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GUIDELINES ON SUPPLIER/LICENSOR AGREEMENT

The following are the guidelines on the Supplier/Licensor Agreement, which covers the licence of Images between image providers. Please read this entire document carefully as it is extremely important that you understand both the terms and conditions and any comments on them.

There are huge variations in working practice across the industry. This agreement aims to cover those that affect most image providers and create a document that is an industry standard but clearly cannot cover all situations or jurisdictions.

CEPIC issues the Supplier/Licensor Agreement to its members as a benefit of membership. It is not a condition of membership that members adopt it. It is important that you judge whether it is suitable for you and your needs and that you make appropriate amendments (preferably with legal advice). If you do not understand a clause then do seek advice before deleting or amending it as it has probably been put there to protect you.

If you already have existing agreements you will need to decide whether you wish to update them or whether you will continue acting on the old terms.

FRONT PAGE

The front page is intended to provide a short Memorandum of Agreement and to set out most of the variable terms.

SUPPLIER AND LICENSOR

- After much deliberation we have chosen these terms to suggest the relationship between the parties rather than the familiar "Agency" concept. In most cases the parties will prefer throughout to define themselves as their name and should replace these terms throughout the document with the actual names of the contracting parties e.g. AB Ltd and BC PLC
- It is important to put in the proper identity of each party e.g. if one party is a limited company then the proper company name should be put in. If it is a sole trader or partnership then the names of the owners should be stated as well as the trading name.
- It is sensible to put in the parties' VAT or Sales Tax number here.



TERRITORY

This is becoming more difficult to restrict as Images are sold over the internet. If the territory is to be limited then note that under clause 5.5 the Licensor can grant any rights, including worldwide rights, to any licensee within the territory but cannot grant rights to licensees outside the territory without prior consent.

INITIAL TERM

See the comments at clause 13.

SOLE/EXCLUSIVE/NON EXCLUSIVE

See the comments at clause 4.

REQUIRED CREDIT

State the form of credit required.

SHARE OF SALES

Many image providers call this a commission rate.

OTHER SPECIAL TERMS

This could cover any expenses to be charged, any marketing assistance to be given or any exceptional terms not set out elsewhere.

STANDARD TERMS

A. INTRODUCTION

Self explanatory

1.1. IMAGES

The word Image is used throughout the agreement and has replaced the words "material" or "photographs" in old agreements. "Image" is used here in its broadest sense and is widely defined. We wanted to make this document as future proof as possible with regard to any future developments as to what constitutes an image.

Record of Images? This Agreement envisages that a full schedule (in whatever form) of all Images should be appended to the Agreement. We appreciate that this may be difficult if you are managing large amounts of material. However, Suppliers and Licensors should know what material they control. It can cause great difficulties later if, for example, a Supplier claims that a Licensor did not have exclusive rights to a particular image or that material given to Licensor has been lost. In order to sell the Images the Licensor will have to catalogue them in some way and therefore schedules should, if possible, be added to the Agreement both at the beginning and when further material is delivered.



What is the arrangement for new material to be added during the Agreement? This is defined as Images which *at any time during the term of the agreement Supplier submits to Licensor and which are accepted by Licensor or which Licensor downloads from Supplier under authorised procedures.* This clause may need to be amended in accordance with your practice and agreement as to what is to happen with new Images. Does the Licensor agree to accept all new material which the Supplier creates? Is the Supplier obliged to send the Licensor all new material or can they offer it elsewhere?

What is the arrangement for material to be removed during the Agreement? There are no arrangements for removal of Images which the Licensor considers outdated or surplus to its requirements. Note that a Supplier may not remove part of their material or unilaterally change the terms or restrict their use during the Agreement. If they wished to do so, they would have to terminate the whole Agreement on notice and see if Licensor would be prepared to negotiate a new Agreement for part only of the material.

1.5 It is for the Licensor to clear all material.

2 DELIVERY OF IMAGES

You should ensure that this accords with your practice.

3. SUPPLIER

3.1 The Supplier promises that Supplier has all rights to authorise the licence of the copyright in the Images.

4 LICENSOR

Exclusivity This is a clause that you need to consider most carefully as it is one of the areas where there is the widest disparity of practice in the Industry.

What is a sole licence? If Licensor is a Sole licensor then Licensor is the only licensor who the Supplier may use but Supplier is still entitled to sell its Images personally.

