TERMS AND CONDITIONS FOR THE SUPPLY OF CONSULTANCY SERVICES

1. INTERPRETATION

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

"Background Intellectual Property" means the Intellectual Property owned or controlled by either Party existing at the date of the Contract or generated other than through the performance of the Services and which is used for the provision of the Services;

"Charges" means the fees, charges and other amounts payable to QinetiQ by the Customer for the provision of the Services;

"Contract" means the written agreement concluded between QinetiQ and the Customer, including the all specification, plans, drawings and other documents that are expressly incorporated into it, and incorporating these Conditions;

"Customer" means the party who purchases or agrees to purchase the Services;

"Customer Resources" means all necessary Customer personnel, materials, equipment, instructions, documents, licences, authorisations and resources reasonably required by QinetiQ to carry out the Services;

"Deliverables" means either (i) any documents, goods, articles or other materials, and any data or other information which are stated in the Contract to be provided by QinetiQ to the Customer and resulting from the performance of the Services; or (ii) in the absence of such a statement in the Contract, a final report which shall include relevant information arising from the performance of the Services;

"Force Majeure Event" shall mean any event which renders the performance of this Contract impossible or illegal, and the occurrence of which is beyond the reasonable control of the Party affected, including any act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, but excluding strikes, lockouts or other industrial disputes (whether involving the workforce of QinetiQ or any other party), failure of a utility service or transport network (except for airport strikes);

"Foreground Intellectual Property" means Intellectual Property arising out of performance of the Services (but for the avoidance of doubt excluding Background Intellectual Property);

"Intellectual Property" means all patents, utility models, trade marks, rights (registered and unregistered) in any designs; applications for any of the foregoing; copyright; semi-conductor topography rights; database rights; rights protecting goodwill and reputation; know-how; inventions, formulae and processes; other confidential information and all rights and forms of protection of a similar nature to these or having equivalent effect anywhere in the world.

"Party" means either of QinetiQ and the Customer as applicable, together being the "Parties";

"Proprietary Information" means trade knowledge, and all other information of a confidential or proprietary nature including but not limited to any and all technical information, data, drawings, process information and know-how and embracing reports, computer software (whether in object or source code) and designs and any information concerning products, customers, business accounts, financial or contractual arrangements or other dealings, transactions or affairs, reports, recommendations, advice or tests and development plans, and in whatever form whether in writing, given orally or contained in an electronic format, and which is either marked as confidential (or with some similar legend) or otherwise clearly intended to be confidential;

"QinetiQ" means QinetiQ Limited (registered in England number 3796233) having its registered office at Cody Technology Park, Ively Road, Farnborough, GU14 0LX, United Kingdom;

"Services" means the programme of work to be performed by QinetiQ as detailed in the Contract; and

"Term" means the period specified in the Contract during which QinetiQ shall provide the Services.

1.2. In the Contract references to (i) 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; (ii) the masculine include the feminine and the neuter and vice versa; (iii) the singular include the plural and vice versa; and (iv) Clauses are references to the clauses set out in these Conditions. The headings to these Conditions will not affect their interpretation.

2. APPLICATION OF TERMS

2.1. These Conditions are the only terms upon which QinetiQ is prepared to deal with the Customer and they shall govern the Contract to the entire exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2. Each order by the Customer for the supply of Services from QinetiQ shall be deemed to be an offer by the Customer to purchase Services subject to these Conditions.

3. SUPPLY OF SERVICES AND DELIVERY

3.1. QinetiQ shall for the Term: (i) perform the Services; and (ii) provide the Deliverables. Unless otherwise stated in the Contract, Deliverables shall be delivered by QinetiQ EXW [Ex Works] (in accordance with Incoterms 2020) at QinetiQ's place of business where the Services are performed.

3.2. If for any reason the Customer does not accept delivery of any Deliverables when they are ready for delivery, then QinetiQ may store the Deliverables and the Customer shall pay QinetiQ its reasonable charges in respect of such storage. In the event that such Deliverables have not been collected by the Customer within ten (10) days from receipt of notification from QinetiQ, QinetiQ may dispose of such Deliverables at the Customer's cost and expense.

