



# CabinetOffice

## Terms and Conditions of Contract

### 1 Interpretation

1.1 In this Agreement, the following words will have the following meanings:

- “Agreement” will mean these terms and conditions, the Specification, the Purchase order, and (if applicable) the Award Letter;
- “Award Letter” means the letter signed by the Customer which confirms the award of the contract and which may give details of the Services to be supplied by the Supplier to the Customer in accordance with the terms of this Agreement;
- “Charges” means the charges for the Services as set out in the Purchase Order or Award Letter (as applicable);
- “Crown” means the government of the United Kingdom including, but not limited to, government ministers, government departments, government offices and government agencies;
- “Customer” means the Minister for the Cabinet Office;
- “DPA” means the Data Protection Act 1998;
- “Expiry Date” means the date for expiry of this Agreement as set out in the Purchase Order or Award Letter;
- “FOIA” means the Freedom of Information Act 2000;
- “Information” has the meaning given under section 84 of the FOIA;
- “Key Personnel” any persons specified as such in the Purchase Order or Award Letter (as the case may be), or otherwise notified by the Customer to the Supplier in writing;
- “Party/Parties” the Supplier and/or the Customer (as appropriate);
- “Premises” will mean have the meaning detailed in the Purchase Order or Award Letter (as applicable) or if such term is not defined it will be the address where the Services are provided;
- “Purchase Order” means the Customer’s order for Services which has a unique number, and details the Services to be supplied by the Supplier to the Customer in accordance with the terms of this Agreement;
- “Relevant Convictions” means a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or as otherwise advised by the Customer;
- “Request for Information” will have the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” will apply);
- “Services” means the services to be provided by the Supplier to the Customer under this Agreement as specified in the Specification, the Purchase Order or Award Letter (as applicable);



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- “Specification” means any specification for the Services produced by the Supplier and agreed with the Customer; or supplied to the Supplier by the Customer including any specification contained in the Purchase Order or Award Letter and any documents referred to therein which set out the quantity, description, quality and price of the Services;
- “Staff” means all persons employed by the Supplier to perform its obligations under this Agreement together with the Supplier’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Agreement;
- “Staff Vetting Procedures” will mean the Customer’s procedures for the vetting of personnel as advised to the Supplier by the Customer;
- “Term” will mean the term set out in the Purchase Order or Award Letter unless extended or terminated earlier in accordance with the terms and conditions of this Agreement;
- “VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
- “Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 where a capitalised word is not defined in this Agreement it will have the meaning given to it in the Purchase Order or Award Letter.

1.3 In this Agreement unless the context otherwise requires:

1.3.1 references to numbered clauses are references to the relevant clause in this Agreement;

1.3.2 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

1.3.3 the headings to the clauses of this Agreement are for information only and do not affect the interpretation of this Agreement;

1.3.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

where the word ‘including’ is used in this Agreement, it will be understood as meaning ‘including without limitation’.

## **2 Basis of Agreement**

2.1 The Purchase Order constitutes an offer by the Customer to purchase Services from the Supplier in accordance with this Agreement.

2.2 The Agreement will be deemed to be accepted on the earlier of: (a) the Supplier signing the Award Letter or Purchase Order; or (b) any act by the Supplier consistent with fulfilling the Purchase Order.

## **3 Supply of Services**

3.1 In consideration of the amounts due under this Agreement, the Supplier will, from the date set out in the Purchase Order or Award Letter; provide the Services to the Customer for the Term, in accordance with the terms and conditions with this Agreement.

3.2 In providing the Services, the Supplier will:



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- 3.2.1 co-operate with the Customer in all matters relating to the Services, and comply with all the Customer's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
  - 3.2.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;
  - 3.2.4 ensure that the Services will conform with all descriptions and specifications set out in the Specification;
  - 3.2.5 comply with all applicable laws; and
  - 3.2.6 provide all equipment, tools and vehicles and such other items as are required to provide the Services.
- 3.3 If the Supplier provides Services from the Customer's premises, on completion of the Services, or termination or expiry of this Agreement (whichever is the earlier) the Supplier will vacate the Customer's premises, remove his plant, equipment and unused materials and will clear away from these premises all rubbish arising out of the Services and leave the premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.
- 3.4 The Customer may inspect and examine the manner in which the Supplier supplies the Services, at the Premises, during normal business hours, on reasonable notice.

