

Terms and Conditions

1. DEFINITIONS AND INTERPRETATIONS

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

- Consultancy (may also be referred to as 'Supplier'): is in the business of providing the Consultancy Services.
- Client (may also be referred to as 'Buyer' or 'Customer'): wishes to obtain Services from the Consultancy on the terms set out in this agreement.
- ADR Notice: Has the meaning given in Clause 19.1(c).
- Agreed Purpose: The reason for which Personal Data is to be held which is so that each party may perform its obligations under this agreement.
- Affiliate: 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.
- Business Day: A day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- Change Order: Has the meaning given in Clause 8.1.
- Client Equipment: Any equipment, including tools, systems, cabling or facilities, provided by the Client, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Works including any such items specified in a Call-off-Contract.
- Client Materials: All documents, information, items and materials in any form, whether owned by the Client or a third party, which are provided by the Client to the Consultancy in connection with the Works, including the items provided pursuant to Clause 6.1(d).
- Confidential Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: As defined in the Data Protection Legislation.
- Consultancy Equipment: Any equipment, including tools, systems, cabling or facilities, provided by the Consultancy to the Client and used directly or indirectly in the supply of the Works, including any such items specified in a Call-off-Contract but excluding any such items which are the subject of a separate agreement between the parties under which title passes to the Client.
- Consultancy Services: The services, as set out in Schedule 1, which are provided by the Consultancy under a Call-off-Contract.
- Data Protection Legislation: The UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
- Dispute: Has the meaning given in Clause 19.1.
- Dispute Notice: Has the meaning given in Clause 19.1(a).
- Force Majeure Event: Has the meaning given in Clause 18.1.
- Intellectual Property Rights: Patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- Invention: Any invention, idea, discovery, development, improvement or innovation made by the Consultancy or the Workers in connection with the provision of the Consultancy Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.
- Reference: The standard charges for the Consultancy Services or the Charges framework for calculating them as set out in Schedule 3.
- Shared Personal Data: The personal data to be shared between the parties under this agreement.
- Call-off-Contract Charges: The sums payable for the Consultancy Services as set out in a Call-off-Contract.
- Call-off-Contract: A detailed plan, agreed in accordance with Clause 4, describing the services to be provided by the Consultancy, the timetable for their performance and the related matters listed in the template Call-off-Contract set out in Schedule 2.
- UK Data Protection Legislation: All applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
- VAT: Value added tax chargeable in the UK.
- Worker: An independent contractor, subcontractor or an employee introduced and supplied by the Consultancy to provide the Consultancy Services, on behalf of the Consultancy, to the Client, not as an employee of the Client.

- Works: All records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software programs, Inventions, ideas, discoveries, developments, improvements or innovations and all materials embodying them in whatever form, including but not limited to hard copy and electronic form, prepared by the Consultancy or the Workers in connection with the provision of the Consultancy Services.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 Any Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.11 A reference to writing or written includes email.

1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.13 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference of this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.

1.14 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.15 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.16 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies [in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.

2. COMMENCEMENT AND DURATION

2.1 This agreement shall commence on the date when it has been signed by all the parties and shall continue, unless terminated earlier in accordance with Clause 14, until either party gives to the other party written notice to terminate. Such notice shall be served no earlier than the first anniversary of the commencement of this agreement and shall expire on the completion of all Call-off-Contract entered into before the date on which it is served.

2.2 The Client may procure any of the Consultancy Services by agreeing a Call-off-Contract with the Consultancy pursuant to Clause 4 (Call-off-Contract).

2.3 The Consultancy shall use reasonable endeavours to provide the Works from the date specified in the relevant Call-off-Contract.

3. CONSULTANCY

3.1 The Consultancy Services shall be performed by one or more Worker(s) of the Consultancy as the Consultancy may consider appropriate.