3.3. The Customer shall notify QinetiQ in writing of any damage to Deliverables or shortfall in quantity as soon as practicable but not later than five (5) days after delivery. In such circumstances the remedies provided in Clause 9.4 shall apply.

4. CUSTOMER RESOURCES

4.1. The Customer will make available free of charge and risk to QinetiQ at the times stated in the Contract or otherwise in a timely manner all Customer Resources reasonably required by QinetiQ to carry out the Services, and (to the extent applicable) the Customer shall, at its cost and expense, remove any Customer Resources which are at QinetiQ's premises and which have not been incorporated into the Deliverables at the expiry or earlier termination of the Contract.

4.2. The Customer represents and warrants that it has the full right, authority and licence to enter into the Contract and to supply and disclose the Customer Resources, and its use by QinetiQ for the purpose of providing the Services will not infringe the copyright or other intellectual property rights of any third party.

4.3. In the event of any failure or delay on the part of the Customer to supply such Customer Resources, or if they are not in accordance with the Contract or are not fit for the purpose provided, then QinetiQ shall within a reasonable time notify the Customer detailing any delay or defect, and the Customer shall as soon as reasonably practicable and at its own cost and expense supply replacement Customer Resources or make good any defect. In such circumstances, QinetiQ may: (i) extend the period for performance of the Services by a reasonable time; and (ii) adjust the Charges to meet any additional expenditure incurred by QinetiQ as a result of any delay (treating any delay as a Customer rescheduling in accordance with Clause 10.2) or defect and the Customer shall pay such additional Charges; and/or (iii) serve notice under Clause 15.1.1; and/or (iv) terminate the Contract immediately without liability to the Customer.

5. PRICE AND PAYMENT TERMS

5.1. QinetiQ shall invoice the Customer at the times stated in the Contract, or otherwise at the end of each month in which the Services are provided.

5.2. The Customer shall pay to QinetiQ the Charges in respect of the Services by bank transfer to a bank account nominated by QinetiQ within 30 days of submission of an invoice by QinetiQ.

5.3. If the Customer disputes any invoice or part of it, the Customer shall immediately notify QinetiQ in writing of the reasons for it disputing the invoice. The Customer shall immediately pay the undisputed portion of the invoice and the Parties shall seek to resolve the dispute within 14 days, and in the absence of a resolution the provisions of Clause 19 shall apply. Upon resolution of the dispute, the agreed payable sum shall be paid immediately to QinetiQ, together with any interest due under Clause 5.4.

5.4. If the Customer fails to pay QinetiQ any sum due pursuant to the Contract, the Customer will be liable to pay interest to QinetiQ on such sums from the due date for payment calculated by reference to (i) the applicable rate due under the Late Payment of Commercial Debts (Interest) Act 1998; or (ii) an annual rate equivalent to the base lending rate from time to time of the Bank of England plus 4 percentage points, whichever is the higher. Such interest shall accrue on a daily basis until payment is made, whether before or after any judgement.

5.5. Whenever under the Contract any sum of money shall be recoverable from or payable by the Customer, QinetiQ may deduct the same from any sum then due to the Customer under the Contract or any other contract between QinetiQ and the Customer.

5.6. Unless otherwise stated in the Contract, the Charges are exclusive of any Value Added Tax, sales tax or similar, and any taxes, duties or imposts chargeable on that, all of which shall be payable by the Customer as an additional charge. All payments due from the Customer shall be made without deduction of any set-offs, taxes, charges and other duties (including any withholding or income taxes). In the event of any withholding or similar tax being applied to payments to QinetiQ, the Customer shall pay such additional sums as necessary to ensure that QinetiQ receives the same sum following deduction of such taxes as it would have received had no such tax been imposed.

