



1.0 Terms and Conditions

If Somniac Security's proposal is accepted an agreement for the provision of the services described in the proposal will exist (**Agreement**) containing these terms and conditions:

1. Definitions

1. In these Terms, unless the context otherwise requires:

Change Request has the meaning given to that term in clause 6.1.

Commercial Representative means a party's representative nominated in accordance with clause 9 for the purposes of these Terms.

Confidential Information (of a party) means any information:

- (a) regarding the business or affairs of that party or its Related Bodies Corporate;
- (b) regarding these Terms;
- (c) which the other party knows, or ought to know, is confidential.

Deliverable means any software, hardware, documentation or other tangible materials to be supplied by Somniac Security in the course of providing Services.

Dispute means any dispute which arises out of or relates to the Services, including without limitation the entry into, breach, termination or validity of the Agreement.

Fees means all amounts payable by the Client to Somniac Security for the Services and Deliverables as set out in, or determined in accordance with, the Proposal.

Force Majeure Event in respect of party, means any event beyond the reasonable control of a party (other than acts or omissions or that party's personnel including its subcontractors) that prevents that party from fulfilling all or particular obligations under the Proposal, including:

- (a) fire, storm, flood, earthquake;
- (b) explosion;
- (c) accident;
- (d) acts of the public enemy, terrorist acts, war, rebellion, insurrection, sabotage;
- (e) epidemic, quarantine restriction;
- (f) transportation embargo; and
- (g) strikes by employees.

Government Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Indirect Loss has the meaning given to that term in clause 11.3.

Insolvency Event in relation to a party (insolvent party) means:

- (a) the insolvent party ceases or takes steps to cease to conduct its business;
- (b) the insolvent party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;

- (c) the insolvent party is unable to pay its debts when they are due or is deemed under the *Companies Act 2006* to be insolvent;
- (d) a liquidator or provisional liquidator is appointed to the insolvent party or a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the insolvent party; or
- (e) an application or order is made or a resolution is passed for the winding up of the insolvent party.

Law means any:

- (a) Government or local government legislation in force in England and Wales or any law of a foreign jurisdiction applicable to the Project or the Services, including regulations, by-laws, declarations, ministerial directions and other subordinate legislation;
- (b) common law; and
- (c) Government Agency requirement or authorisation (including conditions in respect of any authorisation).

Loss includes any liability, damage, costs (including legal costs on a solicitor and own client basis) and other outgoing, and any diminution in value of, or deficiency of any kind, in any thing.

Milestone means an outcome to be achieved from the provision of the Services and the date by which it is to be achieved all specified in the Proposal.

Personal Information has the meaning given to that term in the *Data Protection Act 2018*.

Proposal means the proposal to which these Terms are attached.

Related Body Corporate has the meaning given to it in the *Companies Act 2006*.

Required Insurances means the insurances described in clause 13 of these Terms.

Safety Legislation means all applicable occupational health and safety, environment protection, together with any code of practice or compliance code appropriate or relevant to the performance of the Services.

Safety Requirements means any and all directions, instructions, requests or requirements relevant to, associated with or necessary for compliance by the Client or Somniac Security with Safety Legislation and including any such matters of which Somniac Security has been informed by the Client in writing.

Services means cloud related services, including consulting, migration, implementation, infrastructure and support services together with managed cloud services as specified in the Proposal.

Taxes has the meaning given to that term in clause 8.1.

2. Interpretation

1. In these Terms, unless the context otherwise requires:
 1. words denoting any gender include all genders;
 2. headings are for convenience only and do not affect interpretation;
 3. the singular includes the plural and vice versa;
 4. a reference to a party includes its successors and permitted assigns;
 5. a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;

6. a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
7. unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by “including”, “for example or similar inclusive expressions; and
8. a reference to these Terms includes any variation or replacement of these Terms.