3.2 Except where such Workers are on the Client's premises, when the Client may give directions as to health and safety requirements and network controls and requirements, the Client shall have no right to, nor shall seek to, exercise any direction, control, or supervision over the Workers in the provision of the Consultancy Services. The Consultancy shall endeavour to co-operate with the Client's reasonable requests within the scope of the Consultancy Services, however, it is acknowledged that except as provided the Consultancy shall have autonomy over its working methods.

3.3 The Consultancy has the right, at its own expense, to enlist additional or substitute Workers to perform the Consultancy Services or may sub-contract all or part of the Consultancy Services, provided that the Consultancy provides details, whenever requested to do so, of the substitute Worker or sub-contractor ahead of the planned substitution.

3.4 Where the Consultancy provides a substitute or sub-contracts all or part of the Consultancy Services pursuant to Clause 3.3 above, the Consultancy shall be responsible for paying the substitute or sub-contractor and shall ensure that any agreement between the Consultancy and any such substitute or sub-contractor shall contain obligations which correspond to the obligations of the Consultancy under the terms of this agreement, and the Consultancy shall remain responsible for the acts or omissions of any such substitute or sub-contractor.

3.5 If a Worker is unable for any reason to perform the Consultancy Services, the Consultancy shall inform the Client as soon as reasonably practicable on the first day of unavailability, and in such case shall use reasonable endeavours to provide a substitute subject to Clause 3.3.

3.6 The Client acknowledges and accepts that the Consultancy is in business on its own account and the Consultancy shall be entitled to seek, apply for, accept and perform contracts to supply its services to any third party during the term of this agreement.

3.7 The Consultancy Services shall be provided at such locations, and during such hours, as the Consultancy deems appropriate for the satisfactory provision of the Consultancy Services, unless expressly required otherwise by the Client.

4. CALL-OFF CONTRACT

4.1 Each Call-off-Contract shall be agreed in the following manner:

- a. the Client shall ask the Consultancy to provide any or all of the Consultancy Services and provide the Consultancy with as much information as the Consultancy reasonably requests in order to prepare a draft Call-off-Contract for the Consultancy Services requested;
- b. following receipt of the information requested from the Client, the Consultancy shall either:
 - i. inform the Client that it declines to provide the requested Consultancy Services; or
 - ii. provide the Client with a draft Call-off-Contract.
- c. if the Consultancy provides the Client with a draft Call-off-Contract, the Consultancy and the Client shall discuss and agree that draft Call-off-Contract; and
- d. both parties shall sign the draft Call-off-Contract when it is agreed.

4.2 Unless otherwise agreed, the Call-off-Contract Charges shall be calculated in accordance with the Consultancy's published Charges.

4.3 Once a Call-off-Contract has been agreed and signed in accordance with Clause 4.1(d), no amendment shall be made to it except in accordance with Clause 8 (Change control) or Clause 17.1 (Variation).

4.4 In the event that the Consultancy commences providing the Consultancy Services, specified in a draft Call-off-Contract, before the Call-off-Contract is signed by both parties in accordance with Clause 4.1(d), the Client shall pay the fees for those Consultancy Services provided, in accordance with the Consultancy's published Charges.

4.6 Each Call-off-Contract shall be part of this agreement and shall not form a separate contract to it.

5. CONSULTANCY RESPONSIBILITIES

5.1 The Consultancy shall use reasonable endeavours to provide the Consultancy Services, in accordance with a Call-off-Contract in all material respects.

5.2 The Consultancy shall use reasonable endeavours to meet any performance dates specified in a Call-off-Contract but any such dates shall be estimates only and time for performance by the Consultancy shall not be of the essence of this agreement.

5.3 The Consultancy shall provide, at its own cost, the Consultancy Equipment as is reasonable for the satisfactory performance by the Worker and any substitutes and sub-contractors of the Consultancy Services.