5.7. Where the Customer is required by law to make deductions or withholdings, the Customer shall:

5.7.1. ensure that the deduction or withholding does not exceed the minimum amount legally required;

5.7.2. immediately pay to QinetiQ such additional amount as shall result in the net amount received by QinetiQ being equal to the amount which would have been received by QinetiQ had no such deduction or withholding been made;

5.7.3. pay to the applicable taxation or other authorities within the period for payment permitted by law the full amount of the deduction or withholding (including, without limitation, the full amount of any deduction or withholding from any additional amount paid under Clause 5.7.2);

5.7.4. furnish to QinetiQ, within the period for payment permitted by law, either:-

5.7.4.1. an official receipt of the applicable taxation or other authorities for all amounts deducted or withheld as previously stated, or

5.7.4.2. if the receipts are not issued by the taxation or other authorities concerned on payment to them of amounts deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and

5.7.5. co-operate in all respects necessary to permit QinetiQ to take advantage of double taxation agreements as may be available.

6. INTELLECTUAL PROPERTY RIGHTS

6.1. Ownership of Background Intellectual Property shall remain unaffected by the Contract and owned by the respective Parties.

6.2. Ownership of any and all Foreground Intellectual Property shall vest exclusively in QinetiQ and/or its contractors.

6.3. On delivery of the Deliverables and receipt by QinetiQ from the Customer of the Charges, QinetiQ shall grant to the Customer a non-exclusive, royalty-free right and licence to use the Intellectual Property in the Deliverables solely for the purposes expressly stated in the Contract as being the purposes for which the Deliverables are supplied or, if no such purpose is stated, solely for the purposes of its internal testing and evaluation of the Deliverables (not involving their commercial use or disclosure to any third party).

6.4. The Customer shall at QinetiQ’s request (and shall procure that its employees, agents or officers) carry out all reasonable acts (including prompt signature of documents) necessary to vest ownership of Foreground Intellectual Property in accordance with this Clause 6.

6.5. The Customer undertakes not itself, nor to assist or authorise or purport to authorise any third party to reverse-engineer, de-compile, copy or reproduce all or any part of the Deliverables nor seek or attempt to do so or to otherwise gain access to any Proprietary Information contained or incorporated in the Deliverables nor to use the same and/or any Intellectual Property in the Deliverables for any purpose outside the scope of the licence granted to it by Clause 6.3. For the avoidance of doubt, the foregoing restriction shall not prevent the Customer from making copies of reports and test results supplied by QinetiQ under the Contract for its internal business purposes.

7. RISK AND TITLE

7.1. The Deliverables shall be at the risk of the Customer from the time of delivery in accordance with Clause 3.

7.2. Subject to Clause 7.3, ownership of any and all documents, drawings, designs information, data, software, databases, information and/or Deliverables (and any copies thereof) produced under the Contract shall vest exclusively in QinetiQ and, upon request from QinetiQ, the Customer shall return the same to QinetiQ and not retain any copies.

7.3. Where the Contract states that ownership of any Deliverable shall pass to the Customer, such ownership shall not pass until QinetiQ has received in full (in cash or cleared funds) all sums due to it in respect of (i) the Services; and (ii) all other sums which are or which become due to QinetiQ from the Customer under the Contract. For the avoidance of doubt any such transfer of ownership of a Deliverable shall not imply transfer of ownership of any Intellectual Property or Proprietary Information and the Customer’s sole and entire rights in and to any such Intellectual Property and/or Proprietary Information shall be and remain exclusively those arising under Clause 6.3, despite any such transfer of ownership of a Deliverable.

7.4. QinetiQ shall be entitled to recover payment for the Services despite that ownership of any Deliverables or any parts of them have not passed to the Customer.

7.5. Prior to ownership of any Deliverables passing to the Customer, the Customer grants QinetiQ, its agents and employees an irrevocable licence at any time to enter any premises, on reasonable notice, where such Deliverables are or may be stored in order to inspect them, or, where the Customer’s right to possession has terminated, to recover them.