## **4 Representations and Warranties**

- 4.1 The Supplier warrants that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Agreement, and that this Agreement is executed by a duly authorised representative of the Supplier.

## **5 Variation of the Services**

- 5.1 The Customer reserves the right to vary the Services required, should this at any time become necessary. In the event of any variation to the scope of the Services, the Charges will be subject to fair and reasonable adjustment to be agreed between the Customer and the Supplier.

## **6 Charges and Payment**

- 6.1 The Charges for the Services will be as set out in the Purchase Order or Award Letter, and will be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges will include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.2 The Supplier will invoice the Customer as specified in the Agreement. Each invoice will include such supporting information required by the Customer to verify the accuracy of the invoice including but not limited to the relevant Purchase Order number and a breakdown of the Services supplied in the invoice period.
- 6.3 In consideration of the supply of the Services by the Supplier, the Customer will pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order number. Payments may be withheld or reduced by the Customer in the event of unsatisfactory performance without prejudice to the Customer's other rights and remedies under this Agreement.
- 6.4 Where the Supplier enters into a sub-contract for the purpose of performing its



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obligations under this Agreement, it will ensure that a provision is included in such sub-contract which requires 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.

- 6.5 All amounts stated are exclusive of VAT which will be charged at the prevailing rate. The Customer will, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable on the services supplied.
- 6.6 If there is a dispute as to the amount invoiced the Customer will pay the undisputed amount.
- 6.7 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer will pay the Supplier interest at a rate which will compensate for such loss as has been directly caused by the late payment. The interest rate will not be at a rate higher than the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998. Any disputed amounts will be resolved through the dispute resolution procedure detailed in clause 40.
- 6.8 The Supplier will not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement for a failure to pay undisputed sums in accordance with clause 15.2.

## **7 Recovery of Sums Due**

- 7.1 If any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Agreement) under this Agreement, that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under this Agreement or under any other agreement or contract with the Customer or with any department, agency or authority of the Crown. The Supplier will 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.

## **8 Property**

- 8.1 If necessary, the Customer will provide the Supplier with reasonable access at reasonable times to their premises for the purpose of providing the Services.
- 8.2 All equipment, tools and vehicles brought onto the Premises will be at the Supplier's risk.
- 8.3 Any equipment provided by the Customer for the purpose of this Agreement will remain property of the Customer and will only be used for the purpose of carrying out this Agreement, and will be returned promptly to the Customer on expiry or termination of this Agreement.
- 8.4 The Supplier will reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by any Staff. Equipment supplied by the Customer will be deemed to be in a good condition when received by the Supplier unless the Customer is notified otherwise in writing within seven days.

## **9 Key Personnel**

- 9.1 Any Key Personnel will not be released from supplying the Services without the Agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 9.2 Any replacements to the Key Personnel will be subject to the agreement of the Customer (not to be unreasonably withheld). Such replacements will 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.



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## **10 Inspection of premises**

10.1 The Supplier is deemed to have inspected the Premises before submitting its tender so as to have understood the nature and extent of the Services to be carried out and is satisfied in relation to all matters connected with the performance of its obligations under this Agreement.

## **11 Insurance**

11.1 The Supplier will effect and maintain (for the Term and for 1 year following the end of the Term), with a reputable insurance company, a policy or policies of insurance providing an adequate level of cover in respect of (i) all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under this Agreement; (ii) public liability insurance; and (iii) professional indemnity insurance (where appropriate).

11.2 The Supplier will give to the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

11.3 The insurance may be limited in respect of one claim (but not in any other respect) provided that any such limit will be at least £100K.

