

# TERMS AND CONDITIONS – Contract for Services to Chivas

## **i** CHIVAS' CONTRACTING BASIS

Chivas Brothers Limited is a company incorporated in Scotland with company number SC268758 ("**Chivas**"). It is the Scotch whisky and premium gin division of the Pernod Ricard spirits & wine group. Chivas produces, exports and markets some of the world's best known and highest quality malt, blends and premium gins, in addition to liqueurs and spirit drinks.

These Terms & Conditions are the standard contract terms used by Chivas' Strategic Insights & Development teams to govern its legal relationship with any individual, company or other form of business ("**Supplier**") which supplies services to Chivas.

### 1. Interpretation

1.1 In these terms and conditions some words have particular meanings which are set out in Condition 17.1 below.

1.2 This Agreement comprises the entire agreement between the parties and supersedes any previous agreement between the parties relating to the same subject matter. No other term or condition submitted, proposed or stipulated will apply to the Agreement.

1.3 If there is any conflict or inconsistency in the Agreement, the following descending order of importance will apply: firstly the Work Plans, then these terms and conditions.

### 2. Agreement to Act as Supplier

2.1 Chivas appoints the Supplier on a non-exclusive basis to carry out, and the Supplier agrees to provide, the Services to Chivas, in accordance with the terms and conditions of this Agreement.

2.2 Each obligation of the Supplier shall be interpreted, unless the context requires otherwise, as an obligation on the Supplier to perform or to procure the performance of the said obligation or the relevant Services by an Supplier Affiliate. The Supplier shall ensure that it and any Supplier Affiliate providing Services has capabilities to provide those Services and the Supplier shall remain liable for all acts and omissions of each Supplier Affiliate as if such acts and omissions were its own.

2.3 The Supplier warrants, represents and undertakes to Chivas that (i) during the Term; and (ii) for 3 months after the end of the Term, the Supplier will not provide services in relation to any brand of whisk(e)y, gin, or whisk(e)y or gin-based beverages, or to any member of the Diageo group.

### 3. Term of Appointment

3.1 The Agreement shall commence on the Effective Date and continue thereafter until terminated by either party in accordance with the Agreement ("**Term**").

### 4. Supplier Services

4.1 The parties may enter into a Work Plan for Services and/or Deliverables. Once a Work Plan is agreed and/or signed by the parties, the terms of this Agreement will apply to that Work Plan.

4.2 The Supplier will perform the Services and deliver the Deliverables set out or referred to in the Work Plans, all in accordance with the relevant timescales set out or referred to in the relevant Work Plans.

4.3 The Supplier acts in all its contracts as a principal at law. Nothing in the Agreement shall be construed as creating any relationship of partnership or employment between the parties.

4.4 Time shall be of the essence in relation to the obligations of the Supplier throughout this Agreement (unless the Supplier is prevented from meeting such obligations due to (i) an act or omission of Chivas; or (ii) a Force Majeure Event).

4.5 Chivas may require the Supplier to cancel, reduce or amend any or all Services or any or all of a Work Plan at any time by giving written notice to the Supplier (including by email) and the relevant Fee shall be reduced accordingly. The Supplier will comply with any such request immediately upon receipt.

4.6 In the event of cancellation, reduction or amendment pursuant to Condition 4.5, Chivas will reimburse the Supplier for any reasonable charges or expenses incurred by the Supplier to a third party, excluding the Supplier's employees and Supplier Affiliates, provided that (i) any such charges and expenses are directly attributable to the part of the Services or the Work Plan that has been cancelled, reduced or amended; and (ii) the Supplier has used its best endeavours to mitigate such charges and expenses as far as possible.

4.7 If Chivas requires the Supplier to increase any Services, the Supplier shall inform Chivas promptly of any resulting increase in the relevant Fee and shall act reasonably in assessing such increase. Following Chivas' written approval of the relevant increase, the relevant Services, Work Plans and Fees will be amended accordingly.

### 5. Fees and Payment

5.1 The Fees shall be calculated on the basis set out in the relevant Work Plan and shall be (i) exclusive of any applicable VAT (which shall be itemised separately on Supplier invoices and payable by Chivas subject to receipt by it of a valid VAT invoice); and (ii) inclusive of any duties, imposts and levies other than VAT.