8. WORK PERFORMED ON QINETIQ'S OR CUSTOMER’S PREMISES

8.1. The Customer's employees, agents and representatives shall abide by such regulations, including security and health and safety regulations, as are applicable to their presence on QinetiQ's premises. A copy of those regulations will be available from QinetiQ on demand.

8.2. QinetiQ shall have the right to require the removal from its premises of anyone disobeying such regulations and reserves the right to refuse entry to its premises to any person whom it considers unsuitable.

8.3. Where the Contract requires QinetiQ to perform Services at the Customer’s premises, the Customer shall be responsible for arranging, in good time and at its own expense, all permits, licences or other permissions necessary to enable QinetiQ’s employees, agents, subcontractors and representatives to gain access to, and perform the Services at, such premises. QinetiQ's employees, agents, subcontractors and representatives working on the Customer’s premises shall abide by such regulations detailed in the Contract as are applicable to their presence on the Customer's premises.

8.4. The Customer shall indemnify QinetiQ against loss, liability, claims, costs and expenses relating to personal injury or harm or loss or damage to property caused by the negligence, default or lack of care of the Customer or any of its employees, agents or representatives.

9. WARRANTY AND EXCLUSIVE REMEDY

9.1. QinetiQ warrants that it shall use reasonable skill and care in performance of the Services, but makes no warranty that all or any of the Deliverables will be suitable to enable the Customer to achieve any particular purpose even when such purpose has been notified to QinetiQ.

9.2. QinetiQ makes no warranty that all or any of the Deliverables will not infringe the rights of any third party.

9.3. QinetiQ makes no warranty and accepts no liability for the use made of all or any of the Deliverables by the Customer or by any third party who has obtained such Deliverables directly or indirectly from the Customer and the Customer hereby indemnifies QinetiQ from and against any claims against QinetiQ arising from or relating to any use of the Deliverables.

9.4. Subject to Clause 9.5 below, if any defect or fault is found to exist in the Deliverables resulting from the performance of the Services not in conformance with the warranty in Clause 9.1, QinetiQ shall at its option either (i) re-perform the relevant Services or part of it; and/or repair or replace any Deliverables (or the defective part) or (ii) refund such proportion of the Charges paid to QinetiQ by the Customer for the Services as is reasonable, PROVIDED THAT, if QinetiQ so requests, the Customer shall, at the Customer's expense, return any Deliverables or the part which is defective to QinetiQ. The Customer shall reimburse QinetiQ's costs of inspecting any Deliverables and returning them to the Customer (at the Customer's risk) where no defect is found or any defect has arisen in circumstances listed in Clause 9.5.

9.5. QinetiQ shall have no liability of any kind for breach of its warranty in Clause 9.1 in circumstances where:

9.5.1. the Customer fails to give written notice of the alleged breach to QinetiQ within ten (10) days of the time when the Customer discovers or ought to have discovered it and in any event within three (3) months of delivery of the affected Services or Deliverable or, having given such notice:

9.5.1.1. fails to give QinetiQ a reasonable opportunity to examine the Deliverables concerned; or

9.5.1.2. fails (having been asked to do so by QinetiQ) to return, at the Customer's cost, such Deliverables for examination at QinetiQ's place of business; or

9.5.1.3. continues to make full or substantially full use of such Deliverables: or

9.5.2. the defect arises as a result of: (i) defects in any Customer Resources; or (ii) the Customer failing to follow QinetiQ's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Deliverables or (if there are none) good trade practice; or (iii) the Customer altering or repairing any Deliverables without the prior written consent of QinetiQ; or

9.5.3. any sums remain due and outstanding under the Contract at the date of receipt by QinetiQ of the notice referred to in Clause 9.5.1.

9.6. Where QinetiQ supplies, in connection with the provision of the Services, any goods supplied by a third party, QinetiQ does not give any warranty, guarantee or assurance of any kind as to their quality, fitness for purpose or otherwise, but shall, where reasonably possible, extend to the Customer the benefit of any warranty, guarantee or indemnity given by the party supplying the goods to QinetiQ.