## **12 Intellectual Property Rights**

12.1 All intellectual property rights in any materials (i) provided by the Customer to the Supplier for the purposes of this Agreement will remain the property of the Customer; and (ii) prepared by or for the Supplier solely for delivery of the Services under this Agreement, will vest in the Customer. If, and to the extent, that such materials do not vest automatically in the Customer, the Supplier hereby assigns (with full title guarantee and free from all third party rights) all intellectual property rights in such materials to the Customer.

12.2 The Supplier hereby grants to the Customer a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any intellectual property rights that the Supplier owns, or has developed, prior to the Commencement Date of this Agreement and which the Customer reasonably requires in order to exercise its rights and take the benefit of this Agreement including the Services provided.

12.3 The Supplier will indemnify, and keep indemnified, the Customer in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable 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 arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier, its employees, agents or subcontractors.

## **13 Assignment and sub-contracting**

13.1 The Supplier will 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 this Agreement or any part thereof. 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 will be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

13.2 Where the Supplier enters into a sub-contract with a supplier or Supplier for the purpose



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of performing its obligations under this Agreement, it will comply with clause 6.4.

- 13.3 Where the Customer has consented to the placing of sub-contracts copies of each sub-contract, will at the request of the Customer, be sent by the Supplier to the Customer as soon as is reasonably practicable.
- 13.4 The Customer may assign, novate, or otherwise dispose of its rights and obligations under this Agreement without the consent of the Supplier provided that such assignment, novation or disposal will not increase the burden of the Supplier's obligations under this Agreement.

## 14 Term

- 14.1 This Agreement will take effect on the date specified in Award Letter or the Purchase Order and will expire on the Expiry Date, unless it is otherwise terminated in accordance with the terms and conditions of this Agreement.

## 15 Termination

- 15.1 Without prejudice to any other right or remedy it might have, the Customer may terminate this Agreement by written notice to the Supplier with immediate effect if:
- 15.1.1 the Customer gives the Supplier 1 month's written notice, unless the Agreement is less than 3 months in duration in which case 2 weeks' notice will be given;
- 15.1.2 the Supplier is in material breach of any obligation which is not capable of remedy;
- 15.1.3 the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 15.1.4 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;
- 15.1.5 the Supplier undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988; or
- 15.1.6 the Supplier becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 15.1.6) in consequence of debt in any jurisdiction.
- 15.2 The Supplier may terminate this Agreement if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 15.3 Termination or expiry of this Agreement will not affect the continuing rights under clauses 2, 3.2, 3.3, 8, 11, 16, 24, 25, 26, 30, 32, 38 and 40.

## 16 Consequences of termination/expiry

- 16.1 Upon termination or expiry of this Agreement, the Supplier will:
- 16.1.1 give all reasonable assistance to the incoming supplier of the Services.
- 16.1.2 return all requested documents, information and data to the Customer as soon as reasonably practicable.

## 17 Variation

- 17.1 This Agreement cannot be varied except in writing signed by a duly authorised



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representative of both the parties.

## **18 Prevention of Corruption**

- 18.1 The Supplier will not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 18.2 If the Supplier, its Staff or anyone acting on the Supplier's behalf, engages in conduct prohibited by clauses 18.1, the Customer may:
  - 18.2.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 18.2.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of those clauses.

## **19 Prevention of Fraud**

- 19.1 The Supplier will take all reasonable steps, in accordance with good industry practice, to prevent fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 19.2 The Supplier will notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 19.3 If the Supplier or its Staff commits fraud in relation to this or any other contract with the Crown (including the Customer) the Customer may:
  - 19.3.1 terminate this Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or
  - 19.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

## **20 The Contracts (Rights of Third Parties) Act 1999**

- 20.1 A person who is not a Party to the Agreement will have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

## **21 Health and Safety**

- 21.1 The Supplier will promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer will promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 21.2 While on the Customer's premises, the Supplier will comply with all health and safety measures.
- 21.3 The Supplier will notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.



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## **22 Discrimination**

- 22.1 The Supplier will not unlawfully discriminate within the meaning and scope of the Equality Act 2006, the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 22.2 The Supplier will take all reasonable steps to secure the observance of clause 22.1 by all Staff.

