

IT Services Terms and Conditions

1 Interpretation

1.1 In these terms and conditions:

“Charges”	means the charges for the Services as specified in the Order;
“Customer”	means the person named as Customer in the Order;
“DPA”	means the Data Protection Act 1998;
“Expiry Date”	means the date for expiry of the Agreement as set out in the Order;
“Key Personnel”	means any persons specified as such in the Order or otherwise notified as such by the Customer to the Supplier in writing;
“Party”	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the DPA) which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Services”	means the services to be supplied by the Supplier to the Customer under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the Order;
“Staff”	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 Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Order;
“Term”	means the period from the start date of the Agreement set out in the Order to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the 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.

2 Basis of Agreement

- 2.1 The Order constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Order shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Order countersigned by the Supplier.

3 Supply of Services

- 3.1 In consideration of the Customer’s agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:

- 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 use Staff 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 the Agreement;
 - 3.2.3 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 3.2.4 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the 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 Order and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2.
- 4.2 The Customer may extend the Agreement for a period of up to 6 months by giving not less than 60 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 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 Services.
- 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 Services supplied in the invoice period.
- 5.3 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after the receipt of a valid invoice.
- 5.4 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. Any disputed amounts shall be resolved through the dispute resolution procedure.
- 5.5 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.
- 5.6 Expenses shall be charged on top of any charges.

6 Premises and equipment

- 6.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2 Without prejudice to clause 3.2.4, 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 Staff and Key Personnel

- 7.1 The Supplier shall:
- 7.1.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 7.1.2 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
 - 7.1.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 7.2 Any Key Personnel shall 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.
- 7.3 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). 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.

8 Governance and Records

- 8.1 The Supplier shall:
- 8.1.1 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
 - 8.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.

9 Protection of Personal Data and Security of Data

- 9.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA which arise in connection with the Agreement.
- 9.2 Notwithstanding the general obligation in clause 9.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the DPA) the Supplier shall:
- 9.2.1 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;
 - 9.2.2 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;
 - 9.2.3 promptly notify the Customer of:
 - (a) any breach of the security requirements of the Customer as referred to in clause 9.3; and
 - (b) any request for personal data; and
 - 9.2.4 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.

- 9.3 When handling Customer data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

10 Liability

- 10.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 10.2 Subject always to clauses 10.3:
- 10.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
- 10.2.2 In no event shall the Supplier be liable to the Customer for any:
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect, special or consequential loss or damage.
- 10.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 10.3.1 death or personal injury caused by its negligence or that of its Staff;
- 10.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
- 10.3.3 any other matter which, by law, may not be excluded or limited.

11 Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall 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 two months, either Party may terminate the Agreement by written notice to the other Party.

12 Compliance

- 12.1 The Supplier shall 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 shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 12.2 The Supplier shall:
- 12.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
- 12.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

- 12.3 The Supplier shall perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
- 12.4 The Supplier shall supply the Services in accordance with the Customer's relevant policies as provided to the Supplier from time to time.

13 Prevention of Fraud and Corruption

- 13.1 The Supplier shall 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.
- 13.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 13.3 If the Supplier or the Staff engages in conduct prohibited by clause 13.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
 - 13.3.1 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
 - 13.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

14 Dispute Resolution

- 14.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 14.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 14.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 14.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

15 General

- 15.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 15.2 A person who is not a party to the Agreement shall 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 the Parties.
- 15.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 15.4 The 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 the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

- 15.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall 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 shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

16 Notices

- 16.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 16.3, e-mail to the address of the relevant Party set out in the Order, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 16.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 16.3 Notices under Force Majeure and Termination may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 16.1.

17 Governing Law and Jurisdiction

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