What is an exclusive licence? If Licensor is an Exclusive licensor then only Licensor may sell the Images and the Supplier is not entitled to sell the Images but must direct all enquiries to Licensor.

What is a non-exclusive licence? If the licence is Non Exclusive then the Supplier can sell the rights elsewhere and can also appoint other licensors.

Can exclusivity can be limited? Yes exclusivity can be limited in many different ways -

- by territory e.g.: England, the world, etc,
- by subject e.g.: nature photography,
- by image i.e. Licensor is the exclusive representative for some of the Images but the Supplier may take other Images elsewhere,
- by medium e.g. Licensor is the exclusive Licensor for newspaper and editorial use but not for advertising.



Licensor must consider very carefully with the Supplier exactly what rights are granted and make sure that both parties understand what rights are granted and what their obligations are in relation to the reserved rights. This cannot be set out in detail in the Agreement because arrangements vary so much but is perhaps the most important part of the Agreement to draft accurately. A Supplier may have more than one specialisation and Licensor may only require exclusivity in one of them.

At present this point refers to territory exclusivity and any special points about exclusivity are set out in the special terms. In addition to exclusivity Licensor may have a Non Exclusive Agreement but have an outright ban on placing any other images with a particular class of competing Licensors e.g. Nature Picture Licensors.

4.6 The Licensor is given full authority to negotiate all terms, commissions, licences and reproduction rights including the fee, duration and scope of any licence subject to any terms stated on the Images.

4.6.2 The Licensor can negotiate licences for terms which exceed the duration of the Agreement but again this is something that Licensor may wish to delete.

4.6.3 Some Suppliers allow Licensor to have the final say as to whether they are going to enter any agreement or for example will allow that licences be granted but not a sale of the entire copyright.

4.7 Some Suppliers will not allow agreement to copying, manipulation, etc. and two alternatives are provided here.

4.8 Deals with whether Licensor is entitled to sub-license the Rights.

5. LICENSOR'S DUTIES

5.1 Licensor shall use its best efforts to promote the grant of Licenses for the authorised uses in the Images throughout the Territory, to collect the sums arising in connection with the Licences and to maintain a complete and accurate record of the Licences.

5.3 This stipulates changes that the Licensor may make to the metadata and other rights information. You should ensure that this meets your needs.

5.6 This is a very important clause. The Licensor accepts that the Supplier has no responsibility for obtaining any permissions needed for exploitation by third parties of any of the rights in the Images including, if necessary, model releases, property releases, trade mark releases, etc. This is becoming increasingly important as there have been a number of cases taken by subjects of photographic images, most notably the Naomi Campbell case, and the Panini case in relation to copyright, in which the subjects have been successful in limiting the right to use images.



- 5.8 Credit clause. You should set out the form of the required credit in the Special Terms.
- 5.9 Licensor has to maintain accurate records and send Supplier copies of all rights granted in the Images.
- 5.10 Licensor will inform Supplier of significant business developments.

6. INDEMNITIES

This sets out an indemnity under which Licensor would have to pay Supplier if Licensor was in breach of any of the promises given in 5 above.

7. APPOINTMENT

This states that the parties are independent contractors and are not acting as sales agents.

8. SHARE OF SALES

This should be self explanatory.

9. PAYMENT AND 10 SALES AND COLLECTION REPORT

You should consider these carefully to ensure they reflect your practice and amend them as necessary. As well as usage of Images in 10.1.2 and 10.2.2 you may wish to specify the exact details you require, i.e. duration of licence, territory, usage, whether exclusive or non-exclusive, size, print run etc.

11. BOOKS AND RECORDS

The Licensor agrees to keep professional books and records and allow the Supplier to inspect them.

12. LITIGATION

The Licensor is not obliged to take litigation for infringement of copyright, loss of Images or any other matter.

13. TERM

13.1 This Agreement has an initial duration of the stated term and will then continue unless terminated by either party giving 3 months' written notice to the other. You may wish to amend this notice period.

14. TERMINATION

14.1 If Licensor's sales of any section of the Images are not satisfactory then the parties can enter into discussions about removing just those Images from the Agreement. You could amend this to add a minimum sales obligation.