3. Scope

1. These Terms set out the terms on which Somniac Security will supply the Services to the Client.

4. Service Obligations

1. Somniac Security must, in the performance of the Services, comply with:
 1. the Client Policies notified to Somniac Security from time to time or of which Somniac Security ought reasonably to be aware; and
 2. Laws and standards relating to the Services or the performance of Somniac Security's obligations under these Terms and/or the Proposal.
2. Somniac Security must:
 1. provide the Services in a diligent and professional manner with the degree of skill and care that is normally exercised by recognised professional persons which supply services of a similar nature;
 2. deploy sufficient numbers of personnel to deliver the Services;
 3. ensure that Somniac Security's personnel have appropriate skills and training to perform the Services.
 4. ensure that Somniac Security's personnel comply with these Terms.
 5. not, and must ensure that Somniac Security's personnel do not, engage in any activity that is likely to compromise the ability of Somniac Security to perform its obligations under the Proposal;
 6. obtain and maintain any licences, authorisations, consents, approvals and permits required by applicable Laws to provide the Services.

5. Timing

1. Somniac Security must use reasonable commercial efforts to complete the completion of Services and any Milestones in accordance with the timetable for the Services as specified in the Proposal.
2. If Somniac Security becoming aware that it will be unable to meet a date for achievement of the Services or a Milestone, pursuant to the Proposal, it must notify the Client in writing including:
 1. a statement of the reasons for the delay;
 2. a request for an extension of time to the date by which Somniac Security will complete the Milestone and/or the Services; and
 3. any other changes, if any, which Somniac Security considers are necessary to the Proposal as a consequence of the delay,

3. The Client must not unreasonably withhold or delay its approval to a request under clause 5.2(b).

6. Change Request

1. If either party requires a change to the Services, that party must issue a Change Request in respect of each change:
 1. to the other party's Commercial Representative (Receiving Party);
 2. in the form outlined as part of **Schedule 1** (Change Request); and
 3. in accordance with this clause 6.
2. Each party is responsible for its own costs and expenses in preparing and issuing a Change Request and responding to a Change Request issued by the other party.
3. In order for a Change Request to be effected, it must be duly executed by both parties.
4. Promptly after receipt of a Change Request, each party's Commercial Representatives must meet to discuss the proposed change and, within 10 days, the Receiving Party must advise the other party whether the change is accepted or rejected.
5. In the event that the Change Request is accepted by the Receiving Party, the Change Request must be duly executed by both parties and will come into effect on and from the date of execution or otherwise as agreed between the parties.
6. The parties agree that they will not exercise the ability to propose Change Requests arbitrarily or capriciously in recognition that both parties are committed to the Agreement.

7. Fees

1. In consideration of Somniac Security providing the Services, the Client must pay Somniac Security the Fees in accordance with this clause 7.
2. Somniac Security must provide the Client with a tax invoices for the Fees it is entitled to charge the Client, which must:
 1. show the amount claimed for payment;
 2. be addressed to the Client;
 3. identify the time periods or work to which the amount payable relates; and
 4. provide the information necessary for the Client to pay the invoice by way of electronic transfer.
3. The Client must pay an invoice within 30 days of the date of receipt of the invoice.
4. If there is a genuine Dispute as to whether the whole or part of an invoice submitted by Somniac Security is payable, the Client must give notice of the Dispute in writing to Somniac Security within 10 Business days of receipt of the invoice and pay the amount which is not in dispute
5. If requested to do so by the Client, Somniac Security must promptly provide the Client with sufficient evidence to substantiate any amounts invoiced by Somniac Security that are queried or reasonably disputed by the Client.
6. The Client may withhold only the amount in Dispute until the resolution of the Dispute and the parties must otherwise continue to comply with their obligations under the Proposal until the Dispute is resolved.

8. Taxes

1. All prices and charges are net prices and will not include VAT unless otherwise specified.

2. To the extent that payments to be made are subject to VAT, the appropriate amount of such tax will be shown as a separate item on the invoice and will be added to the price and the recipient party will pay such amount on receipt of a valid tax invoice.

9. Contract Management

1. Each party must appoint a representative to fulfil that party's obligations in relation to governance and notify the name of its representative to the other.
2. Either party may replace its Commercial Representative by notice in writing to the other party.
3. The parties must cause their Commercial Representatives to meet at three monthly intervals to discuss:
 1. the progress of performance of any Services;
 2. any other issue of concern or interest to either party, including a change the governance arrangements recorded in this clause;
 3. proposed solutions for addressing issues of concern; and
 4. issues relating to technical coordination;

and ensure that their Commercial Representatives work to resolve any issues of concern, before applying the Dispute Resolution Procedures, but in no case will this provision prevent or delay any party from invoking such procedures in accordance with their terms.

