

BRICKYARD VFX

Terms and Conditions of Business

DEFINITIONS

1.1 In these Terms and Conditions, the following terms shall have the following meanings:

“**Agreement**” means the Quote, Estimate, these Terms and any Conditions for Services.

“**Brickyard VFX**” means Brickyard VFX, LLC of 180 Lincoln St., Boston, MA 02111 and also includes Rag & Bone Men, LLC of 2054 Broadway, Santa Monica, CA 90404.

“**Brickyard VFX Intellectual Property**” means all rights, including Intellectual Property Rights, in and to (i) Brickyard VFX’s proprietary underlying software, libraries, engines, subroutines and development tools and utilities (in source code and object code form), including underlying models, rigging, animation data, 3D models, character development and all pre-existing intellectual property rights therein, which in each case are of general use or applicability in VFX and which were in existence prior to the parties entering into this Agreement or developed independently of this Agreement; and (ii) any other materials, in whatever form (including documents, information, data and software), which were in existence prior to the parties entering into this Agreement or developed independently of this Agreement.

“**Client**” means the person, firm, company or other entity who has instructed Brickyard VFX to carry out the Services (as defined below) as set out in this Agreement

“**Client Materials**” means any goods, products and materials in whatever form (including all Intellectual Property Rights in the same) provided or made available by the Client to Brickyard

VFX for use in connection with this Agreement, and including any master tapes, film negative prints, sound tapes, video tapes or visual images or sound held in any media.

“Confidential Information” means such information as Brickyard VFX may from time to time provide to the Client (in whatever form including orally, written, in electronic, tape, disk, physical or visual form) relating to this Agreement and the Works, and all know-how, trade secrets, tactical, scientific, statistical, financial, commercial or technical information of any kind disclosed by Brickyard VFX to the Client whether in existence prior to the parties entering into this Agreement or which subsequently comes into existence, including any copies, reproductions, duplicates or notes in any form whatsoever.

“Contract for Services” means any subsequent contract for the provision of Services entered into between Brickyard VFX and the Client pursuant to these Terms.

“Intellectual Property Rights” means copyright (including rights in computer software), database rights, design rights, moral rights, patents, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, and topography rights, know-how, secret formulae and processes, lists of suppliers and customers and other proprietary knowledge and information, internet domain names, rights protecting goodwill and reputation, and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licenses and consents in respect of any of the rights and forms of protection mentioned in this definition.

“Quote” means any quote or estimate presented by Brickyard VFX in respect of Services to be provided to the Client.

“Services” means the services to be provided by Brickyard VFX for the Client pursuant to this Agreement, and includes the Works (as defined below) arising out of the Services.

“Terms” means these terms and conditions of business.

“Works” means the products and materials created, developed and produced by Brickyard VFX for the Client pursuant to this Agreement.

“Work Product” means and includes all software formatted data files, the underlying software itself in any kind or format, Flame files, configuration setups, Maya files 3D models or After Effects.

1.2 Headings used in these Terms are purely for ease of reference and do not form any part of or affect the interpretation of these Terms.

1.3 The words "include" and "including" shall not be construed restrictively.

1.4 Any reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

FORMATION OF CONTRACT

2.1 The Services will be carried out in accordance with these Terms, any Quote, Estimate or Purchase Order and any subsequent Contract for Services to the exclusion of any other terms and conditions the Client seeks to impose whether orally or in writing, unless agreed otherwise in writing by the parties.

2.2 All representations, conditions or warranties, or other terms concerning the Services which might otherwise be implied or incorporated in this Agreement, whether by statute, common law or otherwise are, to the maximum extent permitted by law, excluded from this Agreement or any variation thereof, unless expressly accepted by Brickyard VFX in writing.

2.3 No employee, consultant or agent of Brickyard VFX has the power to vary these Terms orally or in writing, or to make any statement or representation about the Services offered, their fitness for any purpose or any other matter.

2.4 Upon requesting Services from Brickyard VFX, the Client shall be deemed to have accepted these Terms and these Terms shall become binding as between the Client and Brickyard VFX, notwithstanding the absence of any formal acknowledgement.

2.5 The Client and Brickyard VFX may enter into a Contract for Services which will constitute a separate binding contract between the parties which shall incorporate (with any necessary changes) these Terms. In the case of any conflict or inconsistency between these Terms and any subsequent Contract for Services, these Terms shall take precedence.

