the meaning set out below:

'**Agreed Start Date**' means the date set out as such in the Booking Form;

'**Agreement**' means the Booking Form together with these Conditions;

'**Booking Form**' means DTG's Product Test Booking Form setting out the Product information, platform, product tests required as well as any Special Terms agreed by the Parties;

'**Charges**' means the charges payable by Customer for the Services;

'**Conditions**' means these terms and conditions for the provision of the Services;

'**Confidential Information**' means:

- (a) the terms of this Agreement;
- (b) all information disclosed to a Party by or on behalf of the other Party in connection with this Agreement and which relates to the provisions of this Agreement and/or the negotiations relating to this Agreement;
- (c) know-how, secret processes and inventions disclosed to a Party by or on behalf of the other Party in connection with this Agreement; and
- (d) all other information disclosed to a Party by or on behalf of the other Party (whether before or after the Agreed Start Date) which is marked as or has been otherwise indicated to be confidential or which derives value to a Party from being confidential or which would be regarded as confidential by a reasonable business person;

'**Customer**' means the customer specified in the Booking Form;

'**DTG**' means DTG Testing Limited a company registered in England No. 03998972 whose registered office is situated at 5th Floor, 89 Albert Embankment, London SE1 7TP, UK;

'**Insolvency Event**' means where a person ceases or threatens to cease to carry on business, is found unable to pay its debts within the meaning of the Insolvency Act 1986 section 123, has an administrator, receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of any scheme for solvent amalgamation or solvent reconstruction) or undergoes any similar or equivalent process in any jurisdiction;

'**Intellectual Property Rights**' means all intellectual property rights including, without limitation: patents (including supplementary protection certificates), petty patents, utility models, registered and unregistered designs, trade marks and service marks, business and trade names and get up, rights in domain names, copyrights (including rights in computer software) and neighbouring rights, database rights and know how and in each case rights of a similar or corresponding character (whether or not any of these rights are registered and including all applications and rights to apply for the protection of them) and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these which may be submitted anywhere in the world in each case for their full terms and together with any renewals or extensions;

'**Product**' means the Customer's product or prototype to be tested by DTG and set out in the Booking Form;

'**Report**' means the report prepared by DTG for the Customer as a result of and as part of the Services;

'**Service**' means the testing services provided by DTG under this Agreement in relation to a specific product or prototype specified in the Booking Form;

'**Special Terms**' means any special terms set out in the Booking Form which amend vary or supplement these Conditions for the relevant Booking Form only; and

'**Working Day**' means a day (other than a Saturday or Sunday) on which banks in the city of London are open for ordinary business.

1.2 In this Agreement, unless the contrary intention appears:

- (a) a reference to a provision of law is a reference to that provision as extended, applied, amended or enacted from time to time and includes any subordinate legislation and any official guidance issued from time to time;
- (b) the singular includes the plural and vice versa;
- (c) references to any Party to this Agreement include a reference to its successors and permitted assignees and permitted transferees under this Agreement;
- (d) the words "including" and "in particular" and any similar words or expressions are by way of illustration and emphasis only and do not operate to limit the generality or extent of any other words or expressions; and
- (e) references to Clauses and Schedules refer to clauses of, and schedules to, these Conditions.

1.3 The headings in this Agreement do not affect its interpretation.

## **2. Scope of the Agreement**

- 2.1 DTG will supply and the Customer will purchase the Services in accordance with the Booking Form, subject to these Conditions which the Parties agree will govern the provision of the Services to the exclusion of any other terms and conditions, whether proposed before or after the Agreed Start Date.
- 2.2 In respect of each Product submitted for testing, DTG will perform the Services using the version of the test suite current at the time the first test is started. In case of any failure of the tests by a Product when the test suite version used had been in use for less than three months then DTG will retest such Product using the preceding version of the test suite.

## **3. Ordering**

- 3.1 Each request for Services by the Customer shall be treated as an offer to buy subject to these Conditions. DTG is under no obligation to accept any particular request or any orders at all and shall advise the Client promptly if such request/order is not accepted including a reasonable explanation.
- 3.2 To commence an engagement, the Customer shall issue to DTG a request for testing detailing the Product and product tests required. DTG will then issue a Booking Form, subject to these Conditions, to the Customer incorporating the details of the order and (if applicable) any Special Terms.
- 3.3 An order shall be deemed to be confirmed when a Booking Form has been signed by the Customer and a date for commencement of the Services has been agreed by the Parties.
- 3.4 Each order is limited to the Services specified in the relevant Booking Form and any extensions to the Services requested or required may incur additional charges or delays in completing tests. Additional charges will apply to any retests requested by the Customer. DTG reserves the right to refuse to carry out partial retesting of a Product where, in the opinion of DTG, a full retest is required to determine conformance with the appropriate specification. DTG further reserves the right to refuse to carry out further testing where, in the opinion of DTG, the amount of retesting required will unreasonably impair its ability to provide adequate services to other customers.
- 3.5 Minor variations to the Services which, in DTG's reasonable opinion, do not adversely affect the quality of the provision of the Services for the purpose for which they are supplied, will not constitute a breach of contract by DTG or impose any liability on DTG.

## **4. Customer Obligations**

The Customer will:

- (a) make a full disclosure to DTG of all information and/or material that DTG reasonably requires in order to perform its obligations under the Agreement;
- (b) ensure that any such information and/or material is true, accurate and complete in all respects;
- (c) in the event that a software update is required before the start of a first test or retest provide all the information specified as being required in the standard format made available by DTG;
- (d) not request that software updates be performed during a first test;
- (e) ensure that the Product is sufficiently stable for testing to be carried out;
- (f) ensure that all Products, information and/or material provided to DTG are free from any defamatory or unlawful content and do not infringe any Intellectual Property Rights or other rights of any third party;
- (g) ensure that any such Products, information and/or material are provided within sufficient time to enable DTG to supply the Services in accordance with the Agreement;
- (h) where a Product sample has not already been delivered to DTG ensure that the sample is delivered to DTG before the Agreed Start Date;
- (i) where the Customer becomes aware that a Product sample cannot be delivered to DTG before the Agreed Start Date notify DTG in writing to request a deferral of the start date at least 10 Working Days prior to the Agreed Start Date which request DTG shall use its reasonable endeavours to meet; and
- (j) where the Customer fails to deliver the Product sample before the Agreed Start Date or gives fewer than 10 Working Days' notice that it is unable to do so pay an amount up to the full amount of the Charges.

## **5. Liability**

- 5.1 DTG shall not be liable to the Customer for any:
- (a) direct or indirect loss of profits, revenue, anticipated revenues or savings, business opportunities, goodwill or damage to reputation;
  - (b) loss or corruption of any data;
  - (c) any indirect loss, damage, cost, expense, claim or other liability whatsoever; or
  - (d) any failure of any software update requested by the Customer to be carried out by DTG
- which arise out of or in connection with this Agreement or any breach or non performance of it no matter how fundamental (including by reason of DTG's negligence) whether or not DTG has been informed of or was aware that there was a serious possibility of such loss.
- 5.2 DTG will use its reasonable endeavours to provide complete, accurate and reliable information, advice and services and these are provided in good faith based upon information available at the time. DTG does not warrant the accuracy of information provided. It is for the Customer to decide whether or not to accept DTG's advice in making its own management decisions.

