

CONDITIONS OF PURCHASE FOR GOODS AND SERVICES (April 2022)

1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions ("Conditions"):

"Affiliate" means in relation to a Party, any entity that directly or indirectly Controls, is Controlled by, or is under common Control with that Party from time to time;

"Agreement" means the Purchase Order, these Conditions and the Specification;

"Background IPR" means the Intellectual Property Rights in the Goods and/or in any process, device, tool or technique used by a Party in fulfilling its obligations under the Agreement and which Intellectual Property Rights already exist at the date of the Agreement or are generated otherwise than through the performance of work under the Agreement;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and **"Controls"** and **"Controlled"** shall be construed accordingly;

"Data Protection Legislation" has the meaning given to it in Clause 26.1;

"Deliverables" means all documents, data and materials developed by or on behalf of the Supplier in performing the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, specifications and reports (including drafts) and all updates, additions and revisions to them (excluding the Goods);

"Foreground IPR" means Intellectual Property Rights arising out of the performance of any work by either Party under the Agreement including those generated by or on behalf of the Supplier in the course of supplying the Goods and/or Services, but excluding Background IPR;

"Good Industry Practice" means the exercise of that degree of skill, care, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor who is to supply the Services and is seeking in good faith to comply with its obligations under the Agreement;

"Goods" means any goods, materials or articles (including any part or parts of them) to be supplied to the Purchaser by the Supplier pursuant to the Agreement, as set out in the Specification;

"Intellectual Property Rights" means all inventions, patents, registered designs, design rights, database rights, and copyrights, know-how and trademarks (whether registered or not) and the goodwill attaching to any of them and applications for any of them and any right or forms of protection of a similar nature and having equivalent or similar effect to any of them which may subsist anywhere in the world;

"OEM" means original equipment manufacturer;

"Party" means either the Purchaser or the Supplier as applicable, together being the **"Parties"**;

"Purchase Order" means the Purchaser's written instruction to supply the Goods and/or the Services, including any the documents attached to, or referred to in, the Purchase Order;

"Purchaser" means Naimuri Limited (company number 09316579) whose registered office is at Cody Technology Park, Ively Road, Farnborough, Hampshire, GU14 0LX;

"Services" means any services or work, including any Deliverables, to be provided by the Supplier pursuant to the Agreement, as set out in the Specification;

"Specification" means the description or specification for the Goods and/or Services agreed in writing by the Parties, including any statements of work, descriptions or other documents attached to, or referred to in, the Purchase Order;

"Supplier" means the company, firm or individual named as such on the Purchase Order;

"Supplier Staff" means all persons employed and/or engaged by the Supplier to perform the Supplier's obligations under the Agreement, including but not limited to its directors, officers, employees and agency workers and those of its sub-contractors, agents, representatives and advisers; and

"Term" means the term of the Agreement as determined in accordance with Clause 3.1.

1.2 In the Agreement, references to:

1.2.1 any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;

1.2.2 the masculine include the feminine and the neuter and vice versa;

1.2.3 the singular include the plural and vice versa;

1.2.4 Clauses are references to the clauses set out in these Conditions;

1.2.5 the Agreement or to any other agreement or document is a reference to the Agreement or such other agreement or document, in each case as varied from time to time; and

1.2.6 any words following the terms "including", "include" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, descriptions, definition, phrase or term preceding those terms.

1.3 The headings to these Conditions will not affect their interpretation.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions are the only conditions upon which the Purchaser is prepared to deal with the Supplier and they shall govern the Agreement to the entire exclusion of all other conditions. The Supplier waives any right which it might otherwise have to rely on its terms and conditions.
- 2.2 Unless acceptance of these Conditions by the Supplier expressly occurs at an earlier time, the commencement of work by the Supplier in connection with the supply of the Goods and/or performance of the Services shall be deemed to be conclusive evidence of the Supplier's acceptance of these Conditions.
- 2.3 In the event of any conflict between these Conditions and the terms of the Purchase Order, the wording on the face of the Purchase Order will prevail.

3. TERM

- 3.1 The Agreement shall commence on the date of acceptance or deemed acceptance of these Conditions in accordance with Clause 2.2 and continue until completion of the Parties' obligations under the Agreement or the date of termination of the Agreement in accordance with these Conditions.

4. QUALITY

- 4.1 The Goods and Services shall conform in all respects with the requirements of the Agreement (including any variations made in accordance with Clause 22.1).
- 4.2 The Goods shall be safe, durable, free from defects in design, materials and workmanship, fit for the purpose for which they are supplied and for any other purpose made known to the Supplier by the Purchaser in writing, and the Services shall be performed in accordance with Good Industry Practice.
- 4.3 Unless otherwise stated in the Agreement, the Goods and Services shall:
- 4.3.1 conform to all relevant British and European standards (or equivalent); and
 - 4.3.2 comply with the requirements of any applicable statutes, orders, regulations or bylaws from time to time in force, including those relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods and Services.
- 4.4 If any of the Goods or Services fail to conform to any of the provisions in this Clause 4, the Purchaser shall be entitled to any remedies available at law or under the Agreement.
- 4.5 The Supplier shall at all times during the Term maintain a suitable quality management system such as one which complies with the principles of ISO 9001. For the avoidance of doubt, this does not extend to a requirement on the Supplier to obtain certification under ISO 9001.
- 4.6 Unless otherwise stated in the Agreement, the Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits required to carry out its obligations under the Agreement, including those referred to in Clause 27 (US Import and Export Compliance) and Clause 28 (Non-US Import and Export Compliance).