PRICES AND TERMS OF PAYMENT

3.1 Brickyard VFX will invoice the Client for the prices quoted in respect of Services to be provided at the times set out in the relevant Quote or Contract for Services.

3.2 Brickyard VFX shall be entitled to make an adjustment to any quoted prices in the event that additional costs are incurred, or likely to be incurred, by reason of:

3.2.1 the Client Materials (or any part thereof) being, in the reasonable opinion of Brickyard VFX, in any way defective, in an unsuitable format (or a different format to that which Brickyard VFX is expecting to receive the same) or of unsuitable quality for normal processing;

3.2.2 any information supplied by the Client or any third party in connection with this Agreement and the Services being inaccurate or incomplete, or failing to give Brickyard VFX a full and accurate indication of the work involved and/or time and resources required; or

3.2.3 changes by the Client or any third party in its requirements for the Services or Works;
or

3.2.4 exceptional circumstances outside the control of Brickyard VFX, including but not limited to changes in third party costs.

3.3 Subject to clause 3.4 and unless otherwise agreed by Brickyard VFX in writing, the Invoice(s) rendered by Brickyard VFX pursuant to the Quote and/or Contract for Services is due and payable 50% within 30 days of the date of the Invoice with the balance due upon delivery of the Works

3.4 Brickyard VFX expressly reserves the right, at its sole option, to require payment by a different time period of installments during the performance of this Agreement and/or to require payment of all amounts due to Brickyard VFX in respect of Works to be provided prior to delivery of such Works.

3.5 The Client shall pay all amounts owing to Brickyard VFX in full and shall not exercise any rights of set off against invoices submitted.

3.6 In the event of default in payment by the Client under this Agreement, Brickyard VFX shall be entitled, without prejudice to any of its other rights or remedies, to suspend any further performance of the Services without notice and to charge interest on any amount outstanding at the rate of the lesser of one percent (1%) per month from the due date of payment to the actual date of payment.

3.7 All sums payable under this Agreement are exclusive of sales, use and any other taxes, which shall (if and to the extent applicable) be payable by the Client at the rate and in the manner from time to time prescribed by law.

3.8 The Client shall pay any withholding tax or other similar taxes applicable for the Services or otherwise required by law to be deducted from any payment by the Client to Brickyard VFX pursuant to this Agreement. Should the Client be required to pay any such withholding or make such deduction on account of tax, the Client shall pay such additional amount as will ensure that Brickyard VFX receives, free and clear of any tax or other deduction or withholding, the full amount which it would have received had no such withholding or deduction been required. The Client shall indemnify Brickyard VFX against all costs, claims, expenses (including reasonable legal expenses) and/or proceedings arising out of or in connection with such payments. The Client and Brickyard VFX shall cooperate in good faith to respond to any query from the applicable tax authorities in connection with withholding tax or other similar taxes and shall each make available to the other any information or documents and all relevant approvals or authorizations which the applicable tax authorities may reasonably require.

PERFORMANCE AND DELIVERY

4.1 Unless otherwise agreed in writing between the parties, all times specified in a Quote, Estimate or Contract for Services for performance of the Services and delivery of the Works are given in good faith but are not guaranteed by Brickyard VFX.

4.2 Notwithstanding that Brickyard VFX and the Client may have agreed that time is of the essence in respect of specified Services or Works, the time for performance of the Services or delivery of the Works shall in every case be dependent upon prompt receipt of all necessary information, materials (including Client Materials), final instructions and/or approvals from the Client. The Client acknowledges and agrees that any changes to its requirements and/or the occurrence of any of the circumstances in clause 3.2 may result in delay in performance or delivery, for which Brickyard VFX shall not be liable.

4.3 Where the Works are to be delivered electronically, the Client acknowledges and agrees that:

4.3.1 electronic delivery is not a completely secure medium of communication and that an unauthorized third party may intercept, tamper with or delete the Works to be delivered electronically; and

4.3.2 electronic delivery may involve reliance upon third party providers and data carriers, over which Brickyard VFX has no control.