9.7. THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT THE WARRANTIES AT CLAUSE 9.1 AND ASSOCIATED REMEDIES AT CLAUSE 9.4 ARE ITS SOLE AND ENTIRE WARRANTIES AND REMEDIES IN CONNECTION WITH THE PERFORMANCE BY QINETIQ OF THE SERVICES UNDER THE CONTRACT. ALL OTHER WARRANTIES, CONDITIONS, TERMS, REPRESENTATIONS, STATEMENTS, UNDERTAKINGS AND OBLIGATIONS WHICH MAY OTHERWISE BE IMPLIED (BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) IN RELATION TO THE SERVICES ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

10. DELAY IN DELIVERY, CUSTOMER CANCELLATION AND RESCHEDULING

10.1. QinetiQ shall use its reasonable endeavours to achieve any dates agreed for delivery, but shall be under no liability for any failure to achieve such dates.

10.2. Subject to Clause 10.3, the Customer may at any time prior to the performance of the Services under the Contract, by notice in writing cancel or reschedule all or some of the Services.

10.3. The Customer acknowledges that cancellation or rescheduling of the Services at short notice would make reallocation of QinetiQ's committed resources to alternative tasks impractical, as a result of which QinetiQ would suffer financial loss. Accordingly the Customer agrees that, for any notice of cancellation or rescheduling received by QinetiQ prior to the scheduled commencement of the Services, QinetiQ shall have the right to charge a percentage of the Charges for the cancelled or rescheduled Services in accordance with the following table:

Working days before scheduled provision of the Services that notice is received by QinetiQ:	QinetiQ entitled to charge (% of Charges for cancelled or rescheduled Services)
≥10 but ≤28	10%
9	20%
8	30%
7	40%
6	50%

5	60%
4	70%
3	80%
2	90%
1, or on the scheduled day	100%

10.4. On receipt of any notice given in accordance with this Clause 10, QinetiQ shall cease and/or reschedule performance of the cancelled Services as soon as reasonably practicable.

11. LIMITATION OF LIABILITY

11.1. The following provisions set out the entire financial liability of QinetiQ (including any liability for the acts or omissions of its employees, agents, sub-contractors and representatives) to the Customer arising under or in connection with the Contract in respect of:

11.1.1. any breach of the Contract; and

11.1.2. any representation, statement or tortious act or omission including negligence and any other basis of liability.

11.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3. Nothing in the Contract shall exclude or limit the liability of QinetiQ for;

11.3.1. death or personal injury caused by QinetiQ's negligence; or

11.3.2. fraud committed by QinetiQ (including fraudulent misrepresentation); or

11.3.3. any other matter which it would be illegal, or in breach of any statutory provision, for QinetiQ to exclude or attempt to exclude its liability for.

11.4. Subject to Clause 11.3, QinetiQ's aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance, non-performance or contemplated performance of the Contract shall be limited to the Charges payable under the Contract pursuant to Clause 5.

11.5. Subject to Clause 11.3, QinetiQ shall not be liable to the Customer for: (i) any, indirect, special or consequential loss, damage, costs, expenses or any other claims; or (ii) any economic loss (including loss of profit, loss of business, depletion of goodwill or like loss); or (iii) any loss, damage or liability to the extent caused by the negligence, wilful misconduct or other fault of the Customer, its employees, agents or contractors or a breach by the Customer of the Contract; in each case howsoever caused, including without limitation negligence or breach of statutory duty or misrepresentation, arising out of or in connection with the Contract.

12. DESCRIPTION

12.1. Except to the extent that they form part of the specification set out in the Contract, all drawings, descriptive matter, specifications and advertising issued by QinetiQ and any descriptions or illustrations contained in QinetiQ's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the matters described in them and will not form part of the Contract.

13. SAFETY

13.1. The Customer shall, in accordance with statutory health and safety requirements, provide prior written notice to QinetiQ of any health or safety hazards associated with any Customer Resources and/or Customer facilities used by QinetiQ in connection with the performance of the Services.