10. Occupational Health & Safety

1. Somniac Security must comply with, and ensure that any and all Somniac Security personnel engaged in the performance of the Services in the UK, comply with, all such Safety Legislation and Safety Requirements.
2. Somniac Security must, upon request by or on behalf of the Client, demonstrate compliance with such requirements including providing evidence of measures taken to achieve such compliance.
3. Somniac Security must promptly notify the Client of any injury to person, damage to property which occurs in the course of providing the Services.
4. Somniac Security must cooperate with and do all things necessary to assist, and refrain from doing anything that may impede, the Client or its personnel in discharging their obligations under the relevant Safety Legislation.
5. The Client or its other contractors or agents (but excluding any Somniac Security Competitors) may, at any reasonable time, review, inspect, audit or otherwise observe Somniac Security's health and safety systems related to the performance of the Services, and Somniac Security will provide such access and assistance as is necessary to allow such monitoring to occur.

11. Liability

1. Subject to clause 11.2 and clause 11.5, the total and aggregate liability of Somniac Security under the Proposal for Loss suffered or sustained by the Client in connection with the performance of Somniac Security's obligations under the Proposal in respect of the Proposal:

1. whether arising as a result of breach of contract, in tort (including negligence) or under statute; and
2. whether or not arising pursuant to an indemnity in these Terms,

is limited to an amount equal to one half of the Fees specified in the Proposal.

2. The limitation of liability in clause 11.1 does not apply in relation to the following heads of liability:
 1. liability that cannot be limited by Law;
 2. personal injury (including sickness or death);

all of which are unlimited.

3. Neither party will be liable to the other party (or any other person) for any Indirect Loss arising from a breach of these Terms.
4. For the purposes of clause 11.3, the term Indirect Loss means Losses which do not arise naturally (that is, according to the usual course of things) from the relevant breach of (including loss of profits or revenue, loss of goodwill or reputation, loss of anticipated benefits or savings, loss of any prospect or business opportunity, loss of production or other business interruption loss.
5. Under no circumstances will Somniac Security be liable for any data breach sustained by the Client and the Client releases Somniac Security from all claims in respect thereof.
6. Under no circumstances will Somniac Security be liable for any loss of data sustained by the Client during the provision of the Services and the Client releases Somniac Security from all claims in respect thereof.
7. The Client warrants that:
 1. it is aware that loss of data is a risk during the provision of data migration services;
 2. it has and will continue to put in place precautions it deems appropriate to be able to recover any data lost during the provision of the Services.

12. Supplier Warranties

1. Somniac Security represents and warrants that:
 1. it is entitled to enter into the Agreement and perform its obligations under the Proposal;
 2. there are no actions, claims, proceedings or investigations pending or threatened against it or by it which may have a material effect on the subject matter of the Proposal;
 3. there are no matters which will or may adversely affect its ability to perform its obligations under the Proposal;
 4. it will provide and maintain appropriate resources to enable it to fulfil its obligations under the Agreement; and
 5. it will at all times comply with any applicable Laws or Regulatory and Industry Requirements.

13. Insurance

1. Somniac Security must effect and maintain, at its cost, the Required Insurances .
2. Somniac Security must pay any excess/deductible under the Required Insurances.

3. Somniac Security must not do or allow anything which would prejudice any of the Required Insurances, or cause them to be terminated.
4. The Required Insurances are:
 1. Employers Liability insurance in accordance with legislation applicable to any jurisdiction in which Services are to be provided and in which Somniac Security employs persons.
 2. Public Liability Insurance for not less than £1 million in respect of any single occurrence.
 3. Professional Indemnity Insurance for an amount not less than £1 million for any one loss and in the aggregate each policy year for any civil liability arising from a breach of professional duty owed in contract or otherwise.

