

TERMS & CONDITIONS OF SUPPLY SERVICES CONTRACT

Agreed Terms

1. Definitions

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks are open for business;

"**Charges**" means the charges payable by the Customer for the supply of the Services by the Supplier, as set out in the Contract Details and Schedule 2;

"**Conditions**" means these terms and conditions set out in clause 1 to clause 16 (inclusive);

"**Contract**" means the contract between the Customer and the Supplier for the supply of the Services in accordance with the Contract Details, these Conditions and any Schedules;

"**Data Controller**", "**Data Processor**" and "**Personal Data**" have the meanings given to such terms in the Data Protection Legislation;

"**Data Protection Legislation**" means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998;

"**Intellectual Property Rights**" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"**Materials**" means all materials, equipment and tools, drawings, products, images, specifications and data supplied by the Customer to the Supplier;

"**the Services**" means the Services detailed in the Contract Details and Schedule 1;

"**Services Start Date**" means the day on which the Supplier is to start provision of the Services, as set out in the Contract Details;

"**Supplier IPR**" means all Intellectual Property Rights subsisting in documents, products and materials developed by the Supplier or its agents as part of delivery of the Services;

"**Termination Date**" means the date of early termination of this Contract in accordance with its terms.

A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory includes any subordinate legislation made under that statute, as amended or re-enacted.

Schedules to this Contract form part of (and are incorporated into) this Contract.

2. Commencement and Term

This Contract shall commence on the Services Start Date and continue for the Term unless it is terminated earlier in accordance with clause 6.

3. Supply of Services

3.1 The Supplier shall supply the Services to the Customer from the Services Start Date in accordance with the terms of this Contract.

3.2 In performing the Services the Supplier shall meet any performance dates specified in the Contract Details and Schedule 1.

3.3 In supplying the Services the Supplier shall:

3.3.1 perform the Services with all due diligence in accordance with reasonable professional standards in the Supplier's industry, profession or trade;

3.3.2 co-operate with the Customer in all matters relating to the Services, and comply with all instructions;

3.3.3 ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in this Contract;

3.3.4 ensure that the Services will conform in all respects with the service description set out in Schedule 1;

3.3.5 provide all equipment, tools, vehicles and other items required to provide the Services;

3.3.6 ensure that all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design; and

3.3.7 comply with all applicable laws, statutes, regulations and codes from time to time in force.

3.3.8 give due regard to advancing equality of opportunity within all areas of their work and to treat everyone irrespective of their background or protected characteristic with dignity and respect

3.4 At the request of the Customer, the Supplier shall remove immediately any employee or sub-Supplier who in the sole opinion of the Customer, has not conducted themselves appropriately or been incompetent or negligent (at no additional cost or time to the Customer).

4. Customer obligations:

4.1 The Customer shall:

4.1.1 Co-operate with the Supplier in all matters relating to the Services;

4.1.2 provide such access to the Customer's premises, data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with Customer in advance for the purposes of the Services; and

- 4.1.3 provide such information as the Supplier may reasonable request and which the Supplier considers necessary, in order to carry out the Services in a timely manner.
- 4.1.4 Make available to the Supplier a copy of its Equality and Diversity Policy including any specific equality and diversity objectives and priorities to be met as part of this contract,

5. Payment of Charges

- 5.1 In consideration of the Supplier providing the Services the Customer shall pay the Charges plus VAT if applicable.
- 5.2 The Supplier shall submit invoices for the Charges plus VAT if applicable to the Customer in accordance with Schedule 2. Each invoice shall include all reasonable supporting information required by the Customer
- 5.3 The Customer shall pay each invoice which is properly due and submitted to it by the Supplier in accordance with Schedule 2.