## **23 Environmental Requirements**

- 23.1 The Supplier will provide the Services in accordance with the Customer's environmental policy.

## **24 Data Protection Act**

- 24.1 The Supplier and all its Staff will comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.
- 24.2 Notwithstanding the general obligation in clause 24.1, where the Supplier is processing Personal Data (as defined by the DPA) as a Data Processor for the Customer (as defined by the DPA) the Supplier will ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
  - 24.2.1 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
  - 24.2.2 promptly notify the Customer of:
    - (a) any breach of the security measures to be put in place pursuant to this clause; and
    - (b) any request for personal data;
  - 24.2.3 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.

## **25 Information Assurance**

- 25.1 When handling Customer data, the Supplier will ensure the security of the data is maintained in line with the protective marking given to that data by the Customer, and by adopting the appropriate elements of the Cabinet Office Security Policy Framework and supporting documents and any successors thereof as agreed with the Customer and set out in the Award Letter or Specification.
- 25.2 The Customer reserves the right to inspect the physical location of the data store or processing, back-up arrangements and review at appropriate intervals to be agreed with the Customer any information assurance processes and procedures in place.

## **26 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**

- 26.1 The Supplier will comply with, and will ensure that its Staff comply with, the provisions of:
  - (a) the Official Secrets Acts 1911 to 1989; and
  - (b) Section 182 of the Finance Act 1989.





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26.2 In the event that the Supplier or its Staff fail to comply with this clause, the Customer reserves the right to terminate the Agreement by giving notice in writing to the Supplier.

## **27 Freedom of Information**

27.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and will provide all necessary assistance to the Customer to enable it to comply with all Information disclosure obligations.

27.2 The Customer may request the Supplier to provide information in its possession in a specific form and the Supplier will respond within 5 working days.

27.3 The Customer has absolute discretion, notwithstanding any other provision in this Agreement, to determine whether Information is exempt from disclosure.

27.4 The Supplier should not respond to any Request for Information under the FOIA in respect of information held on behalf of the Customer. The Supplier will forward the Request to the Customer promptly and notify the applicant that the Customer will respond to the Request.

27.5 The Supplier acknowledges that (notwithstanding the provisions of this clause and the provisions of clause 33) the Customer may be obliged to disclose information concerning the Supplier or the Services in certain circumstances:

- (a) without consulting the Supplier; or
- (b) following consultation with the Supplier and having taken their views into account; where clause 27.5(a) applies the Customer will, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

27.6 The Supplier will ensure that all Information relevant to this Agreement is retained for disclosure and if requested, permit the Customer to inspect it.

## **28 Publicity, Media and Official Enquiries**

28.1 Without prejudice to the Customer's obligations under the FOIA, neither Party will make any press announcement or publicise this Agreement or any part thereof in any way, except with the prior written consent of the other Party.

28.2 Both Parties will take reasonable steps to ensure that their servants, employees, agents, sub-Suppliers, suppliers, professional advisors and consultants comply with clause 28.1.

## **29 Security**

29.1 The Customer will be responsible for maintaining the security of their premises in accordance with its standard security requirements. While on the Customer's premises the Supplier will comply with all security requirements, and will ensure that all Staff comply with such requirements.

28.2 Where the Services are provided from the Suppliers premises, the Supplier will, at their own cost, comply with all security requirements specified by the Customer in writing.

## **30 Supplier's Staff**

30.1 The Customer may, by giving written notice to the Supplier:

- (a) refuse to admit onto, or withdraw permission to remain on, their premises to any member of the Staff or any person employed or engaged by any member of the Staff;



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- (b) require that a person or Staff is not to become involved in, or is to be removed from involvement in the performance of, the Contract; and
- (c) require that the Supplier replace 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.

30.2 The Supplier will comply with any clause 30.1 notice.

30.3 If requested, the Supplier will provide 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 this Agreement.

30.4 The Supplier's Staff will comply with any rules, regulations and requirements specified by the Customer.

30.5 If the Supplier fails to comply with clause 30.2 within 1 month of the date of the request and in the reasonable opinion of the Customer such failure may be prejudicial to the interests of the Crown then the Customer may terminate the Agreement, provided always that such termination will not prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to the Customer.