- 14.2 The Agreement can be terminated immediately by notice in writing if one of the parties is declared bankrupt or is in breach. At present it does not automatically terminate if one party dies but you may wish to include this.
- 14.3 After the date of termination no further licences will be granted and the Images will be returned as soon as reasonably practicable. Licensor must also return all duplicates and prints and delete all digital files.

15. SHARE OF SALES AFTER TERMINATION

Fees will still be paid after termination on any other exploitation including extensions or renewals.

18. ENTIRE UNDERSTANDING

This Agreement cannot be varied except in writing signed by both parties.

20. DISPUTES AND GOVERNING LAW

The Agreement is governed by the Laws of England and subject to the exclusive jurisdiction of the English Courts. If you wish to put in another jurisdiction then you should obtain independent legal advice.



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IMAGE SUPPLIER AND LICENSOR AGREEMENT (ISALA)

BETWEEN

1. **[NAME AND ADDRESS OF SUPPLIER]** of [address], telephone [], e-mail: [], VAT registration number: [] ("Supplier") which expression shall, where the context admits, include Supplier's executors, administrators, heirs and assigns or successors in business.

-AND-

2. **[NAME AND ADDRESS OF LICENSOR]** of [address], telephone [], e-mail: [], VAT registration number: [] ("Licensor") which expression shall, where the context admits, include Licensor's executors, administrators, heirs and assigns or successors in business.

Special Terms

Territory: (see clause 5.5) [] United Kingdom/Europe/USA/ World [excluding]

Initial Term [2] years (see clause 13.1)

Commencement Date (see clause 13.1)

Licence -(See Clause 4)

Exclusive (you are the only entity who may license the Images in the Territory)

or Sole (we and you are the only entities who may license the Images in the Territory); Licensor acknowledges that Supplier retains the absolute right to license, reproduce or otherwise exploit the Images, in the Territory or elsewhere

or Non Exclusive (we, you and any other licensor notified by us are the only entities who may license the Images in the Territory)

Share of Sales [%] (see clause 8)

Credit statement. Each Image licence shall have the following credit line

Credit; Licensor name/Supplier name/Photographer name/

Any other special terms eg

Expenses, Subject exclusivity Other appointed licensors

We agree to the attached terms.

DATED.....

SIGNED

Supplier

SIGNED

Licensor



A INTRODUCTION

- (1) Licensor is in the business of licensing rights and Images.
- (2) Supplier owns and/or controls Images and wishes to appoint Licensor to exploit and authorise the exploitation of rights in the Images in the Territory on the terms of this agreement, it being understood by Licensor that Supplier shall have no responsibility for clearing rights for the uses contemplated in this agreement.

B AGREED TERMS

1. DEFINITIONS

1.1 "Images" means

1.1.1 Any photographic material, including digital files or any other physical or electronic material including captions, metadata and other rights management information which at any time during the term of the agreement Supplier submits to Licensor and which is accepted by Licensor or which Licensor downloads from Supplier under authorised procedures. A record of Images delivered by Supplier and accepted shall/may be appended to this Agreement from time to time

1.2 "Licensees" means those persons to whom Licensor grants Licences in accordance with the terms of this agreement.

1.3 "Licences" shall mean licences granted to Licensees authorising them to exploit some or all of the Authorised Uses in some or all of the Images in accordance with the terms of this agreement.

1.4 "Authorised uses" shall mean the right to reproduce or otherwise use the Images by all means and in any media (whether such means and media are now known or hereinafter invented), including but not limited to reproduction in books, magazines and other printed media, film or video, in digital form, on textiles, for the purposes of producing stationery, calendars, clothing or similar commercial products; by issuing copies to the public and/or communicating to the public copies of the Images; by rental or lending of copies of the Images; by inclusion of the Images in broadcasts and/or cable programme services.

1.5 The rights to reproduce granted under this agreement are subject to Licensor or its Licensees obtaining any and all necessary permissions from any third parties who may hold any intellectual property rights, including but not limited to moral rights, trade mark and rights of privacy and publicity in them.



2. **DELIVERY OF IMAGES**

- 2.1 Supplier shall provide the Images to Licensor in mutually agreed digital format on CD-ROM, DVD or by e-mail or FTP or such other method as may be agreed between the parties, or
- 2.2 Licensor shall download the Images from Supplier's website and Supplier shall provide access to Licensor for such purpose. Licensor shall maintain a separate supplier number for all Images supplied by Supplier and shall file and reference Images in such a way that Supplier can easily search and identify its own Images.