14. Confidentiality

1. Each party (a Recipient) must keep confidential, and not use or disclose, any Confidential Information of the other party, except as permitted by these Terms.
2. The obligation of confidence in clause 14.1 extends to Confidential Information provided to or obtained by a party before entering into the Agreement.
3. The obligation of confidence in clause 14.1 does not apply to Confidential Information that is:
 1. in the public domain otherwise than as a result of a breach of obligation of confidence;
 2. independently developed by the Recipient; or
 3. already known by the recipient independently of its interaction with the other party and free of any obligation of confidence.
4. A Recipient may disclose Confidential Information of the other party:
 1. if required by law or court order to do so and it:
 1. discloses only the minimum amount of Confidential Information required to satisfy the law or order; and
 2. before disclosing any Confidential Information, gives a reasonable amount of notice to the other party; and
 2. to officers and employees of the Recipient who:
 1. have a need to know (and only to the extent that each has a need to know) the Confidential Information; and
 2. have been directed and have agreed to keep confidential the Confidential Information on terms not inconsistent with these Terms.
5. Each party must take all steps and do all things necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.
6. A Recipient must immediately on request from the other party:
 1. return to the other party;
 2. destroy and certify in writing to the other party the destruction of; or

all the other party's Confidential Information in the Recipient's possession or control other than one copy of any notes and other records that the Recipient is required by law to retain.

7. Each party acknowledges that:
 1. the value of the other party's Confidential Information is such that an award of damages or an account of profits may not be adequate compensation if this clause 14 is breached.
 2. without in any way compromising its right to seek damages or any other form of relief in the event of a breach of this clause 14, a party may seek and obtain an ex-parte interlocutory or final injunction to prohibit or restrain the other party or its advisers from any breach or threatened breach of this clause 14 .

15. Privacy

1. This clause 15 applies to any Personal Information which Somniac Security accesses in the course of performing the Services.
2. Somniac Security must comply with, and must ensure that its personnel comply with all applicable *Data Protection Act 2018*.
3. Without limiting clause 15.2, Somniac Security must:
 1. only use Personal Information to the extent necessary to perform the Services and its other obligations in accordance with these Terms;
 2. not disclose Personal Information to any other person or retain Personal Information without the express, prior written authority of the Client, or (subject to clause 15.3(c)) as expressly required by Law;
 3. notify the Client as soon as reasonably practicable after Somniac Security becomes aware that a disclosure of Personal Information.

16. Resolution of Disputes

1. If a party considers that a Dispute has arisen, it may give a notice to the other party. The notice must set out reasonable particulars of the Dispute.
2. Promptly after the receipt of a notice of a Dispute, the Commercial Representatives of each party must meet to discuss the Dispute and negotiate in good faith to resolve the Dispute without resorting to any legal proceedings.
3. If the parties do not resolve the Dispute in accordance within 10 Business Days of receipt of the notice of the Dispute, either party may request that the Dispute be escalated to the Chief Executive Officer of each party who must negotiate in good faith to resolve the Dispute without resorting to any legal proceedings.
4. If the Chief Executive Officers of each party have not resolved the Dispute within 30 days from the date of escalation of the Dispute under clause 16.3, either party may commence legal proceedings.
5. Compliance with this clause 16 is a condition precedent to a party's entitlement to commence legal proceedings in relation to a Dispute.

17. Termination

1. The Agreement between the Client and Somniac Security may be terminated by agreement of the parties in writing at any time.
2. Somniac Security is entitled to terminate the Agreement (with immediate effect) by notice in writing to the Client if:

1. the Client commits a breach of this Agreement that is capable of remedy, and fails to remedy that breach within 10 Business Days from the date the Client receives notice from Somniac Security of the breach; or
2. an Insolvency Event occurs in relation to the Client.
3. The Client may terminate the Agreement immediately, in whole or in part, by notice to Somniac Security if:
 1. Somniac Security commits a material breach of these Terms that is capable of remedy, and fails to remedy that breach within 10 Business Days from the date the Client notifies Somniac Security of the breach;
 2. an Insolvency Event occurs in relation to Somniac Security.
4. The Client may terminate the Agreement for convenience, at any time, in whole or in part, by giving Somniac Security 90 days prior notice in writing.
5. If the Client terminates the Agreement for convenience, the Client will, pay Somniac Security:
 1. those Fees payable for Services duly performed by Somniac Security up to and including the date of termination; and
 2. the actual costs and expenses which Somniac Security has directly incurred or is directly liable for in anticipation of fulfilling its obligations under these Terms or the Proposal (as the case may be) that cannot reasonably be avoided by Somniac Security as a result of the early termination of these Terms.