6. Termination

- 6.1 This Contract shall terminate on the earlier of the Expiry Date or Termination Date.
- 6.2 This Contract shall terminate immediately in the event that:
 - 6.2.1 either party is in breach of its obligations under the Contract which has not been remedied within Thirty (30) days written notice from the other party;
 - 6.2.2 any arrangement or composition with its creditors, becomes insolvent, subject to receivership in respect of any assets or any administration order, has an administrator appointed, or goes into liquidation or ceases or threatens to cease its business or is subject to any analogous circumstances in any part of the world;
 - 6.2.3 in the opinion of the Customer, the Supplier, its employees or officers or any of the Supplier personnel engaged in the provision of the Services shall engage in any activity which may damage the reputation of Customer by association with the Supplier.
- 6.3 Either party may terminate this Contract by giving Ninety (90) days' notice in writing on any date after the Services Start Date.
- 6.4 On termination of this Contract, the Supplier shall immediately pay to the Customer a refund of any sums paid in advance for the Services which have not been received by the Customer as a result of the termination of this Contract. **[Note: ONLY include if any sums are to be paid in advance for the Services]**
- 6.5 Clauses 7, 8 and 11 shall remain in force indefinitely after expiry or termination of this Contract.

7. Intellectual Property

- 7.1 The Supplier hereby assigns to the Customer all existing and future Intellectual Property Rights (including, without limitation, patents, copyright and related rights) and inventions arising from the Services for the Customer (including the Supplier IPRs). The Supplier hereby irrevocably waives all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which the Customer has or will have in any existing or future works.]

- 7.2 The Customer grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use the Materials for the term of this Contract for the purpose of providing the Services in accordance with this Contract.
- 7.3 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Services by the Customer and its licensees and sub-licensees.
- 7.4 The Supplier agrees promptly to execute all documents and do all acts as may, in the opinion of the Customer, be necessary to give effect to this clause 7.

8. Confidentiality

- 8.1 Each party undertakes that it shall not at any time during this Contract, disclose to any person any confidential information concerning the business, affairs, customers or suppliers of the other party, except as permitted by clause 8.2.
- 8.2 The obligations of confidence referred to in this clause shall not apply:
- 8.2.1 to any confidential information which:-
- 8.2.1.1 is in the possession of and is at the free disposal of either party or is published or is otherwise in the public domain prior to the receipt of such information by either party; or
- 8.2.1.2 is or becomes publicly available on a non-confidential basis through no fault of either party; or
- 8.2.1.3 is received in good faith by either party from a third party who on reasonable enquiry by either party claims to have no obligations of confidence to either party in respect of it and imposes no obligations of confidence upon either party; or
- 8.2.1.4 in relation to any disclosure to or use by either party's employees, professional advisers or officers who need to know such information for the purposes of carrying out the party's obligations under this Contract; or
- 8.2.1.5 in relation to any disclosure or use required by law or regulation.

9. Data Protection

- 9.1 The parties recognise and accept that in fulfilling their obligations under this contract to the extent that each party is acting as Data Controller that party shall ensure it complies with the provisions of the Data Protection Legislation including ensuring that Personal Data can be lawfully transferred to the other party as necessary for the purposes of this contract.
- 9.2 Where in fulfilling its obligations under this contract the Supplier is acting as Data Processor on behalf of the Customer (in which case this contract, and specifically Schedule 1, sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of data subject):

- 9.2.1 the Supplier shall process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
 - 9.2.2 the Supplier shall not appoint any third party processor of Personal Data under this contract without the consent of the Customer. If the Customer gives its consent to the Supplier appointing a third-party processor of Personal Data under this contract, the Supplier confirms that it will enter into a written agreement with the third-party processor incorporating terms which are substantially similar to those set out in this clause 9. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 9; and
 - 9.2.3 the Customer may, at any time on not less than 30 days' notice, revise this clause 9 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this contract).
- 9.3 Whether in fulfilling its obligations under this contract the Supplier is acting as Data Controller or as Data Processor on behalf of the Customer, the Supplier shall:
- 9.3.1 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 9.3.2 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - 9.3.3 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - 9.3.3.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - 9.3.3.2 the data subject has enforceable rights and effective legal remedies;
 - 9.3.3.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - 9.3.3.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

- 9.3.4 assist the Customer in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 9.3.5 notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - 9.3.6 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of this contract unless required by Applicable Law to store the Personal Data; and
 - 9.3.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 9 and allow for audits by the Customer or the Customer's designated auditor.
- 9.4 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with any failure by the Supplier to satisfy any of its obligations pursuant to clauses 9.1 to 9.3 (inclusive) above.