3. **SUPPLIER**

- 3.1 Supplier warrants that it is authorised to appoint Licensor for the purposes contemplated in this agreement under the terms of its agreements with photographers and other rights holders and that it holds the right to authorise the license of the copyright in the Images

4. **LICENSOR**

Supplier hereby appoints Licensor as its [non]exclusive licensor in the Territory and during the Term to manage and administer the authorised uses. Without prejudice to the generality of the foregoing Licensor shall have the right, subject to the terms of this agreement and any special conditions attached to the Images, to:

- 4.1 Issue copies of the Images to prospective Licensees.
- 4.2 grant the Licences.
- 4.3 [license the Authorised Uses without payment solely in connection with the promotion and/or publicity of the business of Licensor and/or the promotion of the Images.]
- 4.4 collect and give good receipt for all monies arising in connection with the Licences.
- 4.5 Store and deliver Images digitally, edit them to add and maintain appropriate metadata and captions
- 4.6 Unless otherwise notified, Licensor has full authority to negotiate all terms of commissions and licences in the Images including the fee, duration and scope of any Licence subject to the terms and conditions of this agreement provided that
 - 4.6.1 Licensor undertakes to use its reasonable endeavours to ensure that the rates charged are competitive and not substantially out of line with broadly agreed trade practice;
 - 4.6.2 Licensor may [not] negotiate licences for terms capable of exceeding the term of this agreement;
 - 4.6.3 Licensor may not transfer to any customer or third party any ownership rights, such as copyright, or rights equivalent to ownership [or exclusive licences in the Images] without the prior written permission of the Supplier;



4.6.4 [Licensor may not license rights managed Images on a royalty-free basis.]

4.7 Licensor may and may at its discretion license others to edit, crop or modify an Image in any way or use any detail from an Image, unless the Supplier has notified Licensor otherwise, save that Licensor does not authorise any amendment which would be unlawful or a breach of moral rights, **or**

Unless the Supplier has notified Licensor otherwise, Licensor may and may license others to crop, edit or modify any image to improve its quality or modify colour balances, but shall not otherwise modify crop or amend an Image without the consent of the Supplier. Each Image must be reproduced or otherwise used in its entirety unless prior written approval by Supplier has been granted for use of a detail. If a detail is used, the credit line shall include all additional information reasonably required by Supplier] **or**

Licensor shall not, and shall not permit its Licensees to crop, overprint, bleed off the page or otherwise alter any of the Images in any way without the prior written permission of Supplier. Each Image must be reproduced or otherwise used in its entirety unless prior written approval by Supplier has been granted for use of a detail. If a detail is used, the credit line shall include all additional information reasonably required by Supplier.

4.8 Licensor may not engage any other photographic agency or licensing entity nor provide any such entity with Images for licensing, sub-licensing, resale or redistribution unless it has Supplier's prior written consent.

or Licensor may on giving prior written notice to the Supplier engage any other photographic agency or licensing entity and provide any such entity with Images for licensing, sub-licensing, resale or redistribution within the Territory. Such notice must include the name, address and website address of the proposed entity together with the commission rates to be charged by Licensor.

5. **LICENSOR'S DUTIES**

5.1 Licensor shall use its best efforts to promote the grant of Licenses for the Authorised Uses in the Images throughout the Territory, to collect the sums arising in connection with the Licences and to maintain a complete and accurate record of the Licences

5.2 Licensor may highlight and market the Images as part of the [] collection with an appropriate link to Supplier's website.

5.3 Licensor will edit and maintain metadata and captions as necessary to ensure that the caption information remains relevant to its own market, language and Territory but may not make any other changes to the metadata. If Supplier so requires, Licensor shall maintain Supplier's own reference number on each Image.[Licensor shall not remove or change any captioning, metadata or rights information put there by Supplier unless such information is patently incorrect or unsuitable in the context of Licensor's database.

5.4 Licensor shall make Supplier's Images available to potential licensees at all times and afford them equal exposure to other images represented by Licensor.