5.4 The Consultancy shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Client's premises, or that apply to the delivery of the Consultancy Services, and that have been communicated to it under Clause 6.1(e), provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

5.5 The Consultancy shall to furnish the Client with any progress reports as may be requested from time to time.

6. CLIENT OBLIGATIONS

6.1 The Client shall:

- a. co-operate with the Consultancy in all matters relating to the Consultancy Services;
- b. appoint a manager in respect of the Works to be performed under each Call-off-Contract, such person as identified in the Call-off-Contract.
- c. provide, for the Consultancy, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as required by the Consultancy including any such access as is specified in a Call-off-Contract;
- d. provide to the Consultancy in a timely manner all documents, information, items and materials in any form (whether owned by the Client or a third party) required under a Call-off-Contract or otherwise reasonably required by the Consultancy in connection with the Works and ensure that they are accurate and complete;
- e. inform the Consultancy of all health and safety and security requirements that apply at the Client's premises or to the delivery of the Consultancy Services;
- f. acknowledge and respond to communications (oral or written) from the Consultancy within a reasonable time;
- g. ensure that all the Client Equipment is in good working order and suitable for the purposes for which it is used in relation to the Consultancy Services and conforms to all relevant United Kingdom standards or requirements;
- h. comply with any relevant and current health, safety, fire and environmental statutes, bye-laws and official codes of practice and guidance, including, for the avoidance of doubt, but not limited to, the requirements of the Health and Safety at Work etc Act 1974, the Management of Health and Safety at Work Regulations 1999, the Provision and Use of Work Equipment Regulations 1992, and maintain appropriate insurance;
- i. obtain and maintain all necessary licenses and consents and comply with all relevant legislation as required to enable the Consultancy to provide the Consultancy Services and deliver the Works, including in relation to the use of all Client Materials, in all cases before the date on which the Consultancy Services under each Call-off-Contract are to start;
- j. keep and maintain the Consultancy Equipment in good condition and not dispose of or use the Consultancy Equipment other than in accordance with the Consultancy's written instructions or authorisation; and
- k. comply with any additional responsibilities of the Client as set out in the relevant Call-off-Contract.

6.2 If the Consultancy's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Consultancy shall be allowed an extension of time to perform its obligations equal to the delay caused by the Client.

7. NON-SOLICITATION

7.1 The Client shall not, without the prior written consent of the Consultancy, at any time from the date on which this agreement commences to the expiry of 6 months after the termination of this agreement, solicit or entice away from the Consultancy or employ or attempt to employ any person who is, or has been, engaged as an employee, Worker, consultant or subcontractor of the Consultancy in the provision of Consultancy Services.

7.2 Any consent given by the Consultancy in accordance with Clause 7.1 shall be subject to the Client paying to the Consultancy a sum equivalent to 30% of the then current annual remuneration of the Consultancy's employee, consultant or subcontractor or, if higher, 30% of the annual remuneration/fee to be paid by the Client to that employee, consultant or subcontractor.

8. CHANGE CONTROL

8.1 Either party may propose changes to the scope or execution of the Consultancy Services under a Call-off-Contract but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:

- a. the Consultancy Services;
- b. the Call-off-Contract Charges;
- c. the timetable for the delivery of the Consultancy Services under the Call-off-Contract; and
- d. any of the other terms of the relevant Call-off-Contract.

8.2 If the Consultancy wishes to make a change to the Consultancy Services under a Call-off-Contract it shall provide a draft Change Order to the Client.

8.3 If the Client wishes to make a change to the Consultancy Services under a Call-off-Contract:

- a. it shall notify the Consultancy and provide as much detail as the Consultancy reasonably requires of the proposed changes, including the timing of the proposed change; and
- b. the Consultancy shall, as soon as reasonably practicable after receiving the information at Clause 8.3(a), provide a draft Change Order to the Client.

8.4 If the parties:

- a. agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Call-off-Contract; or
- b. are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in Clause 18 (Multi-tiered dispute resolution procedure).