18. Notices

1. A notice or other communication under these Terms (**Notice**) must be in writing and in English.
2. A Notice must be:
 1. delivered to the recipient's address or registered office;
 2. posted to the recipient's address or registered office by prepaid ordinary post (or airmail, if posted to or from a place outside the UK); or
 3. emailed to the recipient's email address.as notified in writing from time to time.
3. Service of a Notice is deemed to have occurred, if sent:
 1. as a delivered letter – at the time it is delivered;
 2. as a posted letter – on the fifth Business Day after posting (or the 12th, if posted to or from a place outside the UK);
 3. by email – on the first Business Day after it is sent, provided that the sender does not receive a message stating that:
 1. delivery of the email has failed; or
 2. the recipient is 'out of the office'.

19. Force Majeure

1. Neither party will be liable for a failure or delay in performing its obligations under these Terms to the extent that such failure or delay:
 1. is directly attributable to a Force Majeure Event; and

2. could not have been prevented by reasonable precautions or circumvented or minimised by the non-performing party (for example, by means of alternative sources or work-arounds).

20. General

1. Somniac Security must not assign or transfer in whole or in part its rights and obligations under these Terms without the prior written consent of the Client.
2. Except as expressly provided to the contrary in these Terms, nothing in these Terms will constitute the parties as:
 1. principal and agent;
 2. employer and employee;
 3. partners; or

a party otherwise liable for the acts and/or omissions of the other party.

3. A party must not represent, to any third party, that the parties are principal and agent, employer and employee, partners or that the party is otherwise entitled to incur any liability on behalf of any other party.
4. This document (and any document incorporated by reference in it) records the entire agreement between the parties in relation to its subject matter.
5. This Agreement supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the parties in relation to the subject matter of this Document.
6. Each party must (at its own expense) do all things as the other party asks as may be reasonably required or necessary to give the other party the full benefit of any obligations owed to the other party and expressed in this Document.
7. This Document and any variation of this Document may be executed and take effect in two or more counterparts, each of which when taken together, will constitute one and the same instrument.
8. All warranties, releases, exclusions of liability, indemnities, terms with respect to intellectual property and confidential information on the part of a party in this Document will remain valid and binding upon that party following expiry or termination of this Document.
9. The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under this Document does not operate as a waiver of that right, power or remedy.
10. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy.
11. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the facts specified in the notice.
12. The rights, powers, authorities, discretions and remedies of a party under this Document do not exclude any other right, power, authority, discretion or remedy.
13. A party's failure or delay to exercise a power, right or remedy pursuant to the Document recorded in this Document does not operate as a waiver of that power, right or remedy. The exercise of a power or right does not preclude its future exercise or the exercise of any other power or right.
14. If any provision of this Document is determined by a court or other competent tribunal or authority to be void, voidable or unenforceable then:

1. where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result; and
2. where the offending provision cannot be read down then that provision must be severed from the Document in which event, the remaining provisions of this Document operate as if the severed provision had not been included,

but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this Document.

15. This Document can only be amended, supplemented, replaced or novated by another document signed by the parties.
16. The Document recorded in this Document is governed by the laws of England and Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with all matters concerning the Document recorded in this Document.



2.0 Signatory Page

Somniac Security agrees to provide the in-scope services listed in this document.

Executed by Somniac Group Ltd by an authorised officer in the presence of:

Signature of witness

Signature of authorised officer

Name

Name

The Client accepts the Offer of Somniac Security to provide the Services and supply the Deliverables specified in this Proposal and on the terms and conditions contained in it:

Executed by the Client by an authorised officer in the presence of:

Signature of witness

Signature of authorised officer

Name

Name

3.0 Appendix

3.1 Sample Change Request Form

Title			
Proposed Change No.	#	SOW	#
Date raised			
Raised by	Name		
	Position		
	Company		
	Phone		
	Email		
	Signature		
Detailed description of change			
<i>{Outline the full nature of the change ie what is to be changed and how is it to be changed}</i>			
Reason for change			
<i>{Outline the rationale and justification for the change}</i>			
Impact on the Services from the change (impacts can be positive or negative)			
<i>{Outline the impact, if any, on quality, functionality, effectiveness, efficiency, processes, training, etc}</i>			
Impact on the Fees from the change (impacts can be positive or negative)			
<i>{Outline the impact, if any, on the Fees to be payable by the Client}</i>			
Detail all changes to the information contained in the Agreement			
<i>{Since this change is related to the existing Agreement, all changes required must be written precisely here}</i>			