13.2. QinetiQ reserves the right to inspect any Customer Resources which the Customer wishes to deliver to any QinetiQ premises and to refuse them entry if QinetiQ considers them to be unsafe or pose unacceptable risks of injury or damage to persons or property.

13.3. The Customer shall meet any reasonable costs incurred by QinetiQ resulting from the rejection of such Customer Resources by QinetiQ and QinetiQ shall not be liable for any costs or delays to the Contract resulting from any decision under this clause.

13.4. QinetiQ may at any time make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services. QinetiQ shall within a reasonable time notify the Customer that such changes have been made. If changes are made to the Services resulting from safety or other statutory requirements which become effective after the date of the Contract, then the reasonable charges associated with such change shall be to the Customer's account and QinetiQ shall be entitled to a reasonable extension of time for performance of the affected Services.

14. CONFIDENTIALITY

14.1. Without prejudice to the rights of either Party arising elsewhere in the Contract, all Proprietary Information exchanged between the Customer and QinetiQ (including that contained in any Customer Resources and Deliverables) shall be treated as commercially confidential in accordance with this clause.

14.2. Neither Party shall use, disclose or knowingly permit to be disclosed to any person (except those employees, agents or sub-contractors who need to know the information for the purposes of the Contract or to outsourced service providers to a Party who need to know the information for the purpose of providing services to that Party) any Proprietary Information of the other Party without the prior written consent of the other Party and both Parties shall ensure that such employees, agents, sub-contractors or service providers are subject to like obligations of confidentiality as bind the Parties.

14.3. The obligations of confidentiality owed by one Party to the other set out in this clause shall remain in force despite the completion (or earlier determination) of the Contract but shall not apply to information which:

14.3.1. is in or enters the public domain (otherwise than by a breach of the receiving Party's confidentiality obligations whether under the Contract or otherwise existing);

14.3.2. is known without restriction to the receiving Party at the time of disclosure without breach of any obligation of confidentiality;

14.3.3. becomes known to the receiving Party without restriction from an independent source having the right to convey it; or

14.3.4. is shown to the reasonable satisfaction of the originating Party to have been generated independently by the receiving Party.

14.4. Nothing shall prevent the disclosure of information by the receiving Party 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:

14.4.1. the receiving Party first gives the other Party, where possible, the opportunity to make and/or manage the necessary disclosure;

14.4.2. 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

14.4.3. the other Party is provided with full information on the intended disclosure and is fully consulted.

14.5. This clause shall not apply to the disclosure of any Proprietary Information contained in any Deliverables to the extent that such disclosure is reasonably necessary for the exercise by the Customer of the right referred to in Clause 6.3.

14.6. The Parties acknowledge that damages would not be an adequate remedy for any breach of this clause and that (without prejudice to any other rights or remedies that the Parties may be entitled to as a matter of law), both Parties will be entitled to seek the remedies of injunction, specific performance, and other equitable relief to enforce the provisions of this clause and no proof of special damages shall be necessary for the enforcement of the provisions of this clause.

15. TERMINATION FOR BREACH

15.1. Without prejudice to any rights of action or remedy which have accrued or shall accrue, either Party (the “Terminating Party”) may at any time by written notice (in accordance with Clause 21) terminate the Contract if;

15.1.1. the other Party is in breach of any material obligation under the Contract (which shall include non-payment of any sum due) and if the breach is capable of remedy, the other Party has failed to remedy such breach within thirty (30) days of written notice to that Party requiring remediation of the breach; or

15.1.2. any distress, execution or other process is levied upon any of the assets of the other Party; or

15.1.3. the other Party enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its 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 and/or manager, administrative receiver or administrator is appointed in respect of the whole or any part of the other Party’s undertaking or assets; or

15.1.4. the other Party ceases or threatens to cease to carry on its business; or

15.1.5. the financial position of the other Party deteriorates to such an extent that in the opinion of the Terminating Party the capability of the other Party adequately to fulfil its obligations under the Contract has been placed in jeopardy.