5.2 The Supplier will invoice Chivas in respect of Fees at the times specified in the relevant Work Plans.

5.3 If a Deliverable or part of the Services is not provided as and when specified in the Agreement, Chivas may by written notice to the Supplier (including by email) elect at its sole option to: (i) extend the due date for such Deliverable or Services and request the Supplier to re-perform the relevant services or re-deliver the relevant Deliverable, including, where Chivas so requests, by using an alternative sample; (ii) accept such Deliverable or Services subject to an abatement of the Fees, such abatement to be such amount as is reasonable, taking into account the circumstances; or (iii) reject the Services or Deliverable as not being in conformity with the Agreement in which event the Supplier shall not be entitled to receive the relevant part of the Fee and shall repay to Chivas on request the part of any Fee already paid which relates to such Deliverable or part of the Services.

5.4 The Supplier shall ensure that each invoice contains a valid purchase order number and sufficient information to enable Chivas to reasonably assess whether the Fees detailed thereon are properly payable and any other information reasonably requested by Chivas in writing and the Supplier shall submit all invoices in such format as Chivas may specify from time to time and shall send all invoices to the following email address: [accountspayable@pernod-ricard.com](mailto:accountspayable@pernod-ricard.com); with copy to the contact person for Chivas as set out in the Work Plan.

5.5 Chivas will pay valid invoices within 60 days after the end of the month in which Chivas' Accounts Payable department received the valid invoice.

5.6 Chivas shall notify the Supplier within a reasonable time if it considers that an invoice is not acceptable and reserves the right to withhold payment of any invoice or part of an invoice which is not in accordance with this Agreement or which is disputed by Chivas, acting reasonably.

5.7 Each party shall be liable to pay interest on any overdue amount at an annual rate of 2% above the prevailing base rate of Barclays plc, which interest shall accrue on a daily basis from the date payment becomes due until the party to whom the overdue amount is due has received payment of the overdue amount together with all accrued interest. The parties agree that this remedy provides the payee party with a substantial remedy for the purpose of the Late Payment of Commercial Debts (Interest) Act 1998 and that the parties waive and exclude the statutory right to interest otherwise granted under such Act.

5.8 Unless otherwise agreed in writing, all Fees and costs shall be paid in Sterling. Where relevant, Chivas may agree with the Supplier in advance in writing as to how to handle any exchange rate risk and in the absence of any such prior agreement the exchange rate shall be determined by reference to the rates set out in the Wall Street Journal on the date on which the relevant invoice is issued.

### 6. Audit

6.1 The Supplier shall maintain the Records and will allow Chivas by its own personnel or the audit personnel of a Group Company or by a third party appointed by Chivas access to all the Records during the Term and for 3 years afterwards (or such longer period as may be required by law). The Supplier will afford to Chivas all reasonable assistance in the carrying out of such audit.

6.2 Should any audit or inspection of the Records by Chivas reveal that Chivas has been overcharged the Supplier shall reimburse to Chivas the amount of the overcharge plus interest at the rate referred to in Condition 5.7 above and the costs of the audit or inspection within 14 days of Chivas' request.

6.3 Should any audit or inspection of the Records by Chivas reveal that a Deliverable or Service has not been provided in accordance with the Agreement, Chivas shall be entitled to exercise any of the options set out in Condition 5.3 at its sole discretion, notwithstanding that it may have already accepted such Deliverable or Service.

### 7. Suppliers: Business Terms and Selection

7.1 The Supplier shall be entitled to sub-contract its obligations under the Agreement subject to obtaining Chivas' prior Written Approval on each occasion. The Supplier will use its best endeavours to obtain the best prices and most commercially advantageous terms for Chivas from suppliers and all other third parties involved in any way in the provision of the Services. If Chivas agrees to pay any costs in advance, the Supplier shall obtain Chivas' prior Written Approval of the relevant contracts with suppliers and subcontractors and shall enter into contracts with those suppliers and subcontractors on terms stating that such costs have been paid by Chivas to the Supplier and no further payment shall be due by Chivas and the Supplier shall procure that the relevant supplier or subcontractor delivers to Chivas a collateral agreement acknowledging that

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the supplier's or subcontractor's claim for payment is against the Supplier, not Chivas, and agreeing to carry out the relevant services for Chivas directly, if Chivas so requests. The Supplier is and shall remain responsible and liable to and shall indemnify Chivas and the Group Companies against all Losses as a result of any of the acts or omissions of any supplier and subcontractor in the performance of any obligations under the Agreement, including any claims against any of Chivas or other Group Companies arising from any such act or omission and such acts and omissions shall be deemed to be acts and omissions of the Supplier under the Agreement.