5. DELIVERY OF GOODS / PERFORMANCE OF SERVICES

- 5.1 The Goods shall be delivered by the Supplier carriage and insurance paid to the place stated in the Purchase Order or such other place of delivery as is specified by the Purchaser in writing prior to delivery of the Goods and in accordance with any additional instructions stated on the Purchase Order. Unless otherwise agreed by the Parties in writing, delivery shall occur only when the Supplier has unloaded the Goods at the place of delivery and/or the Goods have been signed for by or on behalf of the Purchaser.
- 5.2 Time for delivery shall be of the essence. The Goods shall be delivered on the date stated in the Agreement or, if no such date is stated, within twenty-eight (28) days of the date of the Purchase Order. The Services shall be performed and the Deliverables delivered by the times specified in the Agreement.
- 5.3 Goods shall be delivered to, and only accepted by, the Purchaser during the following hours:
- Monday – Thursday: 08.00 – 16.00 hours
- Friday: 08.00 – 15.00 hours
- 5.4 If the Goods are delivered to the Purchaser in excess of the quantities ordered, the Purchaser shall not be bound to pay for the excess. The excess will remain at the Supplier's risk and will be returnable at the Supplier's expense.
- 5.5 In addition to any express obligations set out in the Agreement, the Supplier shall provide the Purchaser with:
- 5.5.1 regular progress updates and/or attend progress meetings in relation to the Supplier's performance under the Agreement, as reasonably requested by the Purchaser from time to time; and
 - 5.5.2 such data as the Purchaser may reasonably require from time to time in order to meet its own reporting requirements and any reporting requirements under relevant customer contracts.

6. LABELLING AND PACKING

- 6.1 The Supplier shall ensure that each delivery is accompanied by:
- 6.1.1 a delivery note which shows the Purchase Order number, the type and quantity of the Goods and, in the case of part delivery, the outstanding balance remaining to be delivered; and
 - 6.1.2 any other documents required by the Agreement.
- 6.2 The Supplier shall ensure that the Goods shall be packed and marked in a proper manner. The details of the contents shall be clearly marked on each container and all containers of hazardous materials shall bear prominent and adequate warnings in English and must be accompanied by emergency information in English, in the form of written instructions, labels or similar markings. Unless otherwise agreed, no packaging materials will be returned.

7. TITLE AND RISK

- 7.1 Unless otherwise specified in the Agreement, the Goods shall remain at the risk of the Supplier until delivery to the Purchaser pursuant to Clause 5 is complete. Unless the Goods are rejected pursuant to Clause 8, title to the Goods shall pass to the Purchaser at the time of delivery or at the time of payment for the Goods if payment occurs earlier than the time of delivery.
- 7.2 Where the work under the Agreement involves the Supplier being given custody or control of equipment, assets or other property of the Purchaser (or any customer of the Purchaser or other party on whose behalf the Purchaser is acting), then such equipment, assets or property shall be at the risk of the Supplier whilst they are in the Supplier's custody or control (which shall include any period where the equipment, assets or property are being transported using a carrier arranged by the Supplier).

8. INSPECTION AND REJECTION

- 8.1 The Purchaser shall have the right to inspect and test the Goods and any Deliverables prior to or within a reasonable time after their delivery, at such times as the Purchaser may reasonably require.
- 8.2 If the Goods or Services do not conform to the Agreement, including the Specification and any other requirements referred to in the Agreement, the Purchaser may serve a written remediation notice on the Supplier, requiring it immediately to take such action as is necessary to ensure conformity to the reasonable satisfaction of the Purchaser. Such action may include providing replacement Goods and/or re-performing the Services. Where the Agreement contains acceptance criteria relating to the delivery of the Goods and/or Services, these shall apply in addition to the provisions of this Clause.
- 8.3 Notwithstanding Clause 8.2, where any Goods or Services do not conform to the Agreement, the Purchaser shall be entitled to exercise any remedies available at law or under the Agreement.
- 8.4 Any omission by the Purchaser to undertake, or any approval given during or after, such inspection or testing shall not constitute a waiver of any of the Purchaser's rights or remedies in respect of the Goods or Services. Any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Agreement.