15.2. Where QinetiQ terminates the Contract under this clause, the Customer shall within seven (7) days pay to QinetiQ: (i) all outstanding payments invoiced by QinetiQ under the Contract at the date of termination; (ii) in addition a fair and reasonable price for work done or in progress but not invoiced for at the date of termination; (iii) all costs (including overheads) and liabilities incurred by QinetiQ arising out of or resulting from termination, including but not limited to suppliers’ and sub-contractors’ cancellation charges; and (iv) a sum in respect of the profits which QinetiQ would have made under the Contract but for its termination.

15.3. The provisions of Clauses 4.2, 5.4, 5.5, 6, 7.2, 9, 11, 14, 16, 18, 19, 22, 23.5 and 26 shall survive the expiry or termination of the Contract together with any other provision which by the nature of its terms is implicitly intended to survive expiry or termination.

16. FORCE MAJEURE

16.1. Neither Party shall be liable for, or deemed in breach of, its obligations under the Contract because of any delay or failure in the performance of its obligations under the Contract if the failure or delay is due directly or indirectly to any Force Majeure Event, subject to the following:

16.1.1. the Force Majeure Event shall not excuse the performance of any obligations required to be completely performed under the Contract prior to the occurrence of the Force Majeure Event;

16.1.2. as soon reasonably practicable after occurrence of the Force Majeure Event, the Party affected by the Force Majeure Event shall take reasonable steps to mitigate the effect of the failure or delay and give the other Party written notice describing (i) the particulars of the Force Majeure Event (ii) the extent to which it is unable to perform its obligations and (iii) the estimated period of time during which it is unable to perform its obligations.

16.2. In the event of failure or delay arising from such circumstances, performance of the Contract shall be suspended for such time as the failure or delay continues.

16.3. Either Party may terminate the Contract upon written notice to the other Party if the Force Majeure Event lasts more than ninety (90) days. In such event the Parties shall, subject to the provisions of Clause 15.3, be released from all obligations under the Contract and the Customer shall pay to QinetiQ within seven (7) days: (i) all outstanding payments invoiced by QinetiQ under the Contract at the date of termination; (ii) any amount due pursuant to Clause 4.3; and (iii) in addition a fair and reasonable price for work done or in progress but not invoiced for at the date of termination. In such circumstances, QinetiQ shall (if it has not already done so) deliver up to the Customer all Deliverables as are in a deliverable state.

16.4. QinetiQ shall additionally have the right to terminate the Contract where a change in applicable laws or regulations materially and adversely affects the performance by QinetiQ of its obligations hereunder (including without limitation where the change in law or regulations materially increases the costs of performance of QinetiQ) and it was not reasonably foreseeable at the time of entry into the Contract that such change in law and regulations would take place during the currency of this Contract. Any such termination shall take effect on the same basis as set out in Clause 16.3. QinetiQ shall provide advance notice of its intention to terminate the Contract in accordance with the provisions of this Clause 16.4 and shall give fair consideration to any proposal as may be made by the Customer to enable the Contract to proceed.

17. ASSIGNMENT

17.1. Subject to Clause 17.2, neither Party shall, without the prior written consent of the other Party, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2. QinetiQ may assign, novate, or otherwise dispose of any or all of its rights and obligations under the Contract to any affiliate without the Customer’s consent provided that it gives written notice to the Customer.

18. PUBLICITY

18.1. Neither Party shall without the prior written consent of the other Party; (i) make use of the other Party's name; (ii) make use of the name of any of the other Party's personnel, customers or agents; (iii) make use of any information obtained under the Contract for publicity purposes; or (iv) refer to the other Party or the Contract in any advertisement or public announcement or notice except to the extent required by law or any competent regulatory body.

19. DISPUTE RESOLUTION

19.1. If any dispute arises out of or in connection with the Contract, the Parties undertake that, prior to the commencement of any legal proceedings pursuant to Clause 26, 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.