4.4 Brickyard VFX shall not be responsible for and shall have no liability to the Client or any third party for:

4.4.2 any delay in delivery or any non-receipt of any Works delivered electronically;

4.4.3 any loss or damage (including loss of data) that results from any person gaining unauthorized access to any Works delivered electronically;

4.4.4 use or disclosure of any data obtained by any third party as a result of that third party

gaining unauthorized access to any Works delivered electronically; and

4.4.5 any loss or damage resulting from any malfunction of or the introduction of any viruses, worms, logic bombs, time locks, time bombs, trojan horses and/or bugs to any equipment and/or software used to effect and/or receive any Works delivered electronically.

INTELLECTUAL PROPERTY

5.1 The Client acknowledges that Brickyard VFX (or its third party licensors) owns, and shall retain ownership of, Brickyard VFX Intellectual Property and Work Product, and Brickyard VFX shall not at any time be required to deliver to the Client any of Brickyard VFX Intellectual Property and/or Work Product whatsoever.

5.2 The Client acknowledges and agrees that if in the course of performing the Services (including any processing or production of materials on behalf of the Client) Brickyard VFX discovers or devises any techniques or know-how, all rights of every kind in and to such techniques and know-how shall belong to and vest in Brickyard VFX and shall be deemed to be Brickyard VFX Intellectual Property for the purposes of this Agreement.

5.3 Brickyard VFX shall retain ownership and possession of, and all rights (including all Intellectual Property Rights) in and to, any original character design, ideas or concepts presented or created by Brickyard VFX in relation to this Agreement, unless otherwise agreed in writing by the parties. Where the Client requires a license to use any such original character design, ideas or concepts, for whatever purpose, the terms of such license shall be agreed by the parties in writing pursuant to a Quote and/or any subsequent Contract for Services.

5.4 Subject to clauses 5.1 to 5.3 above and any other terms agreed pursuant to a Quote or Contract for Services, all title and Intellectual Property Rights in and to the Works (excluding Brickyard VFX Intellectual Property), shall pass to the Client only upon the Client paying to Brickyard VFX all sums due and payable under this Agreement. To the extent required, the parties may agree on terms for the license of Brickyard VFX's Intellectual Property (or any part of it) incorporated into the Works, to enable the Client to receive the benefit of the Works.

5.5 The Client hereby grants to Brickyard VFX a perpetual, non-exclusive, transferable, sub-licensable, royalty-free license to use the Client Materials to the extent necessary for Brickyard VFX and/or its suppliers to provide the Services and the Works.

5.6 The Client acknowledges and agrees that Intellectual Property Rights in and to underlying materials processed by Brickyard VFX in the performance of the Services and/or embodied in the Works may be owned by third parties and that the use by the Client of the Works shall be subject always to the Client obtaining any and all necessary licenses and consents from the relevant underlying rights' owner(s).

CONFIDENTIALITY

6.1 Where Confidential Information has been disclosed by Brickyard VFX to the Client, the Client acknowledges that such Confidential Information has been disclosed in confidence, may have considerable value and is of significant importance to Brickyard VFX.

6.2 The Client further acknowledges that Brickyard VFX makes no representation with respect to the accuracy or completeness of any Confidential Information, except to the extent agreed by Brickyard VFX in writing.

6.3 The Client agrees to keep the Confidential Information, including Brickyard VFX Specific IP and Brickyard VFX Background IP provided to the Client pursuant to clause 5, in complete confidence and not to disclose it to any third party. Except as expressly permitted under this Agreement, the Client shall not use, copy in whole or in part, modify or adapt the Confidential Information in any way without Brickyard VFX's prior written consent, which may be given or withheld in its absolute discretion.

6.4 The Client may use the Confidential Information only for the purposes contemplated by this Agreement and for no other purpose. The Client may disclose the Confidential Information to such of its officers, employees and agents to whom disclosure is necessary for the performance of its obligations under this Agreement provided the Client shall ensure such officers, employees and agents observe the obligations of confidentiality imposed by this clause 6 and the Client shall be liable for any failure by them to do so.

6.5 The Client shall not be in breach of this clause 6 if it discloses Confidential Information where such disclosure is required by law, regulation or order of a competent authority provided that Brickyard VFX is given, where possible, reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

6.6 The Client acknowledges that any breach of its confidentiality obligations under this clause 6 would cause Brickyard VFX irreparable and unqualifiable damages and that Brickyard VFX shall be entitled to seek and obtain (without prejudice to any other rights or remedies available to Brickyard VFX in contract or at law) injunctive or other equitable relief against or in respect of any actual or threatened breach of this clause 6 by the Client.