9. PRICE AND PAYMENT

- 9.1 The price of the Goods and Services shall be as stated in the Purchase Order and shall, unless otherwise agreed in writing by the Purchaser, be exclusive of value added tax or other equivalent sales taxes (**VAT**) but inclusive of all other charges. The Purchaser shall pay the price of the Goods and Services net of any deductions or withholding taxes required by law.
- 9.2 The Supplier may invoice the Purchaser on completion of the milestone(s) specified in the Purchase Order or (where no milestones are specified) when the Goods and any Deliverables have been delivered. The Supplier shall, in any event, invoice the Purchaser within six (6) months of completion of the work under the Agreement. If the Purchaser has to investigate its own records to deal with payment queries after six (6) months, the reasonable costs of so doing may be deducted from the amount due.
- 9.3 The Purchaser may, at its option, require the Supplier to submit all invoices for work carried out under the Agreement to the invoice address given on the Purchase Order or via its electronic invoicing system, details of which are also set out on the Purchase Order. The same invoice must not be sent via both methods. Unless otherwise specified in the Purchase Order, the Purchaser shall pay the price of the Goods and Services which meet the requirements of the Agreement within thirty (30) days of (a) receipt of a valid VAT invoice at the invoice address given on the Purchase Order; or (b) the date when the invoice is submitted for payment to the Purchaser's electronic invoicing system.
- 9.4 Any invoice which, when taking into account all other invoices already submitted, is for a cumulative value above that of the Purchase Order will be rejected by the Purchaser.
- 9.5 The Purchaser cannot guarantee to make payment on time for any invoice which is not sent to its official Accounts Payable address as detailed on the Purchase Order.
- 9.6 The Supplier shall not be entitled to claim any payment following the expiry of one (1) year after the date of completion of the supply of the Goods or Services to which they relate.
- 9.7 Without prejudice to any other rights or remedies, the Purchaser reserves the right to set off any amount owing at any time from the Supplier to the Purchaser against any amount due to the Supplier under the Agreement.
- 9.8 If the Purchaser fails to pay any sum properly due pursuant to the Agreement, the Purchaser shall, upon written request, pay simple interest to the Supplier on such sum from the due date for payment specified in Clause 9.3 at an annual rate equivalent to the base lending rate from time to time of Barclays Bank plc plus 2 percentage points. Such interest shall accrue on a daily basis until payment is made.

10. WARRANTY

- 10.1 Unless otherwise specified in the Purchase Order, the Goods and any Deliverables shall comply with the requirements of the Agreement for twelve (12) months from putting into service or eighteen (18) months from the date of delivery in accordance with Clause 5, whichever shall be the shorter.
- 10.2 If the Purchaser, within the warranty period or within thirty (30) days thereafter, gives written notice to the Supplier of any defect in any Goods or Deliverables arising during the warranty period under proper and normal use, the Supplier shall, without prejudice to any other rights or remedies which the Purchaser may have, immediately take such action as is necessary to remedy the defects (whether by repair, replacement or re-performance as the Purchaser shall elect) at the Supplier's expense.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 Ownership of Background IPR shall remain unaffected by the terms of the Agreement. Accordingly, all Intellectual Property Rights in any statements of work, specifications, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Supplier by the Purchaser shall, subject to the rights of third parties, remain vested solely in the Purchaser.
- 11.2 The purchase price for the Goods and Services includes all the irrevocable, perpetual, worldwide, non-exclusive, royalty-free rights (with a right to grant sub-licences) for the Purchaser to use all Background IPR of the Supplier incorporated in the Goods and Deliverables for the purpose of receiving and using the Goods, Deliverables and/or Services and for its own business purposes.
- 11.3 The Supplier hereby assigns to the Purchaser, with full title guarantee and free from all third party rights, all Foreground IPR generated by or on behalf of the Supplier.

- 11.4 The Supplier shall keep the Purchaser indemnified in full against all liability, actions, suits, claims, demands, losses, charges, costs and expenses (including legal and other professional fees and expenses) incurred by the Purchaser as a result of or in connection with any infringement or alleged infringement of any Intellectual Property Rights caused by the use, manufacture or supply of the Goods and/or Services (as applicable).

12. INSURANCE

- 12.1 During the Term and for a period of one (1) year thereafter, the Supplier will take out and maintain with a reputable insurer insurance policies in respect of its liabilities under or in connection with the Agreement, including: (i) employer's liability insurance; (ii) public liability insurance (with product liability cover where the Supplier is supplying Goods); and (iii) professional indemnity insurance (where the Supplier is supplying Services), in each case with the level of cover agreed in writing with the Purchaser or, in the absence of such agreement, with a level of cover appropriate for the Goods and Services to be supplied under the Agreement. The Supplier will provide all facilities, assistance and advice reasonably required by the Purchaser or the Purchaser's insurers for the purpose of dealing with any action, claim or matter arising out of the Supplier's performance of the Agreement.
- 12.2 The Supplier shall produce to the Purchaser upon request, copies of a broker's verification of insurance to demonstrate that the required insurance cover referred to in Clause 12.1 is in place. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under the Agreement.
- 12.3 This Clause 12 shall survive termination or expiry of the Agreement.