7.2 The Supplier shall not pay any costs in advance without obtaining Chivas' prior Written Approval. If Chivas gives its Written Approval to pay any costs in advance then at Chivas' sole discretion:

7.2.1 Chivas will pay the Supplier's invoices in respect of such costs within 10 Working Days of receipt of a valid invoice and the Supplier shall pay such costs to the relevant supplier or subcontractor without delay, and in any event, within 5 days of receipt from Chivas and shall hold on trust for Chivas any sums paid to it by Chivas for the purpose of paying costs in advance, shall not mix such sums with any other money and shall not pay any such sum into an overdrawn bank account; or

7.2.2 Chivas shall pay such costs directly to the relevant supplier or subcontractor.

7.3 The Supplier shall obtain receipts for all costs payable to suppliers and subcontractors and shall provide copies to Chivas upon request.

7.4 For the avoidance of doubt, for the purposes of this Condition 7, references to "subcontractors", "suppliers" and "third parties" shall include Supplier's Affiliates (where applicable).

## 8. Copyright etc.

8.1 All Rights in the Deliverables arising from a Work Plan or the Services shall vest in Chivas whether such Rights arose before, on or after the date of the Work Plan or the Agreement. To that end, the Supplier as beneficial owner hereby assigns to Chivas or its nominee (by way of present assignment of future rights), with full title guarantee, all rights, title and interest in and to such Deliverables, including the right to bring, make, oppose, defend and appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement or any other cause of action arising from ownership of any such Rights (whether occurring before, on or after the date of this Agreement or any Work Plan). If such Rights cannot be assigned by the Supplier to Chivas by way of present assignment of future rights, the Supplier hereby assigns such Rights to Chivas or its nominee with effect from the date of creation of the relevant Rights.

8.2 The Supplier hereby irrevocably waives in favour of Chivas any moral rights it may have in terms of Chapter IV of Part I of the Copyright, Designs and Patents Act 1988 (or so far as is legally possible, any broadly equivalent rights such authors may have in any territory of the world) and shall procure that all employees, third parties and sub-contractors used in the performance of the Services.

8.3 Notwithstanding the foregoing assignment, the Supplier shall be entitled to use all or part of the Data for its own internal business purposes but shall not be entitled to provide all or part of the Data to any other client of the Supplier without Chivas' prior written consent. The Supplier shall deliver the Data within 5 Working Days of the date of a request to do so by Chivas.

## 9. Insurance

9.1 Without prejudice to its obligations under the Agreement, during the Term and for six years thereafter the Supplier shall effect and maintain with reputable insurers such policy or policies of insurance as may be necessary to cover the Supplier's obligations and liabilities under the Agreement, including any required insurance as set out in the Work Plans. Upon Chivas' reasonable request the Supplier shall provide Chivas with all such documentation as is necessary to prove the Supplier's continuing compliance with its obligations to insure under the Agreement.

## 10. Confidential Information

10.1 The parties acknowledge a duty not to disclose or to use for any purpose other than to the extent necessary to perform and receive the Services, without the other's prior written permission, any confidential information whether concerning the other's business, the other's business plans or clients, business analysis tools provided by Chivas to the Supplier or resulting from studies or surveys commissioned and paid for by Chivas, or otherwise ("**Information**"). In the case of Chivas, Information will be deemed to include (without limitation) the strategic, corporate, marketing and sales information and statistics relating to the business of Chivas and/or its Group Companies and the Data.

10.2 The Supplier shall, and shall procure that the Supplier Affiliates shall, impose obligations in terms equivalent to those in Condition 10.1 on their respective personnel. Upon written request by Chivas, the Supplier shall also obtain written assurances from any third parties to whom Information has to be disclosed in order to enable the Supplier to carry out its obligations under the Agreement.

10.3 The restrictions in this Condition 10 shall not prevent: (i) Chivas from disclosing the Information amongst Chivas and its Group Companies; (ii) the use of Information in the proper performance of the Supplier's duties; (iii) disclosure of Information if required by law; or (iv) disclosure of Information which has come into the public domain otherwise than through unauthorised disclosure.

10.4 The Supplier may not advertise or publicly announce that it is undertaking work for Chivas or any Group Company pursuant to the Agreement unless Chivas has provided its prior written approval.

## 11. Warranties and Indemnities

11.1 Each of the parties warrants to the other that it has full power and authority to enter into and perform this Agreement. The warranties contained in this Agreement are cumulative and not alternative.

11.2 The Supplier warrants, represents and undertakes to Chivas that it shall perform the Services with due care and skill, in accordance with Good Industry Practice and all applicable Policies, which it acknowledges have been made available to it.