- 5.5 This agreement grants Licensor the right to license the Images to Licensees resident in the Territory. Any licenses contemplated by Licensor to Licensees not resident in the Territory are only allowed with Supplier's prior written consent.
- 5.6 While Supplier will use its reasonable endeavours to provide Licensor with any information Supplier has regarding the existence of any third party rights with respect to a particular Image, including but not limited to copyright, moral rights, trade mark and rights of privacy and publicity, Licensor acknowledges and agrees that Supplier shall have no responsibility for clearing such rights for the uses contemplated in this agreement. Licensor must satisfy itself that all necessary third party rights, including but not limited to copyright, model releases or consents which may be required for reproduction are obtained and the use of any Image is not obscene, indecent, libellous or unlawful and Licensor, at its sole expense, shall obtain all necessary consents or permissions prior to such use. In Licensor's discretion, Licensor may require its Licensees to clear all necessary rights and obtain all necessary consents or permissions and comply with all other legal requirements. Licensor must indemnify Supplier in respect of any claim for damages, costs or expenses incurred from any reproduction of any Image supplied to Licensor
- 5.7 Licensor must adhere to any stipulations which may be attached to any of the Images and Licensor undertakes to indemnify Supplier against any legal action which may result from such unauthorised use.
- 5.8 Licensor shall give credit to Supplier and the photographer wherever possible. Licensor agrees to make it a term of its Licences that Licensees will print the credit and/or copyright notice set out in the Special Terms.
- 5.9 Licensor shall provide the Supplier with a monthly Sales Report by the 15th of each month containing all the information detailed in clause 10 and setting out all sales of rights in the Images during the preceding month.
- 5.10 Licensor will keep Supplier informed of significant developments, including change of ownership, progress, new photographers and new catalogues taking place at Licensor.

6. **LICENSOR'S INDEMNITIES**

- 6.1 Licensor will indemnify, defend [at the request of Supplier] and hold Supplier and its sub-licensors and assigns harmless against any prejudice, damage, liability or costs including reasonable lawyers' fees which any of the indemnified parties incur arising from or in respect of any claim that there has been a breach of Licensor's obligations in this agreement. This clause will remain in force after the termination or expiration of the agreement.

7. **APPOINTMENT**

The parties shall act as independent contractors and nothing in this agreement shall amount to an agency, joint venture or partnership between them.

8. **SHARE OF SALES**

- 8.1 For the purposes of this clause



- 8.1.1 "Share of Sales" means the proportion of the Net Revenue which Licensor will pay Supplier under this agreement.
- 8.1.2 "Net Revenue" means the gross income derived from the exploitation of the Authorised Uses, less Value Added Tax or equivalent.
- 8.2 Licensor shall pay Supplier as its Share of Sales
- 8.2.1 [60]% of Net Revenue; plus
- 8.2.2 VAT at the currently prevailing rate if appropriate.
9. **PAYMENT**
- 9.1 Licensor will provide Supplier by email and post by the 15th day of each month a Collection Report containing the information specified in 10 below, setting out all payments received for use of the Images in the immediately preceding month.
- 9.2 [**Either**] Supplier will then raise an invoice for its Share of Sales and Licensor will pay Supplier the full amount of the invoice within 14 days of its date. [**or**] The Collection Report shall be accompanied by payment of the Supplier's share of Sales for that month.
- 9.3 All payments shall be paid by Licensor in UK Pounds sterling or such other currency as shall be agreed between the parties, and shall be sent to Supplier by bank transfer or by cheque sent by Airmail or other agreed method of payment.
- 9.4 Licensor agrees to do any act necessary under the laws of the Territory to obtain any necessary certificates of non residence or equivalent so that any monies payable by Licensor to Supplier may be remitted without deduction of income tax or withholding tax. Any amounts to be remitted must be sent free of any withholding or other taxes.
10. **SALES AND COLLECTION REPORTS**
- 10.1 Sales reports shall contain the following information regarding the Licences;
- 10.1.1 The selected Image code number and Identity of Image (caption information);
- 10.1.2 Usage granted of Image;
- 10.1.3 Name of Licensee;
- 10.1.4 Date of Licence;
- 10.1.5 Gross amount of invoice;
- 10.1.6 Share of Sales due to Supplier;
- 10.2 Collection Reports shall contain the following information regarding the Licences;
- 10.2.1 The selected Image code number and Identity of Image (caption information);



- 10.2.2 Usage granted of Image;
- 10.2.3 Name of Licensee;
- 10.2.4 Date of Licence;
- 10.2.5 Date of Payment;
- 10.2.6 Gross amount of invoice;
- 10.2.7 Share of Sales due to Supplier.

