

- 3.5. The Customer may by written notice to the Supplier at any time request a variation to the Specification of the Goods or Services. In the event that the Supplier agrees to any variation to the Specification of the Goods or Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

4. Term

- 4.1. The Agreement shall take effect on the date specified in Award Letter and shall expire on the later of:
- 4.1.1. the Expiry Date; or
 - 4.1.2. the end date of any Extension Period applicable in accordance with clause 4.2; subject to any early termination in accordance with this Agreement (the “**Term**”).
- 4.2. The Customer may, if specified in the Award Letter, extend the Term of the Agreement for one or more Extension Periods (up to a maximum Term of 36 months) by giving not less than 10 Working Days’ notice in writing to the Supplier prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

5. Charges, Payment and Recovery of Sums Due

- 5.1. The Charges for the Goods and Services shall be as set out in Annex 3 and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods and Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services and Delivery of the Goods, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.
- 5.2. The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Goods and Services supplied in the invoice period.
- 5.3. In consideration of the supply of the Goods and Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after Receipt of a valid and undisputed invoice which includes a valid Purchase Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance or Delivery of unsatisfactory Goods.
- 5.4. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the Receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Goods and Services.
- 5.5. If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods and Services unless the Supplier is entitled to terminate this Agreement in accordance with clause 20.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 23.
- 5.6. If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.7. If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

6. Delivery

- 6.1. The Supplier shall Deliver the Goods to the Customer on or by the Delivery Date. Unless otherwise agreed in writing by the Customer, Delivery shall be on the date and to the address specified in the Award Letter. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and the Customer has signed for the Delivery.
- 6.2. The Supplier ensure the Goods are suitably packaged and secured so as to ensure they reach their destination in good condition.
- 6.3. Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.
- 6.4. Unless otherwise stipulated by the Customer in the Award Letter, Deliveries shall only be accepted by the Customer on Working Days and during normal business hours.
- 6.5. Where (i) the Supplier fails to Deliver the Goods or part of the Goods on the Delivery Date or (ii) the Goods or part of the Goods do not comply with the provisions of clauses 3.3 and 3.4, then without limiting any of its other rights or remedies implied by statute or common law, the Customer shall be entitled:
 - 6.5.1. to require the Supplier at their own cost, to Deliver substitute Goods within the timescales specified by the Customer;
 - 6.5.2. to require the Supplier at their own cost, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 6.5.3. to reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and the Customer shall be entitled to a full refund on those Goods or part of Goods duly returned;
 - 6.5.4. to buy the same or similar Goods from another supplier; and
 - 6.5.5. to recover any expenses incurred in respect of buying the goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

6.5.a Persistent Failure to Deliver

Where the Supplier fails to Deliver the Goods or part of the Goods within 5 Working Days of the Delivery Date, on more than three occasions, within a two month period, the Customer shall be entitled to terminate the Agreement, except where such failure is due to a Force Majeure event.

7. Premises and Equipment

- 7.1. If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services and Delivering the Goods, such access to be non-exclusive and revocable. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 7.2. If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 7.3. Any access to the Customer's premises and any labour and equipment that may be provided by the Customer in connection with Delivery of the Goods or provision of Services shall be provided without acceptance by the Customer of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of the Customer or its servant or agent. The Supplier shall indemnify the Customer in respect of any actions, suits, claims, demands,

losses, charges, costs and expenses, which the Customer may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation of Goods or provision of Services to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-Suppliers.

- 7.4. If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Customer may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 7.5. The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 7.6. Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 7.7. Without prejudice to clause 3.2.6, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 7.8. The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

8. Property and Guarantee of Title

- 8.1. Without prejudice to any other rights or remedies of the Customer, title and risk in the Goods shall pass to the Customer when Delivery of the Goods is complete (including off-loading and stacking).
- 8.2. The Supplier warrants that:
 - 8.2.1. it has full clear and unencumbered title to all the Goods; and
 - 8.2.2. at the Delivery Date of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to the Customer. On Delivery the Customer shall acquire a valid and unencumbered title to the Goods.

9. Staff and Key Personnel

- 9.1. The Supplier shall employ sufficient Staff to ensure that it complies with its obligations under this Agreement. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 9.2. The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services. The redeployment and/or replacement of any Key Personnel by the Supplier shall be subject to the prior written approval of the Customer, such approval not to be unreasonably withheld or delayed. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 9.3. If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
 - 9.3.1. refuse admission to the relevant person(s) to the Customer's premises;
 - 9.3.2. direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 9.3.3. require that the Supplier promptly replaces any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,and the Supplier shall comply with any such notice.

- 9.4. The Supplier shall:
- 9.4.1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 9.4.2. if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
 - 9.4.3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.

10. Security of Supplier Staff

- 10.1. Supplier Staff shall be subject to pre-employment checks that include, as a minimum: verification of identity, employment history, unspent criminal convictions and right to work, as detailed in the HMG Baseline Personnel Security Standard (<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>), as may be amended or replaced by the Government from time to time.
- 10.2. The Supplier shall agree on a case by case basis which Supplier Staff roles require specific government National Security Vetting clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Customer Data.
- 10.3. The Supplier shall prevent Supplier Staff who have not yet received or are unable to obtain the security clearances required by this clause from accessing systems which store, process, or are used to manage Customer Data, or from accessing Customer premises, except where agreed with the Customer in writing.
- 10.4. All Supplier Staff that have the ability to access Customer Data or systems holding Customer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Customer in writing, this training must be undertaken annually.
- 10.5. Where Supplier Staff are granted the ability to access Customer Data or systems holding Customer Data, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need such access or leave the organisation, their access rights shall be revoked within one (1) Working Day.

11. Assignment and sub-contracting

- 11.1. The Supplier shall not, without the written consent of the Customer, assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its Sub-contractors as though those acts and omissions were its own.
- 11.2. Where the Supplier enters into a Sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that provisions are included in such Sub-contract which:
 - 11.2.1. contain at least equivalent obligations as set out in the Agreement in relation to the performance of the Services and Delivery of Goods to the extent relevant to such Sub-contract;
 - 11.2.2. contain at least equivalent obligations as set out in the Agreement in respect of confidentiality, information security, data protection, Intellectual Property Rights and compliance with Laws;
 - 11.2.3. contain a prohibition on the Sub-contractor sub-contracting, assigning or novating any of its rights or obligations under such Sub-contract without the prior written approval of the Customer (such approval not to be unreasonably withheld or delayed);
 - 11.2.4. contain a right for the Customer to take an assignment or novation of the Sub-contract (or part of it) upon expiry or earlier termination of the Agreement; and
 - 11.2.5. require payment to be made of all sums due by the Supplier to the Sub-contractor within a specified period not exceeding 30 days from the Receipt of a valid invoice.

- 11.3. Any authority given by the Customer for the Supplier to Sub-contract any of its obligations under this Agreement shall not impose any duty on the Customer to enquire as to the competency of any authorised Sub-contractor. The Supplier shall ensure that any authorised Sub-contractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such Sub-contractor are fully in accordance with the Agreement.
- 11.4. Where the Customer has consented to the placing of Sub-contracts, the Supplier shall, at the request of the Customer, send copies of each Sub-contract, to the Customer as soon as is reasonably practicable.
- 11.5. The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

12. Intellectual Property Rights

- 12.1. All Foreground IP created exclusively within the performance of this Agreement, shall vest in the Customer absolutely, and the Supplier hereby assigns to the Customer, absolutely with full title guarantee (and free from all third party rights), any and all of its rights, title and interest in and to all the existing and future Foreground IP, to the fullest extent permitted by law.
- 12.2. The Supplier hereby grants the Customer a perpetual, royalty-free, irrevocable, worldwide, non-exclusive licence (with a right freely to sub-license to any third party) to use:
 - 12.2.1. all the present and future Background IP that is owned by the Supplier and/or the use of which the Supplier is able to license, including any modifications to or derivative versions of any such Background IP; and
 - 12.2.2. all other relevant Intellectual Property Rights owned by the Supplier and/or the use of which the Supplier is able to license;to the extent necessary to fulfil the Supplier's obligations under this Agreement and/or which the Customer reasonably requires in order to exercise its rights under and to take the full benefit of the Agreement, including, without limitation, using and dealing with the Goods supplied and receiving, using, re-using, adapting, modifying, reproducing, exploiting, producing derivative versions of, supplying and/or publishing (including as open source software) or dealing in any other way with the Deliverables.
- 12.3. Each Party undertakes that it shall promptly execute all documents, make all applications, give all assistance and do or procure the doing of all acts and things as may be necessary or desirable to vest all the Foreground IP in, and to register it in, the name of the Customer and/or to give full effect to the licences granted under this clause 12.
- 12.4. The Supplier:
 - 12.4.1. warrants that the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Goods, Services or Deliverables by the Customer and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
 - 12.4.2. shall indemnify, and keep indemnified, the Customer in full against all costs, expenses, damages and losses (whether direct or indirect), including but not limited to any interest, penalties, and legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use, re-use, reproduction, exploitation, supply and/or publication (including as open source software) of the Goods, Services or Deliverables.
- 12.5. All Background IP is and shall remain the exclusive property of the Party owning it (or, where applicable, the third party from whom that Party's right to use the Background IP has derived) and nothing in this Agreement shall operate to transfer any Background IP of one Party to the other.

- 12.6. The Customer hereby grants to the Supplier, for the Term of this Agreement, a non-exclusive, royalty-free, non-transferable licence to use any Foreground IP or any Background IP that is owned by the Customer and/or the use of which the Customer is able to license, to the extent such use is necessary for the purpose of the Supplier performing its obligations under this Agreement and/or providing the Services and Deliverables.
- 12.7. The Supplier shall, unless otherwise stated in Annex 2:
- 12.7.1. identify any third-party licences for software or other Intellectual Property Rights which are required for the receipt and use of the Goods, Services or the Deliverables by the Customer;
 - 12.7.2. procure that the third party owner of such software or Intellectual Property Rights grants to the Customer a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the software and Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Customer to sub-license, transfer, novate or assign to any other Contracting Authority or to any other third party supplying goods and/or services to the Customer; and
 - 12.7.3. pay any applicable fees for any such licence.

13. Governance and Records

- 13.1. The Supplier shall:
- 13.1.1. attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
 - 13.1.2. submit progress reports to the Customer at the times and in the format specified by the Customer.
- 13.2. The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Goods and Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.
- 13.3. The Supplier shall not charge the Customer for any costs incurred complying with the governance requirements of this Agreement.

14. Confidentiality

- 14.1. Subject to clause 14.2, each Party shall:
- 14.1.1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - 14.1.2. not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 14.2. Notwithstanding clause 14.1, a Party may disclose Confidential Information which it receives from the other Party:
- 14.2.1. where disclosure is required by applicable law (including but not limited to FOIA and EIR) or by a court of competent jurisdiction;
 - 14.2.2. to its auditors or for the purposes of regulatory requirements;
 - 14.2.3. on a confidential basis, to its professional advisers;
 - 14.2.4. to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;