11.3 The Supplier warrants, represents and undertakes to Chivas that (i) none of the Work Plans, the product of the Work Plans or any Rights in any of the foregoing nor the use by Chivas or any Group Company of any of the foregoing shall infringe any third party rights or be in any other way contrary to law; (ii) its personnel working on the Services are and shall be competent and suitable in every respect, whether as to qualifications, experience or otherwise, to perform the Services; and (iii) in providing the Services, it will not and will procure that none of the Supplier Affiliates will engage or involve any person who is under legal drinking age in the country in which they live or any country to which the Services relate.

11.4 The Supplier will on demand indemnify, keep indemnified and hold harmless, and shall cause the Supplier Affiliates to indemnify, keep indemnified and hold harmless each of Chivas and all Group Companies from any Losses arising out of or in connection with:

11.4.1 breach of any warranties set out in Conditions 2.3, 10 and 11.1 to 11.3 (inclusive);

11.4.2 third party claims brought or threatened against Chivas or any Group Company in respect of or arising from any of the Services for: (i) non-compliance with, or breach of, any applicable law or regulation; or (ii) unauthorised use of any data of any person or invasion of privacy; and

11.4.3 any fraud committed by any director, officer, or employee of the Supplier or any Supplier Affiliate.

11.5 The Supplier shall provide Chivas with a parent company guarantee in a form and on terms acceptable to Chivas within 10 days of a request from Chivas. Time of delivery of such parent company guarantee shall be of the essence.

## 12. Limitation of Liability

12.1 Nothing in the Agreement shall exclude or in any way limit either party's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent such liability may not be excluded or limited as a matter of law.

12.2 Subject to Conditions 12.1 and 12.3:

12.2.1 neither party's maximum aggregate liability under or in connection with the Agreement, whether in contract, tort (including negligence) or otherwise, will in any circumstances exceed the greater of (i) 200% of the total remuneration payable to the Supplier by Chivas hereunder during the 12 month period preceding the incident that gave rise to the claim; or (ii) one million pounds Sterling (£1,000,000); and

12.2.2 neither party will be liable under the Agreement for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

12.3 Condition 12.2 shall not apply to Conditions 7.1 or 11.4.

## 13. Termination

13.1 Either party may terminate the Agreement at any time by service on the other party of a minimum of 3 months' notice.

13.2 In addition to each party's respective rights under Condition 13.1, either party may terminate the Agreement forthwith upon written notice to the other in the event of:

13.2.1 in the event of any material breach of the Agreement by the other party, which if remediable, is not remedied within 30 days after the service of a written notice requiring the same. For the avoidance of doubt, the non-payment by Client of an undisputed invoice is a remediable material breach of this Agreement;

13.2.2 in the event that the other party becomes insolvent, enters into liquidation, whether voluntary or compulsory, passes a resolution for its winding up, has a receiver, administrator or administrative receiver appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of debt; or ceases or threatens to cease to carry on business; or any event occurs, or proceeding being taken in any

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jurisdiction that has an effect equivalent or similar to any of the events referred to in this clause 13.2.2.

13.3 Chivas may terminate the Agreement forthwith by written notice to that effect served upon the Supplier in the event that the Supplier, an Supplier Affiliate or any employee, officer, sub-contractor, agent or representative of the Supplier or an Supplier Affiliate, who performs any part of the Services is charged with or investigated in relation to or engages in any conduct that may constitute an offence under the Bribery Act 2010 or the Modern Slavery Act 2015 or breaches the terms of Chivas' anti-bribery policy or anti-slavery policy (the Slavery and Human Trafficking Policy).

13.4 Chivas may terminate the Agreement immediately on written notice if in Chivas' reasonable opinion, the Supplier or its personnel or subcontractors act in any way whatsoever which is likely to be detrimental to the goodwill, reputation or image of Chivas and its brands.

13.5 The Supplier shall advise Chivas in writing as soon as a Change of Control occurs. Chivas shall be entitled to terminate the Agreement by written notice to the Supplier at any time following a Change of Control.

13.6 The termination of the Agreement shall be without prejudice to any other rights or remedies of either party.

13.7 The parties' rights, duties and responsibilities shall continue in full force during the agreed period of notice.

13.8 On expiry or termination of the Agreement: (i) the Supplier shall promptly return to Chivas, and in any event within 28 days of expiry or termination of the Agreement (whichever applies) all copies of the Work Plans and all other property belonging to Chivas; and (ii) all Work Plans will terminate automatically. For the avoidance of doubt, on cancellation or reduction of all of the Services of a Work Plan in accordance with Condition 4.5, the Agreement will terminate automatically.