- 5.3 DTG accepts no liability, whether direct or indirect, for the consequences of its Reports, information, opinions and advice.
- 5.4 The total liability of DTG under or in connection with this Agreement (whether by reason of any negligence by DTG or any of its employees or agents, any non-fraudulent misrepresentation, any breach of contract or otherwise) in relation to any Service shall not exceed the Charges paid by the Customer under the relevant Booking Form.
- 5.5 Nothing in this Agreement shall operate to limit or exclude DTG's liability to the Customer for:
- (a) any death or personal injury caused by the negligence of DTG or any of its employees or agents;
  - (b) any fraud or fraudulent misrepresentation; or
  - (c) for any other matter in respect of which liability cannot lawfully be limited or excluded.
- 5.6 The Parties agree that each of Clauses 5.1, 5.2, 5.3 and 5.4 are separate and independent terms of this Agreement.
- 5.7 Any failure by DTG to meet its obligations under this Agreement shall be excused if, and to the extent that, such failure is caused by the Customer's failure to perform the Customer's obligations.
- 6. Charges and Payment Terms**
- 6.1 The Charges for the Services shall be as set out in the current DTG rate card or in a specific quotation issued to the Customer in respect of the Services set out in the Booking Form. Charges are exclusive of value-added tax ("VAT") or other sales taxes. The Customer will pay DTG any VAT properly chargeable on Services supplied by DTG under this Agreement
- 6.2 If the Customer requires DTG to perform services which fall outside the scope of the Services, such services shall be charged to the Customer by DTG on the time and materials rate notified by DTG prior to commencing the performance of any additional services.
- 6.3 The Customer shall pay DTG the Charges within 30 days of the date of any invoice submitted by DTG, which may be issued before or after the provision of the Services.
- 6.4 DTG reserves the right to delay the start of the Services or the issue of any Report until payment has been received for the related invoice and all outstanding amounts, if any, charged in respect of previous Services.
- 6.5 If the Customer fails to make payment on or before the due date, then without prejudice to any other right or remedy available to DTG, DTG shall be entitled to:
- (a) terminate this Agreement in accordance with Clause 11;
  - (b) suspend any further provision of the Services to the Customer; and/or
  - (c) apply interest to the outstanding amount from time to time at a rate of 4% per annum above the base rate as varied of NatWest Bank Plc, accruing daily from the date payment fell due to the date of actual payment (both dates inclusive) or the maximum rate allowable by law, whichever is less. All costs and expenses incurred by DTG to recover any unpaid sums will also be due from the Customer.
- 7. Warranties**
- 7.1 All time scales quoted are estimates, based on the information available at the date of the quotation and are subject to revision during the course of provision of the Services. DTG will not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any reasonable or unavoidable delay in the delivery of the Services.
- 7.2 DTG warrants that the Services shall be provided using reasonable skill and care.
- 7.3 Save for the warranties expressly set out in this Agreement DTG gives no, and expressly excludes any, warranties in relation to the Services including but not limited to warranties as to merchantability or fitness for purpose, save as otherwise required by law.
- 8. Notification of Hazardous Equipment**
- 8.1 The Customer shall, prior to delivery, notify DTG of any actual or potential health and safety hazards whether inherent in, or arising from, the present condition of any Product supplied by the Customer to DTG as part of the Services.
- 8.2 The Customer assumes full liability for any accident or damage to persons or property on DTG's premises caused by or arising out of the condition or nature of the Product not disclosed to DTG except to the extent that such damage is caused by DTG's negligence.
- 9. Intellectual Property**
- 9.1 Each Party shall retain all right, title and interest in and to their own pre-existing Intellectual Property Rights.
- 9.2 All Intellectual Property Rights in the Report provided by DTG to the Customer, and in any other information, advice or material created by DTG in performing the Services belong to DTG absolutely, and no rights in the Report or such information, advice or material are granted to the Customer, except that the Customer may use the Report and such information, advice or material for the purposes of its own business. In relation to future copyright, such licence shall take effect as a present licence of future rights.
- 9.3 The Customer grants to DTG a free of charge, non exclusive licence to use, copy, modify the Products only to the extent necessary and for the purpose of:
- (a) providing the Services to the Customer; and
  - (b) performing DTG's other obligations under this Agreement.

**10. Confidential Information**

- 10.1 Each Party shall safeguard and keep confidential the other Party's Confidential Information. Neither Party shall use or disclose the other Party's Confidential Information without the written agreement of the other Party. Each Party shall ensure that its officers and employees and any other persons to whom the Confidential Information is disclosed comply with the provisions of this Clause 10.
- 10.2 The obligations on a Party set out in this Clause 10 shall not apply to any information to the extent that such information:
- (a) is publicly available or becomes publicly available through no act or omission of that Party;
  - (b) is required to be disclosed by law or by order of a court of competent jurisdiction or other competent authority; or
  - (c) is disclosed on a necessary basis and under similar confidentiality obligations to the professional advisers, auditors and bankers of such Party.
- 10.3 For the avoidance of doubt, the Customer consents to DTG disclosing:
- (a) all and any information relating to the Product and the Services (including the booking and cancellation of test slots and all performance information resulting from testing and retesting including full details of Reports and the passing or failing of individual test items) to Freesat (UK) Limited if the Product supports the Freesat platform and to YouView TV Limited if the Product supports the YouView platform; and
  - (b) in the case of other platforms, summary pass/fail information extracted from the Reports to relevant Trade Mark or Conformance Mark Licensors or their authorised agents.
- 10.4 The provisions of this Clause 10 shall survive any termination of this Agreement for a period of 5 years.