30.6 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with clause 30.2 will be final and conclusive.

30.7 The Supplier will comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

30.8 The Customer may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Criminal Records Bureau check as per the Staff Vetting Procedures. The Supplier will ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged in the provision of any part of the Services.

## **31 Audit**

31.1 The Supplier will 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 Services supplied under it, all expenditure reimbursed by the Customer, and all payments made by the Customer. The Supplier will 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.

## **32 Transparency**

32.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not confidential. The Customer will be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

32.2 Notwithstanding any other term of this Agreement, the Supplier hereby gives his consent for the Customer to publish the Agreement in its entirety, but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted, including from time to time agreed changes to the Agreement, to the general public.



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## **33 Confidentiality**

33.1 (Subject to clause 26 and 27) each Party will keep confidential and not disclose, and will procure that his employees and the employees of any sub-contractor keep confidential and do not disclose, any information of a confidential nature obtained by him (concerning the other Party) by reason of this Agreement except information which

- (a) is in the public domain otherwise than by reason of a breach of this provision;
- (b) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (c) was in a Party's possession without restriction as to its disclosure prior to receiving such information from the other Party;
- (d) is required to be disclosed by law (including under the FOIA and Environmental Information Regulations), or for the purposes of audit or regulatory requirements;
- (e) is necessary for a Party to disclose for the purposes of the performing its obligations under this Agreement (but only to the extent it is necessary to do so);
- (f) the other Party has given its specific express prior written consent can be disclosed;
- (g) in the case of the Customer, disclosed to any other government department provided that such government department will comply with confidentiality provisions in respect of such disclosed information which are no less onerous than this clause.

33.2 The provisions of this clause will apply during the continuance of this Agreement and after its expiry or termination howsoever arising.

## **34 Force Majeure**

34.1 Neither Party will have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party (those circumstances excluding any industrial action occurring within the Supplier's organisation).

34.2 The Party affected by such circumstances will promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months, either Party may terminate this Agreement by written notice to the other Party.

## **35 Entire agreement**

35.1 This Agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this clause will exclude liability for fraud or fraudulent misrepresentation.

## **36 Waiver**

36.1 Any waiver or relaxation either partly, or wholly of any of the conditions of the Agreement will be valid only if it is communicated to the other party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract will not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

## **37 Agency, partnership etc**

37.1 This Agreement will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

## **38 Remedies cumulative**



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38.1 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement (whether under this Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

## **39 Severance**

39.1 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

## **40 Dispute Resolution**

40.1 The parties will attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement. If the dispute cannot be resolved by the parties within a reasonable period, the dispute may, by agreement between the parties, be referred to a neutral adviser or mediator ("the Mediator") chosen by agreement between the parties. If they are unable to agree a Mediator or if the chosen Mediator is unable or unwilling to act either party will be able to apply an appropriate mediation provider to appoint a Mediator. Within 10 Working Days of appointing the Mediator, the parties will meet with the Mediator to agree a procedure for negotiations.

40.2 All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings. The parties agree to be bound by any written agreement once signed by both parties. If the parties fail to appoint a Mediator, or fail to reach agreement within one month of the Mediator being appointed, either party may exercise any remedy that it has under this Agreement.

## **41 Notices**

41.1 Any notice to be given under this Agreement will be in writing and will be sent by first class mail or air mail, or by facsimile or e-mail (confirmed by first class mail or air mail), to the address of the relevant Party set out in the Purchase Order or Award Letter, or such other address or facsimile number as that Party may from time to time notify to the other Party in accordance with this clause.

41.2 Notices sent as above will be deemed effectively given on the day when in ordinary course of the means of transmission, it would first be received by the addressee in normal business hours.

## **42 Governing Law and Jurisdiction**

42.1 The validity, construction and performance of this Agreement, and all contractual and non-contractual matters arising out of it, will be governed by English law and will be subject to the exclusive jurisdiction of the English courts to which the Parties submit.