13.9 The following Conditions shall survive termination or expiry of the Agreement: 6 to 15, 16 and 17.

## 14. Data Protection and other laws

14.1 In performing its obligations under this Agreement, the Supplier shall comply with all Data Protection Legislation and shall not do or omit to do anything that shall place Chivas or any Group Company in breach of the Data Protection Legislation.

14.2 The parties agree that Chivas is the Data Controller and that the Supplier is the Data Processor of any Personal Data which the Supplier obtains from Chivas or its Group Companies or Processes under the Agreement (such data being "Relevant Personal Data").

14.3 The Supplier hereby undertakes to Chivas that where the Supplier or its employees/partners are Processing Relevant Personal Data as a Data Processor: (i) it will comply with and act only on Chivas' instructions (and shall immediately inform Chivas upon becoming aware that the Supplier's performance of any such instruction would infringe (or is reasonably likely to infringe) Data Protection Legislation); and (ii) it will implement and maintain appropriate technical and organisational measures (including staff training) to ensure a level of security appropriate to the risk and to protect the Relevant Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure (and shall provide a written description of such measures to Chivas promptly upon request).

14.4 The Supplier shall not: (i) transfer any Relevant Personal Data to any country or territory outside the European Economic Area; or (ii) allow any sub-processor to process any Relevant Personal Data, unless in either case, Chivas provides its prior Written Approval to such transfer or sub-processing.

14.5 The Supplier shall provide such assistance and information as Chivas reasonably requires to: (i) demonstrate the Supplier's compliance with the Data Protection Legislation and this Condition 14; and (ii) to carry out a privacy impact assessment (if and where required by Chivas).

14.6 The Supplier shall enter into, and comply with, any standard contractual clauses issued under the Data Protection Legislation in order to ensure compliance with such Data Protection Legislation.

14.7 In the event of any actual or suspected Data Breach, the Supplier shall within 24 hours of the discovery by the Supplier, notify Chivas in writing providing all available details (including in all cases the nature of the breach, the likely number of affected data subjects, anticipated consequences and any actual or proposed remedial steps) and will cooperate at the Supplier's own expense as Chivas may request.

14.8 The Supplier shall notify Chivas (within two (2) Working Days), if it receives: (i) a request from any person to access to a Data Subject's Personal Data; or (ii) a complaint or request relating to Chivas' obligations under the Data Protection Legislation. In either case, Supplier shall provide Chivas with full co-operation and assistance including: (a) providing Chivas with full details of the complaint or request; (b) complying with a Data Subject access request within the relevant timescales set out in the Data Protection Legislation and in accordance with Chivas' instructions; (c) providing Chivas with any Personal Data it holds in relation to a Data

Subject (within the timescales required by Chivas); and (d) providing Chivas with any information requested by Chivas.

14.9 The Supplier shall maintain records of all information reasonably necessary to demonstrate compliance with this Condition 14 and the Data Protection Legislation and make such records available to Chivas, Chivas' auditors and any Regulator on demand.

14.10 The Supplier shall permit Chivas or Chivas' representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's data Processing activities.

14.11 Without prejudice to Condition 13.8, on termination or expiry of this Agreement, the Supplier shall at the request of Chivas delete or return any Relevant Personal Data (unless prevented from doing so by applicable Legislation).

14.12 The Supplier shall notify Chivas immediately if it or any Supplier Affiliate is approached by any Regulator investigating either Chivas', the Supplier's or any Supplier Affiliate's compliance with Data Protection Legislation and (without limiting the foregoing, cooperate fully with any such Regulator in connection with either the Supplier or Chivas' compliance with Data Protection Legislation).

14.13 In the event the Supplier or its Personnel loses any Personal Data and/or commits a breach of this Condition 14), such loss or breach shall be deemed to be a material breach that cannot be remedied for the purposes of Condition 13.2.1.

## 15. Cessation

15.1 If, on Cessation, any contract of employment or engagement of any Assigned Employee has effect or is claimed by such Assigned Employee to have effect as if originally made between (i) Chivas, the Brand Owner or any Group Company and such Assigned Employee; and/or (ii) any New Supplier and such Assigned Employee, by operation of TUPE, the Supplier will, on demand, indemnify, keep indemnified and hold harmless each of Chivas, the Brand Owner and the Group Companies and any New Supplier against all Losses arising out of or in connection with the employment or engagement, or the claimed employment or engagement, and/or the termination or claimed termination thereof of any such Assigned Employee (whether such Losses are incurred before, on or after the Relevant Date).