**11. Term and Termination**

- 11.1 This Agreement shall commence on the Agreed Start Date and continue until completion of the Services unless terminated earlier in accordance with this Clause 11.
- 11.2 Either Party may at any time terminate this Agreement immediately by serving written notice if:
- (a) the other Party undergoes an Insolvency Event;
  - (b) the other Party commits a material breach of any of the provisions of this Agreement and if such breach is capable of remedy, fails to remedy such breach within 30 days after being served with a written notice specifying the breach and requiring it to be remedied; or
  - (c) the circumstances set out in Clauses 6.5 and 17.2 occur.
- 11.3 Termination of this Agreement for whatever reason shall not affect any of its provisions that are intended to continue or have effect after termination, including but not limited to Clauses 5 (Liability), 7 (Warranties), 9 (Intellectual Property), 10 (Confidential Information), 12 (Publicity), 14 (Effect of Waiver), 15 (Severability), 16 (Third Party Rights), 18 (Notices), 19 (No Partnership or Agency), 20 (Governing Law) or 21 (Entire Agreement).

**12. Publicity**

Subject to Clause 10, DTG shall have the right, without further approval from the Customer, to publicise the fact that the Customer is, or was, a Customer and to use the Customer's name in publicity materials in this respect. DTG may also describe in general terms the type of work conducted for the Customer, but shall not be permitted to link the two without the prior permission of the Customer.

**13. Assignment/Sub-Contracting**

- 13.1 Subject to its quality assurance policies and prior notice issued to the Customer, DTG may sub-contract its rights and obligations under this Agreement at any time.
- 13.2 Except as set out in Clause 13.1, neither Party shall be entitled to assign, sub-contract or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.

**14. Effect of Waiver**

No delay or failure on the part of either Party in enforcing any provision in this Agreement shall be deemed to operate as a waiver or create a precedent or in any way prejudice that Party's rights under this Agreement, nor shall any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right of remedy. The rights and remedies provided in this Agreement are cumulative and are additional to any rights or remedies provided by law.

**15. Severability**

If any provision in this Agreement is declared void or unenforceable by any court or other body of competent jurisdiction, or is otherwise rendered so by any applicable law, that provision shall to the extent of such invalidity or unenforceability be deemed severable and all other provisions of this Agreement not affected by such invalidity or unenforceability shall remain in full force and effect. If any provision in this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

**16. Third Party Rights**

The Parties agree that the provisions of this Agreement are personal to them and are not intended to confer any rights of enforcement on any third party. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement or to any of its provisions.

**17. Force Majeure**

17.1 Any delay in the performance of any duties or obligations of either Party (except payment of the Charges) will not be considered a breach of this Agreement if such delay is caused by a strike, lockout, industrial action, riot, civil commotion, shortage of materials, failure of utility or communications providers, fire, earthquake, storm, flood, war, act of terrorism, or any other event beyond the control of such Party (“**Force Majeure Event**”), provided that such Party uses reasonable endeavours to notify the other Party of the circumstances causing the delay and to resume performance as soon as possible.

17.2 If a Force Majeure Event effecting the provision of the Services continues for more than 30 days DTG may terminate this Agreement immediately by written notice.

**18. Notices**

18.1 All notices and other communications to be given under this Agreement shall be in writing and personally delivered or sent by first class pre-paid mail. Delivery shall be deemed to take place at the time of personal delivery and in the case of first class pre-paid mail 48 hours after posting.

18.2 All notices and other communications under this Agreement shall be made to:

For **DTG Testing Limited**, 5th Floor, 89 Albert Embankment, London SE1 7TP Attention: Chief Operating Officer and:

for **the Customer**, the nominated contact set out in the Booking Form or as otherwise specified in writing by the Customer.

**19. No Partnership or Agency**

Nothing in this Agreement shall constitute or be deemed to constitute a partnership or joint venture between the Parties or constitute or be deemed to constitute either Party as agent of the other for any purpose whatsoever and neither Party shall have authority or power to bind the other or to contract in the name of the other Party in any way or for any purpose.

**20. Entire Agreement**

20.1 This Agreement will constitute the entire agreement and understanding between the Parties in respect of its subject matter, and will supersede any previous agreements between the Parties in relation to the supply of the Services.

20.2 The Customer acknowledges and agrees that it has not been induced to enter into this Agreement in reliance upon, and does not have any remedy in respect of, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this Agreement.

**21. Variations**

No purported amendment or variation of this Agreement or any provision of this Agreement shall be effective unless it is in writing and duly executed by or on behalf of each of the Parties.

**22. Governing Law and Applicable Jurisdiction**

This Agreement shall be governed by and construed in accordance with the law of England and Wales and any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the English courts, to which each of the Parties irrevocably submits.