8.5 The Consultancy may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Client pursuant to Clause 8.3 on a time and materials basis at a rate agreed by both parties.

9. CHARGES AND PAYMENT

9.1 In consideration of the provision of the Consultancy Services by the Consultancy, the Client shall pay the agreed Charges in the Call-off Contract.

9.2 The Charges exclude the following, which shall be payable by the Client monthly in arrears, following submission of an appropriate invoice:

- a. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Consultancy engages in connection with the Consultancy Services; and
- b. the cost to the Consultancy of any materials or services procured by the Consultancy from third parties for the provision of the Consultancy Services as such items and their cost are approved by the Client in advance from time to time.

9.3 The Consultancy may increase the Reference Charges and any Charges not calculated in accordance with the Reference Charges on an annual basis with effect from each anniversary of the date of this agreement in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the date of this agreement and shall be based on the latest available figure for the percentage increase in the Retail Prices Index. Any increase in the Reference Charges will be discussed and agreed with the client in writing.

9.4 Any increase in the Reference Charges shall affect:

- a. the Charges (to the extent that they are calculated in accordance with the Reference Charges) in any Call-off-Contracts in force at the date the increase takes effect; and
- b. the calculation of the Charges for Call-off-Contracts entered into after the date the increase takes effect.

9.5 The Consultancy shall invoice the Client for the Charges at the intervals specified in the Call-off-Contract. If no intervals are so specified, the Consultancy shall invoice the Client at the earlier of either the Works being completed or the end of each month for Works performed during that month.

9.6 The Client shall pay each invoice submitted to it by the Consultancy within 30 days of receipt to a bank account nominated in writing by the Consultancy.

9.7 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Consultancy any sum due under this agreement on the due date:

- a. the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%; and
- b. the Consultancy may suspend part or all of the Works until payment has been made in full.

9.8 All sums payable to the Consultancy under this agreement:

- a. are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- b. shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. RELATIONSHIP BETWEEN THE CLIENT AND CONSULTANCY

10.1 The Consultancy acknowledges to the Client that there is no intention on the part of the Consultancy, the Worker(s) or the Client to create an employment relationship between any of those parties and that the responsibility of complying with all statutory and legal requirements relating to the Workers(s), (including but not limited to the payment of taxation, maternity payments and statutory sick pay) shall fall upon and be discharged wholly and exclusively by the Consultancy.

10.2 The Client is under no obligation to offer further contracts or services to the Consultancy nor is the Consultancy under obligation to accept such contracts or services if offered. The Consultancy is not obliged to make its services available except for the performance of its obligations under this agreement. Both parties agree and intend that there be no mutuality of obligations either during or following this Agreement, whatsoever.

10.3 The Consultancy shall be responsible for any PAYE Income Tax and National Insurance Contributions and any other taxes and deductions payable in respect of its Workers in respect of the Consultancy Services.

11. INTELLECTUAL PROPERTY RIGHTS

11.1 Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Consultancy.

11.2 The Client grants the Consultancy a fully paid-up, non-exclusive, royalty-free, non-transferable license to copy and modify any materials provided by the Client to the Consultancy for the term of the Contract for the purpose of providing the Services to the Client.

12. DATA PROTECTION

12.1 Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes. Each party shall:

- a. ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
- b. give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to the Data Recipient, their successors and assigns;
- c. process the Shared Personal Data only for the Agreed Purposes;
- d. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- e. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including confidentiality) which are no less demanding than those imposed by this agreement;
- f. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;
- g. not transfer any personal data obtained from the Data Discloser outside of the European Economic Area unless the prior written consent of the data subject has been obtained and the following conditions are fulfilled:
 - i. complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
 - ii. the transferring party complies with its obligations under the Data Protection Legislation ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or
 - (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

12.2 Each party shall comply with the Data Protection Legislation and agrees that any material breach of the Data Protection Legislation shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.