15.2 The Supplier will, if so requested by Chivas, promptly enter into an appropriate deed of indemnity with any New Supplier on terms which give effect to the indemnity contained in Condition 11.4 in favour of the New Supplier and the Supplier will, on demand, indemnify, keep indemnified and hold harmless Chivas, the Brand Owner and each Group Company against any Losses which result from a failure to do so, including for the avoidance of doubt, any Losses arising out of or in connection with any back-to-back indemnity provided by any of Chivas, the Brand Owner or any Group Company to any New Supplier to confer the benefit of the indemnity in Condition 11.4 on such party.

## 16. Notices

16.1 Any notice to be given under the Agreement shall be in writing and shall be served by (i) delivering it personally; or (ii) where notice is to be served at an address within the United Kingdom, by prepaid first class recorded delivery post; or (iii) commercial courier, in each case sent for the attention of the person, and to the address set out in the Work Plan or to such other person or address as the receiving party may have notified to the other.

16.2 A notice is deemed to have been received: (i) if delivered personally, at the time of delivery at the address and for the contact referred to in this Condition 16; (ii) if sent by prepaid first class recorded delivery post, at 9.00 am on the second Working Day after posting; and (iii) if delivered by commercial courier, on the date and at the time that the courier's receipt is signed. If deemed receipt under this Condition 16.2 is not within business hours (meaning 9.00am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), then deemed receipt will take place when business next starts in the place of receipt.

## 17. General

17.1 The Supplier agrees that Client enters into this Agreement for itself and for the benefit of each Group Company and that all provisions expressed to be for the benefit of Client shall also be for the benefit of each of Client's Group Companies. Any Losses incurred by such a Group Company shall be deemed to be Losses incurred by Client (and shall not be deemed to be indirect, consequential or special losses for being suffered by a Group Company of Client), provided that the Supplier shall have no greater liability to Client and its Group Companies (together) than the Supplier would have to Client pursuant to clause 12.

17.2 Neither party shall be liable for any failure to perform or delay in performance of any of its obligations under the Agreement caused by a Force Majeure Event provided the same arises without the fault or negligence of such party. Failure to perform by a subcontractor shall not be deemed to be a Force Majeure Event unless that subcontractor's failure to perform was caused by any of the foregoing circumstances to the extent that they are beyond the relevant subcontractor's reasonable control. If the

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Force Majeure Event continues for more than 30 days in aggregate, the party which is not claiming the Force Majeure Event may terminate the Agreement with immediate effect on giving written notice to the other party and neither shall be liable to the other for such termination.

17.3 Any New Supplier shall be entitled to directly enforce clause 15. Except as set out in this clause 17.3 and without prejudice to clause 17.1, a person who is not a party to the Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

17.4 Except as set out in this clause, neither party shall assign, novate, transfer, charge or deal in any other manner with the Agreement or any of its rights under it without the prior written consent of the other party. Client shall be entitled to assign, novate, subcontract or otherwise transfer this Agreement or any of rights and obligations hereunder in whole or in part to a Group Company without requiring the prior written consent of the Supplier.

17.5 No variation of the Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties, and in respect of Client, by an Authorised Person only.

17.6 The failure of either party to enforce or to exercise at any time or for any period any term of or any right pursuant to this Agreement shall not be construed as a waiver of any such term or right and shall in no way affect that party's right later to enforce or exercise it.

17.7 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

17.8 Should any of the provisions of this Agreement be invalid or unenforceable then such invalidity or unenforceability will not affect the remaining provisions of the Agreement herein. The parties agree that they will replace an invalid or unenforceable provision with a new provision which closely approximates the lawful intent of the invalid or unenforceable provision.

17.9 This Agreement and the Work Plans (and the documents referred to in this Agreement and the Work Plans) constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter herein. No other term or condition submitted, proposed or stipulated will apply to the Agreement. Provided that nothing will exclude or limit Chivas' liability for fraudulent misrepresentation, the Supplier acknowledges that it has not, in entering into this Agreement, relied on any statement, representation or assurance that is not expressly set out in this Agreement or a Work Plan.

17.10 The Supplier shall, at the request and expense of Chivas, execute any document and do any deeds and other things reasonably necessary to carry out the provisions of the Agreement.

17.11 The Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

17.12 The Agreement shall be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England and Wales over any claim or matter arising under or in connection with the Agreement or the legal relationships established by the Agreement.