13. TERMINATION

- 13.1 The Purchaser shall have the right at any time to terminate the Agreement (in whole or in part) for convenience by giving the Supplier not less than thirty (30) days' written notice, whereupon all work on the Agreement (or the part of the Agreement so terminated) shall be discontinued. The Supplier will take all reasonable steps to mitigate the effects of termination. Upon termination under this Clause 13.1, the Purchaser shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any indirect or consequential loss nor shall it exceed the price that would have been payable to the Supplier if the Agreement (or the relevant part of the Agreement) had not been terminated. Title in all Goods and any Deliverables shall pass to the Purchaser on such payment, and (if not already delivered) shall be delivered to the Purchaser at that time.
- 13.2 Either Party shall have the right to terminate at any time by giving the other Party written notice to terminate the Agreement immediately if:
- 13.2.1 the other Party commits a material breach of the Agreement which (if capable of remedy) it fails to remedy within thirty (30) days of receipt of written notice of the same;
 - 13.2.2 the other Party repeatedly breaches any of the terms of the 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 the Agreement;
 - 13.2.3 any distress, execution or other process is levied upon any of the assets of the other Party;
 - 13.2.4 the other Party agrees to any kind of composition, rescheduling, scheme, compromise or arrangement involving it and its creditors generally (or any class of them) as a result of financial difficulties;
 - 13.2.5 an order is made or an effective resolution is passed for the other Party's winding up (except for the purposes of amalgamation or reconstruction as a solvent company), or if a petition is presented to court, or if a receiver/manager, administrative receiver or administrator is appointed in respect of the whole or any part of the other Party's undertaking or assets;
 - 13.2.6 any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 13.2.3 to 13.2.5 inclusive;
 - 13.2.7 the other Party ceases or threatens to cease to carry on its business; or
 - 13.2.8 the financial position of the other Party deteriorates to such an extent that, in the reasonable opinion of the non-defaulting Party, the capability of the other Party to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 13.3 The expiry or termination of the Agreement, however arising, will be without prejudice to the rights and obligations of the Parties which have accrued prior to expiry or termination. The provisions of Clauses 10 (Warranty), 11 (Intellectual Property Rights), 12 (Insurance), 13.3, 14 (Remedies), 16 (Confidentiality), 17 (Assignment and Sub-contracting), 18 (Publicity), 22 (Miscellaneous), 29 (Dispute Resolution) and 30 (Governing Law and Jurisdiction) shall survive expiry or termination of the Agreement, together with any provisions hereof which by their nature should survive the expiry or termination of the Agreement.

14. REMEDIES

- 14.1 Without prejudice to any other rights or remedies which the Purchaser may have under the Agreement or otherwise, if any Goods or Services are not supplied in accordance with, or the Supplier fails to comply with, the Agreement and the Supplier has failed to remedy such breach of the Agreement within thirty (30) days of receipt of a written remediation notice from the Purchaser, the Purchaser shall be entitled to avail itself of one or more of the following remedies, whether or not any part of the Goods or Services have been accepted by the Purchaser:
- 14.1.1 to require the Supplier to provide replacement Goods and/or re-perform the Services;
 - 14.1.2 to reject the Goods (in whole or in part) and return them to the Supplier, at the risk and cost of the Supplier, on the basis that a full refund for the defective Goods shall be immediately paid by the Supplier;
 - 14.1.3 to refuse to accept or pay for any further deliveries of the Goods or Services but without any liability to the Supplier;
 - 14.1.4 to carry out, at the Supplier's expense, any work necessary to make the Goods or Services comply with the Agreement, including obtaining the Goods or Services in substitution from another supplier; and
 - 14.1.5 to claim such damages as may have been sustained as a result of the Supplier's breaches of the Agreement.

15. HEALTH, SAFETY AND SECURITY

- 15.1 The Supplier shall ensure that the Goods are designed and/or constructed and the Services are supplied so as to be safe for persons using or affected by the same.