11. **BOOKS AND RECORDS**

- 11.1 Supplier or its financial adviser shall be entitled to inspect the books and records of Licensor relating only to the Images at the offices of Licensor during normal business hours provided Supplier gives reasonable notice of at least 7 days to Licensor and there is no more than one inspection in any calendar year. If any such examination reveals an underpayment of 5% or more for any quarter, Licensor shall reimburse Supplier for all costs and expenses of such examination as well as any such underpayment and interest at 2% over base rate.
- 11.2 Licensor will retain all financial and other records relating to this Agreement during the continuance of this agreement and for a period of six years thereafter.

12. **LITIGATION**

- 12.1 Licensor shall have the right to bring legal proceedings in its own name in order to recover unpaid fees from Licensees and shall be under no obligation to consult with Supplier in relation to them.
- 12.2 Each party shall promptly inform the other of any actual or suspected infringement of copyright, breach of moral rights, breach of privacy or defamation or other matter giving rise to threat of proceedings or claims or demands in respect of any of the Images. Supplier and Licensor shall negotiate in good faith with a view to cooperating in any proposed legal proceedings but Supplier shall be under no obligation to institute any legal proceedings.

13. **TERM**

- 13.1 This agreement shall continue for the Initial Term from the Commencement Date and thereafter until terminated by either party giving at least 3 months' written notice to the other. The termination shall not prejudice any licences then existing.

14. **TERMINATION**

- 14.1 [If at any time Licensor's sales of any particular Images or section of Images is not satisfactory to Licensor then Licensor will enter into discussions with the Supplier to discuss removal of such Images from the Agreement.]
- 14.2 Either party may terminate this Agreement immediately by notice in writing to the other if the other;



- 14.2.1 is declared bankrupt or goes into liquidation or receivership or an administrative receiver is appointed over all or any part of its assets or a meeting of creditors is called; or
 - 14.2.2 breaches any term of this Agreement which breach is not capable of effective remedy; or
 - 14.2.3 breaches any term of this Agreement which is capable of remedy but which is not remedied within 30 days of the date of the notice specifying the breach and requiring that party to comply with that term.
- 14.3 After termination Licensor may not grant any further Licences and Licensor shall within 14 days of termination;
- 14.3.1 return to Supplier by a safe method affording proof of delivery any physical Images and any duplicates or prints;
 - 14.3.2 return or destroy any CDs or DVD's or similar media bearing copies of the Images; and
 - 14.3.3 permanently delete any digital Images from all sources, including website, server, back up and any method of storage whether or not accessible to the public.

15. **SHARE OF SALES AFTER TERMINATION**

Following termination for any reason, Supplier shall be entitled to be paid its Share of Sales on all Licences negotiated during the term, irrespective of whether such income is received during the term or at any time thereafter.

16. **CONFIDENTIAL INFORMATION**

The parties agree to keep as confidential and not divulge to any other person any information about the business of the other or trade secrets learned in the performance of this agreement, whether or not such information is in the public domain. This clause shall continue during the agreement and after its termination for any reason.

17. **ASSIGNMENT**

Licensor may not assign this agreement nor any of Licensor's rights and/or obligations in whole or in part without the prior written consent of Supplier.

18. **ENTIRE UNDERSTANDING**

This agreement constitutes the entire understanding between the parties and is binding upon them, their executors, successors or assigns. It may not be varied except in writing signed by both parties.

19. **NOTICES**

All notices under this agreement shall be in writing and will be delivered by personal service, registered or recorded delivery post or overnight courier to the parties at their addresses set out at the beginning of this agreement or such other address as they may designate from time to time. Any notice shall be deemed to

**Coordination of
European
Picture Agencies
Press Stock Heritage**



have been given five days after the date on which it is mailed or the next day if served personally.

20. **DISPUTES AND GOVERNING LAW**

This agreement shall be governed by and interpreted in all respects in accordance with the laws of England and Wales. If any dispute shall arise between Supplier and Licensor in connection with or in relation to this agreement the matter shall be resolved by the [English Courts/ National Court of the Supplier.]