## 18. Definitions

18.1 In the Agreement, the following words and phrases shall, unless the context otherwise requires, have the following meanings:

<b>Agreement</b>	Means the agreement comprising the covering letter annexed hereto, any Work Plan, these terms and conditions, and any schedules or annexes thereto;
<b>Assigned Employee</b>	Means any individual employed or engaged or formally employed or engaged by the Supplier or any subcontractor of the Supplier to provide the Services or any part thereof;
<b>Authorised Person</b>	Means a person employed by Chivas whose title is Brand Director, Marketing Director, Strategy and Development Director, Head of Consumer Insight or Senior Consumer Planner;
<b>Brand Owner</b>	Means in respect of each Work Plan the brand owner(s) as set out in that Work Plan or if no brand owner is mentioned in the Work Plan, shall be one (or more if applicable) of the following: (i) Allied Domecq Spirits & Wine Limited for Beefeater, Ballantine's, Scapa and Long John; (ii) Chivas Holdings (IP) Limited for Chivas Regal, Royal Salute, Passport, 100 Pipers, Aberlour and Clan Campbell; (iii) The Glenlivet Distillers Limited for The Glenlivet and Longmorn; or (iv) Hill, Thomson & Co., Limited for Something Special and Queen Anne, in all cases, the brand owner(s) as intended by Chivas and the Supplier;

<b>Cessation</b>	Means the cessation or partial cessation of the Services or any part thereof, for whatever reason, including, for the avoidance of doubt, the termination, partial termination, or expiry of this Agreement, and any reduction in the level of the Services;
<b>Change Control</b>	Means a change or proposed change in the holding of, or the acquisition or proposed acquisition of, either: (i) the voting rights attaching to 25% or more of the voting shares or stock in the Supplier; or (ii) the power to direct or cause the direction and management of the policies of the Supplier in accordance with the holder's or acquirer's wishes, whether as a result of the ownership of shares, control of the board of directors, contract or any powers conferred by the articles of association or other constitutional documents of the Supplier or otherwise;
<b>Client</b>	Means Chivas Brothers Limited (a company registered in Scotland (company no. SC268758) and registered office at 111-113 Renfrew Road, Paisley, Renfrewshire PA3 4DY Scotland);
<b>Data</b>	Means all raw data, analyses, reports, statistics, databases and other outputs provided by the Supplier in performing the Services and delivering the Deliverables;
<b>Data Breach</b>	means any data breach or security breach in respect of any Relevant Personal Data (whether or not such breach is the responsibility of the Supplier), including if the Supplier or its Personnel misplaces or loses any Personal Data and/or commits a breach of Condition 14);
<b>Data Controller</b>	Has the same meaning as set out in the Data Protection Legislation;
<b>Data Processor</b>	Has the same meaning as set out in the Data Protection Legislation;
<b>Data Protection Legislation</b>	Means Regulation (EU) 2016/679 (The General Data Protection Legislation) and any legislation in force from time to time which implements it or the European Community's Directive 95/46/EC and Directive 2002/58/EC and any other similar national privacy legislation and any guidance and codes of practice issued by data protection regulators.
<b>Data Subject</b>	Has the same meaning as set out in the Data Protection Legislation;
<b>Deliverable</b>	Means all outputs and deliverables set out or referred to in the Work Plans including all Data contained therein (whether such outputs and deliverables were created, developed or produced before, on or after the Effective Date);
<b>Effective Date</b>	Means the date of the covering letter;
<b>Fee(s)</b>	Means the fee set out or referred to in a Work Plan;
<b>Force Majeure Event</b>	Means any of the following circumstances to the extent that they are beyond the reasonable control of the relevant party: Act of God, natural disaster, epidemic or pandemic, war, armed conflict, terrorist attack, fire, explosion, extreme adverse weather or interruption of utility service;
<b>Good Industry Practice</b>	Means in relation to any activity and under any circumstance, exercising the same skill, expertise and judgement and using facilities and resources of a similar or superior quality as would be expected from a person who: (i) is skilled and experienced in providing the services in question, seeking in good faith to comply with his contractual obligations and seeking to avoid liability arising under any duty of care that might reasonably apply; and (ii) takes all proper and reasonable care and is diligent in performing his obligations; and (iii) complies with all applicable Legislation including relevant industry standards that may apply to his particular activities;
<b>Group Company</b>	Means (i) any body corporate which is from time to time a holding company of Chivas, a subsidiary of Chivas or a subsidiary of a holding company of Chivas ("holding company" and "subsidiary" having the meanings attributed to them by Companies Act 2006 section 1159) and (ii) any company within the Pernod Ricard S.A. group of companies from time to time and "Group" shall be construed accordingly;