6.7 On receipt of a written demand, the Client shall return to Brickyard VFX, or destroy at Brickyard VFX's option, any and all written documents or materials containing Confidential Information, together with all copies thereof, and if Brickyard VFX should so require the Client shall, when returning documents or materials, provide to Brickyard VFX a certification duly executed by an officer of the Client confirming that the Client has complied with all of its obligations under this clause 6.

TERMINATION

7.1 Except where otherwise stated in a Quote or Contract for Services, this Agreement will expire on completion of the Services to be provided pursuant to it.

7.2 This Agreement, and any Services to be provided under it, may only be terminated with the written consent of Brickyard VFX and in accordance with these Terms (and if applicable, the terms of any subsequent Contract for Services). The giving of consent shall not in any way prejudice Brickyard VFX's right to recover from the Client full compensation for any loss or expense arising from such termination of this Agreement.

7.3 Notwithstanding clause 7.2 and without prejudice to any other rights or remedies available to Brickyard VFX, the Client may give of any Services to be provided hereunder may only be terminated by Client giving Brickyard VFX written notice of termination, provided that such notice is received by Brickyard VFX:

7.3.1 24 hours or less after the applicable Project Start Date, there shall be no charge to the Client; and

7.3.3 14 days or more after the date for performance or the commencement of performance of the relevant Services (the "Project Start Date"), Brickyard VFX shall be entitled to charge the Client the full price specified in the Quote or the relevant Contract for Services or, if none is stated, the applicable amount chargeable to the Client based on Brickyard VFX's rate card current at the Project Start Date;

in each case (except clause 7.3.1) reflecting the fact that Brickyard VFX is unlikely to be able to secure an order for the Services and/or to reallocate the resources allocated to the Client's order within the specified timeframes.

7.4 Any provisions of this Agreement which by their nature are intended to survive termination or expiration (including clause 6 (Confidentiality) and clause 8 (Liability and Indemnity) shall remain in full force and effect notwithstanding any termination or expiration of this Agreement.

LIABILITY AND INDEMNITY

8.1 Nothing in this Agreement shall exclude or in any way limit either party's liability for death or personal injury caused by its negligence.

8.2 Subject to clause 8.1 and without prejudice to any other provision of these Terms, the Client agrees that:

8.2.1 this Agreement states the full extent of Brickyard VFX's obligations and liabilities in respect of the Works and performance of the Services;

8.2.2 under no circumstances shall Brickyard VFX be liable for any indirect, special, punitive, incidental or consequential loss or damage whatsoever, including but not limited to any loss of profits, business interruption, loss of goodwill, loss of use or corruption of data or software;

8.2.3 Brickyard VFX's entire liability for any direct loss suffered by the Client under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall be limited to the fees paid by the Client in accordance with this Agreement.

8.3 The Client shall indemnify and hold harmless Brickyard VFX and its officers, directors, employees and agents from and against all claims or proceedings and all loss and damage of any kind, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, Brickyard VFX as a result of or in connection with:

8.3.1 any defamatory or libelous matter or any infringement or alleged infringement of a third party's Intellectual Property Rights or other rights arising out of the supply or use of the Client Materials in relation to the Works and/or in the course of carrying out the Services;

8.3.2 any damage to property caused by Brickyard VFX in the course of carrying out the Services as a result of any act or omission of the Client (including its officers, employees, consultants and agents); and

8.3.3 any breach by the Client, including its officers, employees, consultants and agents, of any of these Terms or the terms of any Contract for Services.

8.4 BRICKYARD VFX EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. .

INSURANCE

9. The Client shall maintain and keep in effect at all times insurance policies with coverages that are sufficient to protect the Client against any loss or liability which it may incur or suffer arising out of this Agreement, including insurance which covers the Client for any damage or loss for which Brickyard VFX is not liable pursuant to these Terms, and which protects the Client against any accidental loss, damage or destruction to any Client Materials or any other materials of any kind supplied by the Client to Brickyard VFX, while in the possession or control of Brickyard VFX. Brickyard VFX may at any time request the Client to provide copies or certificates of insurance or other evidence to prove compliance with this clause.