- 15.2 The Supplier represents and warrants that the Supplier has made available to the Purchaser adequate health and safety information about the Goods and/or Services and about any conditions necessary to ensure that when put to use the Goods and/or Services will be safe.
- 15.3 The Supplier shall immediately notify the Purchaser in the event that the Supplier, the Supplier Staff or the Supplier's subcontractors commit any incidents in connection with the performance of the Agreement that give rise to:
- 15.3.1 obligations under applicable health and safety law for reporting of injuries, diseases and dangerous occurrences;
- 15.3.2 a breach of applicable health and safety law or the site requirements in force at the premises of the Purchaser or its customer (as the case shall require); or
- 15.3.3 an investigation or inquiry by the Health & Safety Executive or any other public body or authority.
- 15.4 The Supplier shall (and will procure that the Supplier Staff):
- 15.4.1 where applicable, abide by the provisions of the Official Secrets Acts 1911 to 1989;
- 15.4.2 obtain any security clearances required to perform the Agreement and provide such evidence as the Purchaser may reasonably require to verify that the security clearances are in place;
- 15.4.3 manage all security clearances sponsored by the Supplier in accordance with the relevant obligations imposed by the issuing authority;
- 15.4.4 comply with the Purchaser's reasonable security policies and requirements;
- 15.4.5 inform the Purchaser immediately it becomes aware of any breach by the Supplier Staff of any secrecy or security obligation relating to the Agreement; and
- 15.4.6 co-operate with any investigation relating to breaches of secrecy or security.
- 15.5 Where any access to the premises of the Purchaser or its customer is necessary in connection with the delivery of the Goods or performance of the Services, the Supplier shall (and will procure that the Supplier Staff):
- 15.5.1 only enter such premises for the purpose of performing the Agreement;
- 15.5.2 obtain any necessary permission to proceed from the Purchaser and complete any required Purchaser induction training before commencing work at the premises; and
- 15.5.3 at all times comply with any security and health and safety regulations currently in force at such premises, as notified to the Supplier from time to time, including any security policies required by the Purchaser for specific tasks or activities.
- 15.6 In the event that any of the Supplier Staff require unescorted security pass access to any of the Purchaser's premises, the Supplier shall ensure that such Supplier Staff produce a completed basic level Criminal Records Declaration form for review by the Purchaser that is less than six (6) months old, from Disclosure Scotland or the Disclosure and Barring Service to accompany their security check application pack prior to accessing such premises. The Purchaser reserves the right to prevent any of the Supplier Staff from having access to the Purchaser's premises if their application for security clearance is not returned within a reasonable timeframe or is returned with a result that includes conditions and/or restrictions which are not acceptable to the Purchaser.
- 15.7 The Purchaser may require the removal of any Supplier Staff from the premises of the Purchaser or its customer if in the reasonable opinion of the Purchaser their performance or conduct is or has been unsatisfactory or such Supplier Staff have failed to comply with the provisions of this Clause 15. On receipt of such request, the Supplier shall promptly remove the relevant Supplier Staff and replace them with a suitably qualified and competent replacement, unless a replacement is unnecessary.
- 15.8 Compliance with this Clause is a condition of the Agreement and any failure by the Supplier to comply with this Clause shall also constitute a material breach of the Agreement.
- 16. CONFIDENTIALITY**
- 16.1 Each Party shall keep confidential and not disclose or knowingly permit to be disclosed to any person or use other than for the purpose of the Agreement any technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by one Party to the other Party or its representatives and any other confidential information concerning the other Party's business or its products which the other Party may obtain or learn, except as permitted by this Clause 16.
- 16.2 The receiving Party may disclose the disclosing Party's confidential information without prior written consent to its employees, agents, contractors or advisers who need to know the same for the purpose of discharging the receiving Party's obligations or exercising its rights under the Agreement and it shall ensure that such employees, agents, contractors and advisers are subject to like obligations of confidentiality as are contained in this Clause 16.
- 16.3 The obligations of confidentiality owed by each Party to the other Party in this Clause 16 shall not apply to information which:
- 16.3.1 is in or enters the public domain (otherwise than by a breach of the receiving Party's confidentiality obligations whether arising under the Agreement or otherwise);
- 16.3.2 is known without restriction to the receiving Party at the time of disclosure without breach of any obligation of confidentiality;
- 16.3.3 becomes known to the receiving Party without restriction from an independent source having the right to convey it; or
- 16.3.4 is shown to the reasonable satisfaction of the originating Party to have been generated independently by the receiving Party.
- 16.4 Nothing shall prevent the disclosure by the receiving Party of the disclosing Party's confidential information to the extent required by applicable law or by the regulations of any stock exchange or regulatory authority to which such Party is subject or pursuant to any order of court or other competent authority or tribunal PROVIDED THAT:
- 16.4.1 the receiving Party first gives the other Party, where possible, the opportunity to make and/or manage the necessary disclosure;

- 16.4.2 where the receiving Party is required to make the disclosure itself, the disclosure made is the minimum required, having regard to all possible exemptions from disclosure, and is made under maximum possible constraints of confidentiality; and
- 16.4.3 to the extent permitted by applicable law, the other Party is provided with full information on the intended disclosure and is fully consulted.

17. ASSIGNMENT AND SUB-CONTRACTING

- 17.1 The Supplier shall not be entitled to assign, transfer or sub-contract any of its rights or obligations under the Agreement, in whole or in part), without the prior written consent of the Purchaser, which shall not be unreasonably withheld.
- 17.2 Sub-contracting by the Supplier shall not in any way relieve the Supplier of its responsibilities under the Agreement.
- 17.3 The Purchaser has the right to transfer its rights and obligations under the Agreement, in whole or in part, upon written notice to the Supplier. Upon the Purchaser's request, the Supplier shall enter into such instruments as are reasonably required to give effect to such transfer.

18. PUBLICITY

- 18.1 Neither Party shall, for publicity purposes without the prior written consent of the other Party:
- 18.1.1 make use of the other Party's name or the name of that Party's personnel, customers or agents; or
- 18.1.2 refer to the other Party or the Agreement in any advertisement announcement or notice, except to the extent required by law or any competent regulatory body.

19. NOTICES

- 19.1 A notice given under or in connection with the Agreement must be in writing and (a) delivered by hand; or (b) sent by pre-paid first class post or other next working day delivery service providing proof of delivery; or (c) sent by pre-paid airmail or international courier service providing proof of delivery; or (d) sent by email. Such notice shall be sent to the address of the Purchaser or to the address of the Supplier shown on the Purchase Order or to such other address as either the Supplier or the Purchaser may substitute by written notice to the other Party (as the case may be). Unless otherwise notified in writing by the Purchaser, all notices issued by the Supplier to the Purchaser by email shall be sent to procurement@QinetiQ.com.
- 19.2 Notice shall be deemed given:
- 19.2.1 if delivered by hand, on the day of delivery;
- 19.2.2 if sent by pre-paid first class post or other next working day delivery service providing proof of delivery, at the time recorded by the delivery service;
- 19.2.3 if sent by pre-paid airmail or international courier service providing proof of delivery, at the time recorded by the delivery service; and
- 19.2.4 if sent by email, at the time of transmission during normal UK business hours.

20. COUNTERFEIT MATERIALS

- 20.1 The Supplier shall ensure that it complies with all applicable anti-counterfeiting or anti-piracy laws, legislation, regulations or directives ("**Anti-Counterfeiting Legislation**") which apply to its business and shall not source or provide any Goods which are counterfeit and/or which have been sourced from unauthorised distributors which are not validly licensed. The Supplier will not, and will use reasonable endeavours to procure that Supplier Staff will not, engage in any activity, practice or conduct which would constitute an offence under any applicable Anti-Counterfeiting Legislation.
- 20.2 A breach of this Clause 20 shall constitute a material breach of the Agreement.

21. REGULATORY COMPLIANCE

- 21.1 To the extent that the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (EC/1907/2006) ("**REACH**") applies to the Goods and/or Deliverables, the Supplier warrants that such Goods and/or Deliverables, and any substances contained therein, are supplied in compliance with, and not prohibited or restricted by, REACH or any other applicable legislation and/or regulations in force from time to time. The Supplier shall provide the Purchaser with all the necessary information required for the Purchaser to comply with and/or be satisfied that the Supplier has complied with REACH.
- 21.2 The Supplier shall be responsible for ensuring that any Goods, and all components forming part of any Goods, shall comply with the requirements of the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006 ("**RoHS Regulations**") and the Classification, Labelling and Packaging Regulation (EC/1272/2008) ("**CLP Regulation**") or any replacement thereof. In respect of all Goods supplied under the Agreement, the Supplier shall, upon the Purchaser's request, provide a certification in a form acceptable to the Purchaser that the Goods supplied comply with the RoHS Regulations and the CLP Regulation.
- 21.3 In supplying any Goods the Supplier shall, at its own expense, comply with the requirements of the Waste Electrical and Electronic Equipment Regulations 2013 to the extent that they apply to any Goods being supplied. The Supplier shall be responsible for the collection and disposal of any such Goods at the end of their life and for any cost associated with such collection and disposal of Goods from any end user to whom the Purchaser sells those Goods. Upon commencement of the Agreement, the Supplier shall provide the Purchaser with details of the arrangements it has in place for the collection and disposal of such Goods.
- 21.4 The Supplier shall bear all costs, charges and expenses in relation to compliance with this Clause 21.

22. MISCELLANEOUS

- 22.1 No variation of the Agreement shall be valid unless it is agreed in writing by the Parties' duly authorised representatives and, where required, issued as a written Purchase Order amendment by the Purchaser.
- 22.2 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing. Failure or delay by the Purchaser in enforcing any provision of the Agreement shall not be a waiver of any of the Purchaser's rights under the Agreement or of the right at any time subsequently to enforce that provision or any other provision of the Agreement. No waiver in respect of any right or remedy shall operate as a waiver in respect of any other right or remedy.

22.3 A person who is not a Party to the Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement, provided that any Affiliate of the Purchaser which is involved in procuring Goods and/or Services from the Supplier shall have the right to enforce any provision of the Agreement to the extent that it applies to the Goods and/or Services which it procures. The Parties shall not be under any obligation to seek the consent of any Affiliate of the Purchaser for any amendment to the Agreement. This Clause does not affect any right or remedy of any person that exists otherwise than pursuant to that Act.

22.4 If any provision of the Agreement is or becomes invalid, illegal or unenforceable in whole or in part, it shall be deemed deleted, but the validity of the other provisions of the Agreement shall not be affected.

23. SUPPLIER CODE OF CONDUCT

23.1 The Supplier shall comply, and will procure that the Supplier Staff and its sub-contractors comply, with the Purchaser's Supplier Code of Conduct which can be viewed on the Purchaser's website at: www.QinetiQ.com/suppliers/code_of_conduct.

24. NOT USED

25. BUSINESS ETHICS, SANCTIONS AND MODERN SLAVERY

25.1 Each Party shall comply with the Bribery Act 2010 and any other anti-corruption and anti-bribery laws, legislation, regulations or directives ("**Anti-Corruption Legislation**") which apply to its business or which apply in the place where the Agreement is performed. Each Party shall not, and will procure that its employees, agents, contractors and representatives shall not, engage in any activity, practice or conduct which would constitute an offence under any Anti-Corruption Legislation. In addition, the Supplier shall maintain in place policies and procedures governing its business ethics which ensures it complies with the requirements of the Purchaser's Supplier Code of Conduct referred to in Clause 23.1.

25.2 The Supplier shall and will procure that each of its Affiliates shall:

25.2.1 comply with any trade, financial or other sanctions regime imposed by the UN, EU, UK, US, including regimes administered by the United States Department of the Treasury, Office of Foreign Assets ("**OFAC**") and Her Majesty's Treasury, and any other such regime which applies in relation to the Supplier's business ("**Sanctions**"); and

25.2.2 ensure that it shall not supply any goods or other items pursuant to the Agreement from, or on behalf of, a "**Restricted Person**" (being any person listed as, targeted by Sanctions, including but not limited to persons on the "**Specifically Designated Nationals and Blocked Persons**" list issued by OFAC and the "**Consolidated List of Financial Sanctions Targets in the UK**" issued by Her Majesty's Treasury, or located or incorporated in any country which is the target of country-wide Sanctions) nor use any monies paid by the Purchaser for the benefit of a Restricted Person.

25.3 The Supplier shall comply with the Modern Slavery Act 2015 and any other modern slavery laws, legislation, regulations or directives ("**Modern Slavery Legislation**") which apply to its business or which apply in the place where the Agreement is performed. The Supplier shall not and will procure that its employees, agents, representatives and sub-contractors shall not, engage in any activity, practice or conduct which would constitute an offence under Modern Slavery Legislation.

25.4 A breach of this Clause 25 shall constitute a material breach of the Agreement.

26. DATA PROTECTION

26.1 In performing its obligations under the Agreement, each Party shall comply with and ensure that its employees, agents, representatives and contractors comply with the General Data Protection Regulation (EU/2016/679) ("**GDPR**") and all other applicable laws and regulations effective in the UK relating to the processing of personal data and privacy each as may be updated, amended, re-enacted or replaced (together the "**Data Protection Legislation**"). The Supplier shall not perform its obligations under the Agreement in such a way as to cause the Purchaser to breach any of its obligations under the Data Protection Legislation. The following terms shall have the meanings ascribed to them under the GDPR: "**controller**"; "**processor**"; "**personal data**"; "**data subjects**".

26.2 Unless otherwise agreed in writing, the Supplier shall:

26.2.1 to the extent that it acts as a processor for the purpose of the Agreement:

- (a) comply with the documented instructions of the Purchaser as controller;
- (b) not act as processor for the purposes of the Agreement without first agreeing with the Purchaser (i) a description of the scope, nature and purpose of the processing; (ii) the duration of the processing; and (iii) the types of personal data and categories of data subjects;
- (c) only use a sub-processor with the consent of the Purchaser, and where such consent is general, communicate changes to the Purchaser in advance with a chance to object;
- (d) be responsible for any processing by any sub-processor and ensure it flows down the obligations set out in this Clause to any sub-processor;
- (e) provide the Purchaser with assistance and full co-operation: (i) in relation to any requirement of the Purchaser to comply with requests from individuals exercising their rights to access, rectify, erase or object to the processing of their personal data; (ii) in respect of compliance with its security and data breach obligations, including notifying the Purchaser within forty-eight (48) hours (where feasible) of any breach of Data Protection Legislation in relation to personal data processed under the Agreement; and (iii) by carrying out a privacy impact assessment on the Purchaser's reasonable request;
- (f) return or delete, at the Purchaser's option, the personal data on expiry or termination of the Agreement, save to the extent that the Supplier may keep a copy of the personal data under Data Protection Legislation; and
- (g) inform the Purchaser if, in its opinion, the Purchaser's instructions would breach Data Protection Legislation.

26.2.2 in every case where it processes personal data:

- (a) only process personal data of the Purchaser to the extent and in such manner as is necessary for it to carry out its obligations under the Agreement;
- (b) ensure that the Supplier Staff are subject to a duty of confidence with respect to such personal data;

- (c) not cause or permit such personal data to be transferred outside the European Economic Area; and
- (d) refrain from using such personal data for marketing and/or promotional purposes or disclosing such personal data to third parties for such purposes.

26.3 The Supplier shall on request demonstrate compliance with the provisions of this Clause 26. The Purchaser reserves the right to audit such compliance by the Supplier upon reasonable prior notice and the Supplier shall provide reasonable assistance and co-operate reasonably with the Purchaser in conducting such audit. The Supplier shall retain all records necessary to comply with its obligations under the Data Protection Legislation and the Agreement.

26.4 Any breach by the Supplier of this Clause 26 shall constitute a material breach of the Agreement.

27. US IMPORT AND EXPORT COMPLIANCE

27.1 This Clause 27 shall apply where the Supplier is a US supplier of items exported from the US, or a non-US supplier of US origin items (including as a distributor and/or a reseller).

27.2 The Supplier shall formally identify, using the Purchaser's Export Control Supplier Declaration Form, each item of hardware, software, technical data, technology, documentation or other article or item that is subject to US export control regulations. The Supplier shall notify the Purchaser of the export control classification for the Goods and/or Services as follows:

27.2.1 if controlled by the International Traffic in Arms Regulations (ITAR), the United States Munitions List (USML) category and subcategory; or

27.2.2 if controlled by the Export Administration Regulations (EAR), the Export Control Classification Number (ECCN).

27.3 The Supplier shall obtain in good time all export control authorisations and licences required by US law to perform the Agreement ("**US Licences**"). The Supplier warrants that it either holds all required US Licences on the date of the Purchase Order or will obtain such US Licences in good time to meet the delivery schedule.

27.4 The Supplier shall inform the Purchaser immediately of any issues related to the US Licences which may have an adverse impact on its capacity to perform the obligations under the Agreement. The Purchaser will assist the Supplier in producing the documentation necessary to obtain the US Licences, including end use and end user statements.

27.5 If it is a non-US supplier of US origin items, the Supplier shall, at the Purchaser's request, provide the Purchaser with a point of contact in the OEM's organisation competent to discuss export control matters with the Purchaser and to provide authoritative guidance regarding the export controls applicable to the OEM's items.

27.6 The Supplier agrees to use the Destination Control Statement as required by the ITAR or the EAR, and to provide the Purchaser with a copy of any export licence or authorisation that has been obtained. In the case of an ITAR licence, the Supplier may redact its ITAR registration number appearing on the licence and furnish the Purchaser with a redacted copy. The Supplier must inform the Purchaser of any conditions or provisos applicable to the licence(s).

27.7 The Supplier will assist the Purchaser in making application for any amendment or re-transfer or re-export request that may be required in relation to a US Licence.

27.8 When further sub-contracting is permitted under the Agreement, the Supplier will include provisions equivalent to this Clause 27 in any further sub-contracts entered into in respect of the Goods and/or Services, where applicable. The Supplier shall procure that all sub-contractors requiring access to the licenced article(s) shall be covered by the relevant licence(s).

28. NON-US IMPORT AND EXPORT COMPLIANCE

28.1 This Clause 28 shall apply where the Supplier is a non-US supplier of items exported from outside the US (and the article(s) or item(s) are not manufactured outside the US subject to a Manufacturing Licence Agreement approved by the US State Department), or a supplier of non-US origin items (including as a distributor and/or a reseller).

28.2 The Supplier shall formally identify, using the Purchaser's Export Control Supplier Declaration Form, each item of hardware, software, technical data, technology, documentation or other item that is subject to its national export control regulations. The Supplier shall notify the Purchaser of the export control classification established by its competent national authorities in respect of any such items.

28.3 The Supplier shall obtain in good time all export control authorisations and/or licences required by its national law to perform the Agreement ("**Non-US Licences**"). The Supplier warrants that it either holds all Non-US Licences on the date of this Purchase Order or will obtain such Non-US Licences in good time to meet the delivery schedule.

28.4 The Supplier shall inform the Purchaser immediately of any issues related to the Non-US Licences which may have an adverse impact on its capability to perform the obligations under the Agreement. The Purchaser will assist the Supplier in producing the documentation necessary to obtain the Non-US Licences, including end use and end user statements.

28.5 The Supplier shall, at the Purchaser's request, provide the Purchaser with a point of contact in the OEM's organisation competent to discuss export control matters with the Purchaser and to provide authoritative guidance regarding the export controls applicable to the OEM's items.

28.6 The Supplier will assist the Purchaser in making application for any amendment or re-transfer or re-export request that may be required in relation to a Non-US Licence.

28.7 Where further sub-contracting is permitted under the Agreement, the Supplier will include provisions equivalent to this Clause 28 in any further sub-contracts entered into in respect of the Goods and/or Services, where applicable. The Supplier shall procure that all sub-contractors requiring access to the licenced article(s) shall be covered by the relevant licence(s) to the extent required by the export control laws applicable to the Supplier.

29. DISPUTE RESOLUTION

29.1 If any dispute arises out of or in connection with the Agreement ("**Dispute**") the Parties undertake that they will seek to have the Dispute resolved amicably by use of an alternative dispute resolution procedure acceptable to both Parties. Either Party will be entitled to initiate the process by written notice to the other.

- 29.2 If the Dispute has not been resolved to the satisfaction of either Party within thirty (30) days of initiation of the procedure pursuant to Clause 29.1, or if either Party fails or refuses to participate in or withdraws from participating in the procedure then either Party may refer the Dispute to the courts in accordance with Clause 30.
- 29.3 Nothing in this Clause 29 shall restrict or prevent either Party from seeking injunctive relief at any time.

30. GOVERNING LAW AND JURISDICTION

- 30.1 This Agreement and any dispute or claim arising out of or in connection with it (whether such disputes are contractual or non-contractual in nature, such as claims in tort, for breach of statute or regulation, or otherwise) shall be governed by and construed in accordance with the law of England and Wales.
- 30.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation save that each Party shall be entitled to take injunctive or enforcement proceedings against the other in any jurisdiction where that other Party holds assets.