# TERMS AND CONDITIONS – Contract for Services to Chivas

<b>Losses</b>	Means all costs, liabilities, losses, damages, claims, actions, proceedings, awards, charges, penalties, demands and expenses (including all legal and other professional fees and expenses);
<b>New Supplier</b>	Means any person, firm, company or other entity which may on Cessation be engaged by any of the Group Companies to provide the Services or any part thereof or services which formerly comprised the Services or any part thereof;
<b>Personal Data</b>	Has the same meaning as set out in the Data Protection Legislation;
<b>Policies</b>	Means those policies adopted by Chivas and made accessible by Chivas to the Supplier either online at <a href="http://www.chivasspirit.com/business-spirit/suppliers">http://www.chivasspirit.com/business-spirit/suppliers</a> or otherwise;
<b>Process</b>	Has the meaning given to it under the Data Protection Legislation but, for the purposes of this Agreement it shall include both manual and automatic processing and "Processing" and "Processes" shall be construed accordingly;
<b>Records</b>	Means (i) financial accounts; (ii) records of the Services carried out by the Supplier including records of the individuals engaged in surveys carried out by or on behalf of the Supplier; (iii) the Data; and (iv) any other records that Chivas wishes the Supplier to maintain as set out in the Work Plans;
<b>Regulator</b>	Means any government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled by any applicable Legislation to supervise, regulate, investigate or influence the matters dealt with in this Agreement or any other affairs of Client or any of its Group Companies;
<b>Relevant Date</b>	Means in respect of any Assigned Employee the date of a Relevant Transfer from the Supplier or any subcontractor of the Supplier to any Group Company or any New Supplier;
<b>Relevant Personal Data</b>	Has the specified meaning in Condition 14.2;
<b>Relevant Transfer</b>	Means a relevant transfer for the purposes of TUPE;
<b>Rights</b>	Means any copyright, extended or revived copyright, design right, registered design right, patent, performer's property right, image right (including any name, nickname, image, likeness, biographical details, portrait, caricature, silhouette, autograph, signature, voice and/or photograph as well as any words, and/or symbols, and/or photographic and/or graphic representations which identify a person and/or a person's name or likeness anywhere in the world), know-how, trade name, trade mark, domain name, right to any URL, database right or any similar right exercisable in any part of the world, including any application for registration of any patent, trade mark, registered design or similar registerable rights in any part of the world;
<b>Services</b>	Means those services set out in agreement and those services specified or referred to in the Work Plans;
<b>Supplier</b>	Means the company specified in the cover letter and/or the Work Plan;
<b>Supplier Affiliate</b>	Means any subsidiary, holding company, subsidiary undertaking and any parent undertaking of the Supplier and shall include for the avoidance of doubt any group undertaking in relation to the Supplier where (i) "subsidiary" and "holding company", (ii) "group undertaking" and (iii) "subsidiary undertaking" and "parent undertaking" each have the meanings given in the Companies Act 2006 in sections (i) 1159, (ii) 1161, and (iii) 1162 respectively;
<b>Term</b>	Has the meaning set out in Condition 3.1;
<b>TUPE</b>	Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or the Acquired Rights Directive 77/187, as the context dictates, both as amended, re-enacted, or extended from time to time and any analogous or similar law or regulation applicable in all or the relevant part of the Territory;

<b>Work Plan</b>	Means any work plan issued by Chivas to which these terms and conditions are attached or which refers to these terms and conditions which may or may not be named, amongst other things "brief", "scope of work" or any other thing having the same effect; and, where no such work plan exists in respect of services, Chivas' written instructions for delivery of services, as such Work Plans are amended from time to time in accordance with the Agreement;
<b>Working Day</b>	Means a day (other than a Saturday or a Sunday) on which the clearing banks in the City of London are open for business; and
<b>Written Approval</b>	Means approval signified by: (i) any fax, letter or purchase order on Chivas' notepaper bearing the signature of an Authorised Person, or any other person nominated in writing by an Authorised Person for the purposes of giving Written Approval; (ii) email emanating from the personal email address of an Authorised Person, or of any other person nominated in writing by an Authorised Person for the purposes of giving Written Approval; or (iii) oral approval given by an Authorised Person, or any other person nominated in writing by an Authorised Person for the purposes of giving Written Approval, provided this is in circumstances where time does not permit Written Approval and the said oral approval is confirmed in writing within one Working Day.

1. Condition headings do not affect the interpretation of the Agreement and references to Conditions are references to the Conditions of these terms and conditions.
2. Words in the singular include the plural and in the plural include the singular.
3. A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
4. References to including and include(s) shall be deemed to mean respectively including without limitation and include(s) without limitation.
5. References to a person includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organisation or other entity, in each case whether or not having a separate legal personality.