12.3 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- a. consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- b. promptly inform the other party about the receipt of any data subject access request;
- c. provide the other party with reasonable assistance in complying with any data subject access request;
- d. not disclose or release any Shared Personal Data in response to a data subject access request without first consulting with and obtaining the consent of the other party;
- e. assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

- f. notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- g. at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;
- h. use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy from personal data transfers;
- i. maintain complete and accurate records and information to demonstrate its compliance with this Part 9 and allow for audits by the other party or the other party's designated auditor; and
- j. provide the other party with contact details of at least one employee as point of contact and manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

12.4 Each party consents to the other party appointing third party processors where required by that party to perform its obligations under this agreement. The party appointing the third party processor confirms that it will enter with third-party processors into a written agreement which that party confirms will reflect the requirements of the Data Protection Legislation. The party appointing the third party processor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 10.4.

12.5 Either party may, at any time on not less than 30 days' notice, revise this Clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

12.6 Each party shall indemnify the other against all claims and proceedings and all liability, loss, costs and expenses incurred by the other as a result of any claim made or brought by a data subject or other legal person in respect of any loss, damage or distress caused to them as a result of any breach by the other party of the Data Protection Legislation by that party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

12.7 This Clause 12 shall survive termination of this agreement.

13. CONFIDENTIALITY

13.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

13.2 This Clause 13 shall survive termination of the agreement.

14. ANTI-BRIBERY AND ANTI-CORRUPTION

14.1 The Consultancy shall:

- a. comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 (Relevant Requirements), and the Modern Slavery Act 2015;
- b. comply with the Clients' Anti-Bribery Policy, as the same may be updated from time to time (Bribery Policy);
- c. have and maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Bribery Policy and will enforce them where appropriate;
- d. promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Consultancy in connection with the performance of this agreement;
- e. promptly provide any information required by the Client to confirm its compliance with this Clause 14; and
- f. ensure that its Workers comply with this Clause 19.

14.2 For the purpose of this Clause 14, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act) and section 8 of that Act respectively.

15. LIMITATION OF LIABILITY

15.1 The Consultancy has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £1 million per claim. The limits and exclusions in this clause reflect the insurance cover the Consultancy has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.

15.2 References to liability in this Clause 15 include every kind of liability arising under or in connection with this agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

15.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

15.4 Nothing in this Clause 15 shall limit the Client's payment obligations under this agreement.

15.5 Nothing in this agreement shall limit the Client's liability under Clause 11.9(b).

15.6 Nothing in this agreement limits any liability which cannot legally be limited, including liability for:

- a. death or personal injury caused by its negligence;
- b. fraud or fraudulent misrepresentation; or
- c. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

15.7 Subject to Clause 15.3, Clause 15.4, Clause 15.5 and Clause 15.6, this Clause 15.7 specifies the types of losses that are excluded:

- i. loss of profit;
- ii. loss of sales or business;
- iii. loss of agreements or contracts;
- iv. loss of anticipated savings;
- v. loss of us or corruption of software, data or information;
- vi. loss of or damage to goodwill;
- vii. loss of reputation; or
- viii. indirect or consequential loss.

15.8 The Consultancy has given commitments as to compliance of the Consultancy Services with relevant specifications in Clause 5.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.

15.9 Unless the Client notifies the Consultancy that it intends to make a claim in respect of an event within the notice period, the Consultancy shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire 2 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

15.10 This Clause 15 shall survive termination of the agreement.

16. INDEMNITY PROCEDURE

16.1 If either party (Indemnifying Party) is required to indemnify the other party (Indemnified Party) under Clause 10.1, Clause 11.4, Clause 11.9(b) or Clause 12.6(as applicable), the Indemnified Party shall:

- a. notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity (Claim);
- b. allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- c. provide the Indemnifying Party with such reasonable assistance regarding the Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- d. not, without prior consultation with the Indemnifying Party, make any admission relating to the Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