10. Equality and Diversity

10.1 Equality and Diversity

The Supplier shall discharge their responsibilities and obligations under this contract and perform the service in accordance with their duties under the provisions of the Equality Act 2010 (and any subsequent re-enactments or amendments), relevant anti-discriminatory legislation and Codes of Practice issued by the Equality and Human Rights Commission and Power to Change Equality and Diversity Policy. The Supplier shall also take all reasonable steps to ensure the observance of the above clause by the Supplier's staff and sub-contractors.

- 10.2 The Supplier shall notify the appropriate Contract Manager in writing as soon as it becomes aware of any investigation or proceedings brought against the Supplier or its sub-contractors in relation to unlawful discrimination in connection with the Supplier's performance of the Contract. The Supplier shall promptly provide Power to Change access to any documents or information relevant to the investigation or proceedings and shall permit a representative from Power to Change to attend any associated meetings.
- 10.3 The Supplier shall take all reasonable steps to ensure the observance of Clause 10.1 by the Supplier's staff and sub-contractors.

11. Limitation of Liability

11.1 Nothing in this Contract shall limit either party's liability for:

11.1.1 death or personal injury caused by negligence, or the negligence of its personnel, agents or subcontractors; and

11.1.2 fraud or fraudulent misrepresentation;

- 11.2 Subject to clause 11.1, the Customer's total liability to the Supplier, whether in contract, tort, breach of statutory duty or otherwise shall be limited to the value of this Contract and shall exclude liability for any indirect or consequential loss arising under or in connection with this Contract.

12. Insurance

The Supplier shall maintain professional indemnity insurance and public liability insurance throughout the Term to cover the liabilities that may arise under or in connection with this Contract and shall provide the Customer with a copy of the insurance certificate detailing the extent of the cover and the receipt for the current years premium upon request.

13. Audit

The Supplier shall be available for meetings with the Customer and allow the Customer or those acting for the Customer or the Comptroller and Auditor General ("CAG"), his or her staff at the National Audit Office and agents and advisers, full and free access to the Supplier's records in relation to the Services and any of the Supplier's offices or buildings and produce such oral or written explanations in relation to the Services as the Customer or the CAG considers necessary.

14. Force Majeure

14.1 Neither party shall be deemed in breach of this Contract or liable for any delay or non-performance or for the consequences of any delay or non-performance which is due to any circumstance beyond the reasonable control of that party ('Force Majeure') of which it has notified to the other party. Where possible, the parties shall agree a reasonable extension of the time for performing such obligations.

14.2 In the event that any event of Force Majeure may continue in excess of 30 days then the party not in default shall be entitled to terminate this Contract immediately by notice in writing to that effect.

14.3 For the avoidance of doubt, Force Majeure shall not include any reasonably foreseeable event, any event which may be considered to be a normal business risk or against which insurance may be obtained or for which business continuity plans would be considered by an experienced provider of the Services (whether or not it has been considered by the Supplier).

15. Notices

15.1 Any notice or other communication given to a party in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email.

15.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.1, if sent by pre-paid first class post or other next working day delivery service at 9.00am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or, if sent by email, one Business Day after transmission.

16. General

16.1 This Contract shall be governed by and construed in accordance with English law. The parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Contract.

16.2 No provision of this Contract is enforceable pursuant to the contracts (Rights of third Parties) Act 1999 by any person who is not a party to it.

16.3 This Contract comprises the entire Contract and understanding between the parties and supersedes any previous Contract relating to its subject matter.

- 16.4 No variation to this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.5 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise any right or remedy, or the single or partial exercise of any right or remedy shall not prevent or restrict the further exercise of that or any other right or remedy.
- 16.6 The Supplier shall not be entitled to assign, change, licence, sub-contract or otherwise part with possession of the benefit or burden of the whole or any part of this Contract without the prior written consent of the Customer.
- 16.7 This Contract may be executed in any number of counterparts each of which when executed shall constitute an original of this Contract, but all the counterparts shall together constitute the same Contract.
- 16.8 Nothing in this Contract will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind.