

The Short form Contract



Department  
of Health &  
Social Care

Department of Health and Social Care  
39 Victoria Street  
Westminster  
London  
SW1H 0EU

BBI Solutions OEM Limited  
C/O Berry Smith LLP  
Haywood House, Dumfries Place  
Cardiff, CF10 3GA

[REDACTED]  
Date: 30/07/2021

Dear Sirs,

**Report on quantitative performance of supplied antibodies and/or other affinity molecules**

Following your tender/ proposal for the provision of a report on the quantitative performance of certain supplied antibodies and/or other affinity molecules to the Secretary of State for Health and Social Care we are pleased confirm our intention to award this contract to you.

The attached contract details ("**Order Form**"), contract conditions and the Annexes set out the terms of the contract between the Secretary of State for Health and Social Care and BBI Solutions OEM Limited for the provision of the deliverables set out in the Order Form.

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the deliverables. Please confirm your acceptance of the Conditions by signing and returning the Order Form to [REDACTED] at [REDACTED] within 7 days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to include the reference number above in any future communications relating to this contract.

We will then arrange for Order Form to be countersigned which will create a binding contract between us.

Yours faithfully,

## Order Form

<b>1. Contract Reference</b>	Oxford and Aptamer novel antibody screening for UK manufactured lateral flow test	
<b>2. Date</b>		
<b>3. Buyer</b>	Secretary of State for Health and Social Care 39 Victoria Street London SW1H 0EU	
<b>4. Supplier</b>	BBI Solutions OEM Limited Registered address: C/O Berry Smith LLP, Haywood House, Dumfries Place, Cardiff, CF10 3GA Registration number: 08368483	
<b>5. The Contract</b>	<p>The Supplier shall supply the deliverables described below on the terms set out in this Order Form and the attached contract conditions ("<b>Conditions</b>") and any Annexes.</p> <p>Unless the context otherwise requires, capitalised expressions used in this Order Form have the same meanings as in Conditions.</p> <p>In the event of any conflict between this Order Form and the Conditions, this Order Form shall prevail.</p> <p>Please do not attach any Supplier terms and conditions to this Order Form as they will not be accepted by the Buyer and may delay conclusion of the Contract.</p>	
<b>6. Deliverables</b>	<b>Goods</b>	None
	<b>Services</b>	<p>The Supplier shall conduct testing on certain antibodies and/or other affinity molecule reagents (as specified at Annex 3) (<b>Antibodies</b>) supplied respectively by:</p> <ul style="list-style-type: none"> <li>(i) the University of Oxford (as specified at Annex 3) under the material transfer agreement dated 14 June 2021 between the Supplier and the Chancellor, Masters and Scholars of the University of Oxford; and</li> <li>(ii) Aptamer Group Limited under the material transfer agreement with an effective date of 26 March 2021 between the Supplier and Aptamer Group Limited, and prepare a report including data on incidence of non-specific binding, indicative sensitivity and indicative signal range, based upon the positive control used, as well as</li> </ul>

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	<p>recommendations of Antibody pairs to take forward for prototype development of a Covid-19 lateral flow test (<b>Report</b>).</p> <p>The Services shall be performed at Unit 2, Parkway, Pen-y-fan Industrial Estate, Crumlin, NP11 3EF, UK and the Report delivered to the Buyer by email at the address set out at section 13 of this Order Form.</p>																									
7. Specification	The specification and timescales for delivery of the Deliverables is as set out in Annex 2.																									
8. Term	<p>The Term shall commence on the date this Contract is executed by both parties and continue in force until delivery of the Report in accordance with the Specifications set out at Annex 2 to the satisfaction of the Buyer unless it is otherwise extended or terminated in accordance with the terms and conditions of the Contract.</p> <p>The Buyer may request an extension of the Contract for a period of up to 6 weeks by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. Supplier will confirm availability of resource and agree a mutually agreeable timeframe and pro-rata charge for the extension. The terms and conditions of the Contract shall apply throughout any such extended period.</p>																									
9. Charges	<p>The Charges for the Deliverables and Services shall be as set out below:</p> <table><tr><th>Description</th><th>Price per unit (excl. VAT)</th><th>Total # items</th><th>Total Price (excl. VAT)</th><th>Currency</th></tr><tr><td>Custom conjugations (per conjugation)</td><td></td><td></td><td></td><td>GBP</td></tr><tr><td>Preparation of lateral flow immunochromatographic (LFI) configurations for screening, testing, data collation and reporting</td><td></td><td></td><td></td><td>GBP</td></tr><tr><td>Reagents for testing</td><td></td><td></td><td></td><td>GBP</td></tr><tr><td>Total Maximum Price</td><td></td><td></td><td></td><td></td></tr></table> <p>and shall become payable on delivery of the Report to the satisfaction of the Buyer. If the Buyer notifies the Supplier that it is not satisfied with the</p>	Description	Price per unit (excl. VAT)	Total # items	Total Price (excl. VAT)	Currency	Custom conjugations (per conjugation)				GBP	Preparation of lateral flow immunochromatographic (LFI) configurations for screening, testing, data collation and reporting				GBP	Reagents for testing				GBP	Total Maximum Price				
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	<p>Report on first submission by the Supplier, the Supplier shall amend the Report to address the Buyer's concerns and re-submit the Report within 2 weeks of the Buyer notifying the Supplier that it is not satisfied with the Report.</p> <p>In no event shall the aggregate Charges payable under this Contract exceed a total of [REDACTED] (excl. VAT).</p>								
<b>10. Payment</b>	<p>All invoices must be sent, quoting a valid purchase order number (PO Number), to:</p> <p>[REDACTED]</p> <p>Within 10 Working Days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.</p> <p>To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Buyer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.</p> <p>If you have a query regarding an outstanding payment, please contact our Accounts Payable section by email.</p>								
<b>11. Buyer Authorised Representative(s)</b>	<p>For general liaison your contact will continue to be [REDACTED]</p>								
<b>12. Address notices for</b>	<table border="0"> <tr> <td><b>Buyer:</b></td><td><b>Supplier:</b></td></tr> <tr> <td>Secretary of State for Health and Social Care 39 Victoria Street Westminster London SW1H 0EU</td><td>Peter Corish BBI Solutions c/o Berry Smith LLP, Haywood House, Dumfries Place, Cardiff CF10 3GA</td></tr> <tr> <td>[REDACTED]</td><td>Attention: [REDACTED]</td></tr> <tr> <td>With copy by email to: [REDACTED]</td><td>With copy by email to: [REDACTED]</td></tr> </table>	<b>Buyer:</b>	<b>Supplier:</b>	Secretary of State for Health and Social Care 39 Victoria Street Westminster London SW1H 0EU	Peter Corish BBI Solutions c/o Berry Smith LLP, Haywood House, Dumfries Place, Cardiff CF10 3GA	[REDACTED]	Attention: [REDACTED]	With copy by email to: [REDACTED]	With copy by email to: [REDACTED]
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With copy by email to: [REDACTED]	With copy by email to: [REDACTED]								
<b>13. Key Personnel</b>	<table border="0"> <tr> <td><b>Buyer:</b></td><td><b>Supplier:</b></td></tr> <tr> <td>Secretary of State for Health and [REDACTED]</td><td>[REDACTED]</td></tr> </table>	<b>Buyer:</b>	<b>Supplier:</b>	Secretary of State for Health and [REDACTED]	[REDACTED]				
<b>Buyer:</b>	<b>Supplier:</b>								
Secretary of State for Health and [REDACTED]	[REDACTED]								



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	<p>Social Care 39 Victoria Street Westminster London SW1H 0EU</p> <p>Attention: [REDACTED]</p> <p>Email: [REDACTED]</p>	<p>BBI Solutions c/o Berry Smith LLP, Haywood House, Dumfries Place, Cardiff CF10 3GA</p> <p>Attention: [REDACTED]</p> <p>Email: [REDACTED]</p>
<b>14. Procedures and Policies</b>	<p>The Buyer may require the Supplier to ensure that any person employed in the delivery of the Deliverables has undertaken a Disclosure and Barring Service check.</p> <p>The Buyer may require the Supplier to ensure that any person employed in the delivery of the Deliverables has undertaken a Disclosure and Barring Service check.</p> <p>The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Contract, relevant to the work of the Buyer, or is of a type otherwise advised by the Buyer (each such conviction a "<b>Relevant Conviction</b>"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Deliverables.</p>	

Signed for and on behalf of the <b>Supplier</b>	Signed for and on behalf of the <b>Buyer</b>
Name: [REDACTED]	Name: [REDACTED]
Date: 04/08/21	Date: 5/8/2021
Signature: [REDACTED]	Signature: [REDACTED]

## Annex 1 – Authorised Processing Template

<b>Contract:</b>	Oxford and Aptamer novel antibody screening for UK manufactured lateral flow test
<b>Date:</b>	
<b>Description Of Authorised Processing</b>	<b>Details</b>
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data	
Categories of Data Subject	

## **Annex 2 – Specification**

### **1. Screening approach**

Antibody/Gold nanoparticle (GNP) conjugates will be manufactured from candidate antibodies using the Supplier's high throughput approach. A single conjugate will be manufactured for each antibody with each conjugate being made to the same conditions.

The conjugated antibodies will be used in a sandwich assay format lateral flow immunochromatographic (LFI) using candidate antibodies as capture and detector. A fixed capture concentration and standard nitrocellulose membrane to be used. A fixed GNP conjugate concentration will be used.

Suitable samples of derogated SARS-CoV-2 virus will be prepared using diluent buffer at a range of concentrations, including a buffer blank, then assessed in the sandwich format LFI. Data will be plotted as a response curve of signal versus analyte concentration and comparative performance of different capture and detector combinations assessed using measures of performance below. Where low or negative results are observed when testing nucleoprotein-specific antibody pairs versus whole virus, recombinant antigen standards may be tested as a control to confirm result is due to low antibody binding and not low nucleoprotein availability due to ineffective viral particle lysis. Time required for this reflex testing is not included in this proposal. Alternative sample types desired by the customer may be accommodated subject to customer provision of materials in a timely fashion.

### **2. Measures of performance (priority order)**

1. Incidence of non-specific binding (selecting for lowest signal when testing buffer only sample)
2. Indicative sensitivity (selecting for highest signal to noise ratio when testing defined low concentration sample)
3. Indicative signal range (selecting for highest signal to noise ratio when testing defined high concentration sample)

This exercise will yield a ranked order list of reagent combinations in an LFI format based on the above criteria.

### **3. Timescales**

The Supplier shall deliver the Report to the Buyer within 8 weeks of the Commencement Date and use reasonable endeavours to deliver the Report to the Buyer within 6 weeks of the Commencement Date.

## **Annex 3 – Antibodies**

- Monoclonal antibodies recognising SARS-CoV-2 S and N proteins provided by the University of Oxford; and
- Circa 1mg of a single 5' biotin labelled aptamer against the nucleocapsid of SARS-CoV-2 and circa 1mg of a single 5' thiol labelled aptamer against the nucleocapsid of SARS-CoV-2, provided by Aptamer Group Limited.



# Short form Terms

## 1. Definitions used in the Contract

In this Contract, unless the context otherwise requires, the following words shall have the following meanings:

<b>"Antibodies"</b>		means the antibodies and/or other affinity molecule reagents as specified at Annex 3;
<b>"Central Government Body"</b>		means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: a) Government Department; b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); c) Non-Ministerial Department; or d) Executive Agency;
<b>"Change Law"</b>	<b>in</b>	means any change in Law which impacts on the supply of the Deliverables (including taxation or duties of any sort affecting the Supplier) which comes into force after the start date of the Contract set out in the Order Form;
<b>"Charges"</b>		means the charges for the Deliverables as specified in the Order Form;
<b>"Confidential Information"</b>		means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
<b>"Contract"</b>		means the contract between (i) the Buyer and (ii) the Supplier which is created by the Supplier's counter signing the Order Form and includes the Order Form and Annexes;
<b>"Controller"</b>		has the meaning given to it in the GDPR;
<b>"Buyer"</b>		means the person identified in the letterhead of the Order Form;
<b>"Date Delivery"</b>	<b>of</b>	means that date by which the Deliverables must be delivered

<b>"Buyer Cause"</b>	to the Buyer, as specified in the Order Form; any breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the Contract and in respect of which the Buyer is liable to the Supplier;
<b>"Data Protection Legislation"</b>	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
<b>"Data Protection Impact Assessment"</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
<b>"Data Protection Officer"</b>	has the meaning given to it in the GDPR;
<b>"Data Subject"</b>	has the meaning given to it in the GDPR;
<b>"Data Loss Event"</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
<b>"Data Subject Access Request"</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
<b>"Deliver"</b>	means hand over the Deliverables to the Buyer at the address and on the date specified in the Order Form in accordance with Clause 6 of the Order Form. Delivered and Delivery shall be construed accordingly;
<b>"Existing IPR"</b>	any and all intellectual property rights that are owned by or licensed to either Party and which have been developed independently of the Contract (whether prior to the date of the Contract or otherwise);
<b>"Exit Day"</b>	has the meaning in the European Union (Withdrawal) Act 2018;
<b>"Expiry Date"</b>	means the date for expiry of the Contract as set out in the Order Form;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Force Majeure Event"</b>	any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations



under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain; ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; iii) any failure of delay caused by a lack of funds; iv) any event or other consequence arising as a result of or in connection with the withdrawal of the United Kingdom from the European Union; and v) any event or other consequence arising as a result of or in connection with the COVID-19 pandemic except for circumstances caused by or related to the COVID-19 pandemic which are changes in applicable Law and/or governmental guidance which mean that the Deliverables cannot be provided as set out in the Contract (in all material respects) without such Laws and/or government guidance being breached, or if the Supplier can reasonably demonstrate that despite all reasonable endeavours, it is unable to secure non-COVID-19 infected personnel to provide the Deliverables due to the levels of COVID-19 infections in the population of the United Kingdom;

<b>"GDPR"</b>	the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>"Good Industry Practice"</b>	standards, practices, methods and procedures conforming to the law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;
<b>"Government Data"</b>	a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's confidential information, and which: i) are supplied to the Supplier by or on behalf of the Buyer; or ii) the Supplier is required to generate, process, store or transmit pursuant to the Contract; or b) any Personal Data for which the Buyer is the Data Controller;
<b>"Information"</b>	has the meaning given under section 84 of the FOIA;
<b>"Information Commissioner"</b>	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
<b>"Insolvency Event"</b>	in respect of a person: a) if that person is insolvent; ii) if an order is made or a resolution is passed for the winding up of

	the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction); iii) if an administrator or administrative receiver is appointed in respect of the whole or any part of the persons assets or business; iv) if the person makes any composition with its creditors or takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;
<b>"Key Personnel"</b>	means any persons specified as such in the Order Form or otherwise notified as such by the Buyer to the Supplier in writing;
<b>"Law"</b>	means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, byelaw, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>"LED"</b>	Law Enforcement Directive (Directive (EU) 2016/680);
<b>"New IPR"</b>	all and intellectual property rights arising out of or in connection with the performance of the Services including all intellectual property rights in any materials created or developed by or on behalf of the Supplier pursuant to the Contract but shall not include the Supplier's Existing IPR;
<b>"Order Form"</b>	means the letter from the Buyer to the Supplier printed above these terms and conditions;
<b>"Party"</b>	the Supplier or the Buyer (as appropriate) and "Parties" shall mean both of them;
<b>"Personal Data"</b>	has the meaning given to it in the GDPR;
<b>"Personal Data Breach"</b>	has the meaning given to it in the GDPR;
<b>"Processor"</b>	has the meaning given to it in the GDPR;
<b>"Purchase Order Number"</b>	means the Buyer's unique number relating to the order for Deliverables to be supplied by the Supplier to the Buyer in accordance with the terms of the Contract;
<b>"Regulations"</b>	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires) as amended from time to time;
<b>"Report"</b>	Means the report to be prepared by the Supplier as further detailed at clause 6 of the Order Form;
<b>"Request for Information"</b>	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning



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set out for the term "request" shall apply);

<b>"Services"</b>	means the services to be supplied by the Supplier to the Buyer under the Contract;
<b>"Specification"</b>	means the specification for the Deliverables to be supplied by the Supplier to the Buyer (including as to quantity, description and quality) as specified in the Order Form;
<b>"Staff"</b>	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Contract;
<b>"Staff Vetting Procedures"</b>	means vetting procedures that accord with good industry practice or, where applicable, the Buyer's procedures for the vetting of personnel as provided to the Supplier from time to time;
<b>"Subprocessor"</b>	any third Party appointed to process Personal Data on behalf of the Supplier related to the Contract;
<b>"Supplier Staff"</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under a Contract;
<b>"Supplier"</b>	means the person named as Supplier in the Order Form;
<b>"Term"</b>	means the period from the start date of the Contract set out in the Order Form to the Expiry Date as such period may be extended in accordance with clause 8 of the Order Form or terminated in accordance with the terms and conditions of the Contract;
<b>"US-EU Privacy Shield Register"</b>	a list of companies maintained by the United States of America Department for Commerce that have self-certified their commitment to adhere to the European legislation relating to the processing of personal data to non-EU countries which is available online at: <a href="https://www.privacyshield.gov/list">https://www.privacyshield.gov/list</a> ;
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>"Workers"</b>	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) ( <a href="https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees">https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees</a> ) applies in respect of the Deliverables;
<b>"Working Day"</b>	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

## **2. Understanding the Contract**

In the Contract, unless the context otherwise requires:

- 2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 2.3 the headings in this Contract are for information only and do not affect the interpretation of the Contract;
- 2.4 references to "writing" include printing, display on a screen and electronic transmission and other modes of representing or reproducing words in a visible form;
- 2.5 the singular includes the plural and vice versa;
- 2.6 a reference to any law includes a reference to that law as amended, extended, consolidated or re-enacted from time to time and to any legislation or byelaw made under that law;
- 2.7 the word 'including', "for example" and similar words shall be understood as if they were immediately followed by the words "without limitation"; and
- 2.8 Any reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
  - (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - (b) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred.

## **3. How the Contract works**

- 3.1 The Order Form is an offer by the Buyer to purchase the Deliverables subject to and in accordance with the terms and conditions of the Contract.
- 3.2 The Supplier is deemed to accept the offer in the Order Form when the Buyer receives a copy of the Order Form signed by the Supplier.
- 3.3 The Supplier warrants and represents that its tender and all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

## **4. What needs to be delivered**

### **4.1 All Deliverables**

The Supplier must provide Deliverables: (i) in accordance with the Specification; (ii) to a professional standard; (iii) using reasonable skill and care; (iv) using Good Industry Practice; (v) using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract; (vi) on the dates agreed; and (vii) that comply with all law.

### **4.2 Services clauses**

- (a) Late delivery of the Services will be a default of the Contract.
- (b) The Parties must co-operate with each other and third party suppliers on all aspects connected with the Services and delivery of the Services, and ensure that their respective staff comply with any reasonable instructions including any security requirements.
- (c) The Supplier must at its own risk and expense provide all equipment required to deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of the Contract.
- (d) The Supplier must allocate sufficient resources and appropriate expertise to the Contract.
- (e) The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- (f) The Supplier must ensure all Services, and anything used to deliver the Services, are of good quality and free from defects.
- (g) The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## **5. Pricing and payments**

5.1 In exchange for the Deliverables, the Supplier shall be entitled to invoice the Buyer for the Charges in the Order Form. The Supplier shall raise invoices promptly and in any event within 90 days from when the Charges are due and the Buyer must pay such invoices in accordance with clause 5.3 below.

5.2 All Charges:

- (a) exclude VAT, which is payable on provision of a valid VAT invoice;
- (b) include all costs connected with the supply of Deliverables.

5.3 The Buyer must pay the Supplier the charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds to the Supplier's account stated in the Order Form.

5.4 A Supplier invoice is only valid if it:

- (a) includes all appropriate references including the Purchase Order Number and other details reasonably requested by the Buyer;
- (b) includes a detailed breakdown of Deliverables which have been delivered (if any).

5.5 If there is a dispute between the Parties as to the amount invoiced, the Buyer shall pay the undisputed amount. The Supplier shall not suspend the provision of the

Deliverables unless the Supplier is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with clause 11.5. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 33.

- 5.6 The Buyer may retain or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.
- 5.7 The Supplier must ensure that all subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the Buyer can publish the details of the late payment or non-payment.

## **6. The Buyer's obligations to the Supplier**

- 6.1 If Supplier fails to comply with the Contract as a result of a Buyer Cause:
  - (a) the Buyer cannot terminate the Contract under clause 11;
  - (b) the Supplier is entitled to reasonable and proven additional expenses and to relief from liability under this Contract;
  - (c) the Supplier is entitled to additional time needed to deliver the Deliverables;
  - (d) the Supplier cannot suspend the ongoing supply of Deliverables.
- 6.2 Clause 6.1 only applies if the Supplier:
  - (a) gives notice to the Buyer within 10 Working Days of becoming aware;
  - (b) demonstrates that the failure only happened because of the Buyer Cause;
  - (c) mitigated the impact of the Buyer Cause.

## **7. Record keeping and reporting**

- 7.1 The Supplier must ensure that suitably qualified representatives attend progress meetings with the Buyer and provide progress reports when specified in the Order Form.
- 7.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the Contract for seven years after the date of expiry or termination of the Contract.
- 7.3 The Supplier must allow any auditor appointed by the Buyer access to their premises once per year, to verify all contract accounts and records of everything to do with the Contract and provide copies for the audit.
- 7.4 The Supplier must provide information to the auditor and reasonable co-operation at their request.
- 7.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
  - (a) tell the Buyer and give reasons;
  - (b) propose corrective action;
  - (c) provide a deadline for completing the corrective action.



- 7.6 If the Buyer, acting reasonably, is concerned as to the financial stability of the Supplier such that it may impact on the continued performance of the Contract then the Buyer may:
- (a) require that the Supplier provide to the Buyer (for its approval) a plan setting out how the Supplier will ensure continued performance of the Contract and the Supplier will make changes to such plan as reasonably required by the Buyer and once it is agreed then the Supplier shall act in accordance with such plan and report to the Buyer on demand
  - (b) if the Supplier fails to provide a plan or fails to agree any changes which are requested by the Buyer or fails to implement or provide updates on progress with the plan, terminate the Contract immediately for material breach (or on such date as the Buyer notifies).

## **8. Supplier staff**

- 8.1 The Supplier Staff involved in the performance of the Contract must:
- (a) be appropriately trained and qualified;
  - (b) be vetted using Good Industry Practice;
  - (c) comply with all conduct requirements when on the Buyer's premises.
- 8.2 Where a Buyer decides one of the Supplier's Staff isn't suitable to work on the Contract, the Supplier must replace them with a suitably qualified alternative.
- 8.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach clause 8.
- 8.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's premises and say why access is required.
- 8.5 The Supplier indemnifies the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.
- 8.6 The Supplier shall use those persons nominated in the Order Form (if any) to provide the Deliverables and shall not remove or replace any of them unless:
- (a) requested to do so by the Buyer (not to be unreasonably withheld or delayed);
  - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave; or
  - (c) the person's employment or contractual arrangement with the Supplier or any subcontractor is terminated for material breach of contract by the employee.

## **9. Rights and protection**

- 9.1 The Supplier warrants and represents that:
- (a) it has full capacity and authority to enter into and to perform the Contract;
  - (b) the Contract is executed by its authorised representative;
  - (c) it is a legally valid and existing organisation incorporated in the place it was formed;
  - (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;

- (e) it maintains all necessary rights, authorisations, licences and consents to perform its obligations under the Contract;
  - (f) it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
  - (g) it is not impacted by an Insolvency Event.
- 9.2 The warranties and representations in clause 9.1 are repeated each time the Supplier provides Deliverables under the Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
  - (a) wilful misconduct of the Supplier, any of its subcontractor and/or Supplier Staff that impacts the Contract;
  - (b) non-payment by the Supplier of any tax or National Insurance.
- 9.4 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.
- 9.5 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

## **10. Intellectual Property Rights (IPRs)**

- 10.1 Each Party keeps ownership of its own Existing IPRs.
- 10.2 Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use its Existing IPRs and any New IPR for the purpose of the Supplier fulfilling its obligations under the Contract only.
- 10.3 Where the Supplier acquires ownership of intellectual property rights in any New IPR it must do everything reasonably necessary to complete a transfer by assigning its rights in the New IPR to the Buyer in writing on request and at its own cost.
- 10.4 Neither Party has the right to use the other Party's intellectual property rights, including any use of the other Party's names, logos or trademarks, except as provided in clause 10 or otherwise agreed in writing.
- 10.5 If any claim is made against the Buyer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Deliverables (an "**IPR Claim**"), then the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim except to the extent that such IPR Claim results from the Buyer using the Deliverables in breach of the terms of this Contract, or in a manner not contemplated by the terms of this contract.
- 10.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
  - (a) obtain for the Buyer the rights in clauses 10.2 and 10.3 without infringing any third party intellectual property rights;

- (b) replace or modify the relevant item with substitutes that don't infringe intellectual property rights without adversely affecting the functionality or performance of the Deliverables.