17. TERMINATION

17.1 Without affecting any other right or remedy available to it, each party may terminate the agreement with immediate effect by giving written notice to the other party if:

- a. the other party commits a material breach of its obligations under this agreement and (if such breach is remediable) fails to remedy that breach within 14 (fourteen) days after receipt of notice in writing to do so;
- b. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- c. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- d. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- e. the other party (being an individual) is the subject of a bankruptcy petition or order;
- f. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
- g. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

- h. the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- i. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- j. 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 Clause 17.1(b) to Clause 17.1(i) (inclusive);
- k. the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- l. the other party's financial position deteriorates to such an extent that in the Consultancy's opinion the Client's capability to adequately fulfil its obligations under this agreement has been placed in jeopardy; or
- m. the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

17.2 Without limiting its other rights or remedies, the Consultancy may terminate the agreement with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this agreement on the due date for payment.

17.3 Without limiting its other rights or remedies, the Consultancy may suspend the supply of the Works under the agreement or any other agreement between the Client and the Consultancy if the Client fails to pay any amount due under this agreement on the due date for payment, the Client becomes subject to any of the events listed in Clause 17.1(b) to Clause 17.1(i) (inclusive), or the Consultancy reasonably believes that the Client is about to become subject to any of them.

17.4 On termination of the agreement for any reason:

- a. the Client shall retain financial responsibility (in accordance with the agreement) and shall immediately pay to the Consultancy all of the Consultancy's outstanding unpaid invoices and interest and, in respect of the Works supplied but for which no invoice has yet been submitted, the Consultancy shall submit an invoice, which shall be payable by the Client immediately on receipt;
- b. the Client shall return all of the Consultancy Materials which have not been fully paid for. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this agreement;
- c. the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry;
- d. Related existing Call-off-Contracts with this client shall terminate at the Consultancy's discretion; and
- e. any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

18. FORCE MAJEURE

18.1 Neither party shall be liable to the other for any failure to fulfil the agreement or any provision of the agreement if fulfilment has been delayed, hindered or prevented by circumstances beyond our reasonable control including but not limited to fire, explosion, flood, tempest, unusually adverse weather conditions, failure or shortage of power supplies, fault or failure of plant or machinery of manufacturers, war, hostilities, riot, acts of terrorism, strikes, lock-outs or other industrial action or trade dispute (Force Majeure Event).

18.2 Where one party becomes aware of a Force Majeure Event arising, that party shall immediately notify the other.

18.3 If a Force Majeure Event exceeds 30 days, either party may immediately terminate the agreement without liability, by providing written notice to the other party.

19. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

19.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure set out in this Clause 19:

- a. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Operations Manager (or an individual of similar seniority) of the Client and Operations Manager of the Consultancy shall attempt in good faith to resolve the Dispute;
- b. if the Operations Manager of the Client and Operations Manager of the Consultancy are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Managing Director of the Client and Managing Director of the Consultancy who shall attempt in good faith to resolve it; and
- c. if the Managing Director of the Client and Managing Director of the Consultancy are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR Notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 14 days after the date of the ADR notice.

19.2 If the Dispute is not resolved within 90 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 90 days, or the mediation terminates before the expiration of the said period of 90 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with Clause 20.11(b).

20. OTHER IMPORTANT TERMS

20.1 Variation:

- a. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20.2 Waiver:

a. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

20.3 Rights and remedies:

a. Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20.4 Severance:

a. If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
b. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20.5 Entire agreement:

a. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
b. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
c. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

20.6 Survival:

a. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
b. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

20.7 Assignment:

a. The Client shall not, without the prior written consent of the Consultancy, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
b. The Consultancy may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

20.8 No partnership or agency:

a. Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20.9 Third party rights:

a. This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

20.10 Notices:

a. Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.
b. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

20.11 Governing law and Jurisdiction:

a. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
b. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).