STORAGE OF CLIENT MATERIALS

10.1 Brickyard VFX shall be under no liability whatsoever in respect of any loss or damage to or destruction of the Client Materials (whether such Client Materials are in the possession of Brickyard VFX or otherwise) and it is the Client's responsibility to ensure that it has appropriate back-up copies of all Client Materials.

10.2 In accordance with clause 9 above, the Client shall insure all Client Materials to their full value against all risks.

10.3 The Client shall provide details to Brickyard VFX for the return of the Client Materials within two months from the date of confirmation of a Quote or Contract for Services, as applicable. If the Client does not provide Brickyard VFX with details for the return of the Client Materials, Brickyard VFX shall send the Client Materials to its archive upon completion of the Services and Brickyard VFX shall be entitled to charge the Client reasonable storage charges for doing so.

10.4 Where Client Materials are supplied or specific instructions are given by the Client, Brickyard VFX accepts no liability for any reduction in the quality of the Services caused by defects or errors in or the unsuitability of such Client Materials or by Brickyard VFX's use of the Client Materials or adherence to any of the Client's specific instructions.

PUBLICITY

11.1 Brickyard VFX may publicize, advertise and market the Works, after it has been made available to the public, via broadcast, on any of its website(s), social media site(s), blog(s), in pitches to third parties, in connection with any appropriate industry awards, without the prior written consent of the Client.

11.2 The Client hereby grants to Brickyard VFX a perpetual and royalty-free license to use the Works throughout the world for the purposes of clause 11.1 above and in order for Brickyard VFX to promote its business by whatever means it sees fit.

FORCE MAJEURE

12. In the event of the Services being prevented, delayed, or in any way interfered with by any act of government, war, industrial dispute, strike, breakdown of machinery or equipment, accident, fire or by any other cause beyond Brickyard VFX's control, Brickyard VFX may, at its option, suspend performance of or terminate this Agreement, without liability to the Client for any resulting damage or loss, such suspension or termination being without prejudice to Brickyard VFX's right to recover all sums owing to it in respect of Services and Works delivered and costs incurred up to the date of suspension or termination.

SUBCONTRACTORS

13. Brickyard VFX shall be entitled to appoint one or more subcontractors to carry out all or any of its obligations under this Agreement.

GENERAL

14.1 **Modification:** No modification of this Agreement (including any of the Services or Works to be provided hereunder) shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

14.2 **Waiver:** A waiver of any right or remedy under this Agreement is effective only if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a

party in exercising any right or remedy under this Agreement or by law shall constitute a waiver of that (or any other) right or remedy.

14.3 **Severance:** If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the provisions of this Agreement shall not be affected.

14.4 **Independent Contractor:** The parties acknowledge that Brickyard VFX is acting as an independent contractor. Nothing in this Agreement will be construed to constitute or appoint either party as the agent, partner, joint venturer or representative of the other party for any purpose whatsoever, or to grant to either party any right or authority to assume or create any obligation or responsibility, express or implied, for or on behalf of or in the name of the other, or to bind the other in any way or manner whatsoever.

14.5 **No Third Party Beneficiaries:** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

14.6 **Assignment:** The Client may not assign this Agreement, by operation of law or otherwise, without the prior written consent of Brickyard VFX.

14.7 **Entire Agreement:** This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, whether written or oral, with respect to such subject matter.

14.8 **Notices:** Any notice or other communication required to be given under this Agreement or otherwise in writing may be sent by email or by first class pre-paid post to 180 Lincoln Street, Boston, MA 02111 to the attention of the Legal Department. Any notice sent by first class mail shall be deemed received three working days after the date of mailing. Any notice sent by e-mail shall be deemed received on the next business day after the date of delivery.

14.9 **Governing Law and Jurisdiction:** This Agreement or any dispute relating to its subject matter shall be governed by and construed exclusively in accordance with the laws of the Commonwealth of Massachusetts (for Works entered into and performed by Brickyard Atlantic) and the laws of the State of California (for Works entered into and performed by Brickyard Pacific) and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts located in Boston, Massachusetts and Los Angeles, California respectively, for the purposes of adjudicating any matter arising from or in connection with this Agreement.

14.10 **Counterparts:** This Agreement, where required, may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.