## **11. Ending the contract**

**11.1** The Contract takes effect on the date of or (if different) the date specified in the Order Form and ends on the earlier of the date of expiry or termination of the Contract or earlier if required by Law.

**11.2** The Buyer can extend the Contract where set out in the Order Form in accordance with the terms in the Order Form.

### **11.3 Ending the Contract without a reason**

The Buyer has the right to terminate the Contract at any time without reason or liability by giving the Supplier not less than 30 days' written notice and if it's terminated clause 11.5(a) to 11.5(f) applies.

### **11.4 When the Buyer can end the Contract**

- (a) If any of the following events happen, the Buyer has the right to immediately terminate its Contract by issuing a termination notice in writing to the Supplier:
  - (i) there's a Supplier Insolvency Event;
  - (ii) if the Supplier repeatedly breaches the Contract in a way to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
  - (iii) if the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
  - (iv) there's a change of control (within the meaning of section 450 of the Corporation Tax Act 2010) of the Supplier which isn't pre-approved by the Buyer in writing;
  - (v) if the Buyer discovers that the Supplier was in one of the situations in 57(1) or 57(2) of the Regulations at the time the Contract was awarded;
  - (vi) the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations;
  - (vii) the Supplier or its affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them.
- (b) If any of the events in 73(1) (a) to (c) of the Regulations (substantial modification, exclusion of the Supplier, procurement infringement) happen, the Buyer has the right to immediately terminate the Contract and clause 11.5(a) to 11.5(f) applies.

### **11.5 What happens if the Contract ends**

Where the Buyer terminates the Contract under clause 11.4(a) all of the following apply:

- (a) the Buyer's payment obligations under the terminated Contract stop immediately;
- (b) accumulated rights of the Parties are not affected;



- (c) the Supplier must promptly delete or return the Government Data except where required to retain copies by law;
- (d) the Supplier must promptly return any of the Buyer's property provided under the Contract;
- (e) the Supplier must, at no cost to the Buyer, give all reasonable assistance to the Buyer and any incoming supplier and co-operate fully in the handover and re-procurement;
- (f) the following clauses survive the termination of the Contract: 10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 33, 34 and any clauses which are expressly or by implication intended to continue.

### **11.6 When the Supplier can end the Contract**

- (a) The Supplier can issue a reminder notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate the Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract value or £1,000, whichever is the lower, within 30 days of the date of the reminder notice.
- (b) If a Supplier terminates the Contract under clause 11.6(a):
  - (i) the Buyer must promptly pay all outstanding charges incurred to the Supplier;
  - (ii) the Buyer must pay the Supplier reasonable committed and unavoidable losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the Contract had not been terminated;
  - (iii) clauses 11.5(c) to 11.5(f) apply.

### **11.7 Partially ending and suspending the Contract**

- (a) Where the Buyer has the right to terminate the Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends the Contract it can provide the Deliverables itself or buy them from a third party.
- (b) The Buyer can only partially terminate or suspend the Contract if the remaining parts of it can still be used to effectively deliver the intended purpose.
- (c) The Parties must agree (in accordance with clause 24) any necessary variation required by clause 11.7, but the Supplier may not either:
  - (i) reject the variation;
  - (ii) increase the Charges, except where the right to partial termination is under clause 11.3.
- (d) The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under clause 11.7.

## **12. How much you can be held responsible for**

- 12.1 Each Party's total aggregate liability under or in connection with the Contract (whether in tort, contract or otherwise) is no more than 125% of the Charges paid or payable to the Supplier.
- 12.2 No Party is liable to the other for:
  - (a) any indirect losses;
  - (b) loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).