19.2. If the dispute has not been resolved to the satisfaction of either Party within thirty (30) days of initiation of the procedure in Clause 19.1 or if either Party fails or refuses to participate in or withdraws from participating in the procedure then either Party may deal with the dispute through legal proceedings issued in accordance with Clause 26.

20. EXPORT LICENCES

20.1. QinetiQ shall use reasonable endeavours to obtain all necessary UK export or other licences, consents, clearances and/or authorisations (together, the “Export Licences”) required in order to sell and export the Services and Deliverables.

20.2. The Customer shall, at its own cost and expense, assist QinetiQ in obtaining an end-user certificate, undertaking or such other information as shall be reasonably required by QinetiQ to pursue any application for Export Licences.

20.3. Each Party shall comply with the terms or requirements of any Export Licences, end-user certificate or any other trade control legislation or regulations, which apply to the export, import or use of the Services or Deliverables.

20.4. If any Export Licences are not granted or are revoked, then:

© QinetiQ Ltd 2020 | 2020-01

20.4.1. such event shall be deemed to be a Force Majeure Event under Clause 16 and QinetiQ shall have no liability to the Customer for completing the sale of any Services or Deliverables affected by such Export Licences, or for any loss, expense or damage suffered by the Customer; and

20.4.2. notwithstanding Clause 16.3, QinetiQ may, by notice in writing to the Customer, immediately terminate the Contract or any part of it relating to the Services or Deliverables in respect of which the Export Licences have not been granted or have been revoked.

20.5. The Customer shall be responsible for obtaining all necessary import clearances and licences, and paying for all import duties, taxes or payments due, in relation to any Customer Resources to be delivered to QinetiQ in connection with the performance of the Services.

21. NOTICES

21.1. A notice or other communication given to a Party under the Contract:

21.1.1. shall be in writing in English (or accompanied by a properly prepared translation into English);

21.1.2. shall be signed by or on behalf of the Party giving it;

21.1.3. shall be sent for the attention of the person, at the address or fax number specified in the Contract (or to such other address, fax number or person as that Party may notify to the other, in accordance with the provisions of this clause); and

21.1.4. shall be (a) delivered personally; or (b) sent by commercial courier; or (c) sent by fax; or (c) sent by e-mail.

21.2. If a notice or other communication has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:

21.2.1. if delivered personally, at the time of delivery, as evidenced by proof of receipt signature of the Party representative; or

21.2.2. if delivered by commercial courier, at the time of signature of the courier's receipt; or

21.2.3. if sent by fax or e-mail, at the time of transmission.

22. NON-SOLICITATION

22.1. Both Parties undertake during the term of the Contract and for twelve (12) months after completion or earlier determination of the Contract not to solicit or make an offer of employment (or an offer for services) to any the employee, officer or agent of either Party engaged performance of the work under the Contract.

23. MISCELLANEOUS

23.1. No amendment to the Contract shall be effective unless it is made in writing and signed on behalf of both Parties.

23.2. A person who is not a Party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

23.3. Failure by either Party to enforce, at any time or for any period, any one or more of the Conditions of the Contract shall not be a waiver of them or of the right at any time subsequently to enforce all Conditions of the Contract.

23.4. The Contract constitutes the entire agreement between the Parties in connection with its subject matter and neither Party has relied on any warranty, statement, representation or promise by or on behalf of the other Party, except as expressly set out in the Contract. Each Party agrees that its only liability in respect of the representations and warranties that are set out in the Contract (whether made innocently or negligently) shall be for breach of contract.

23.5. If any provision of these Conditions is held by any competent authority to be illegal, void, voidable, invalid, unenforceable or unreasonable in whole or in part it shall, to the extent of such illegality, invalidity, voidness, voidablity, unenforceability or unreasonableness be deemed severable and the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

24. BUSINESS ETHICS

24.1. Each Party shall comply with the provisions of anti-corruption and anti-bribery laws, legislation, regulations or directives which apply to its business or which apply in the place where the Contract is performed.

25. SANCTIONS COMPLIANCE

25.1. Each Party shall comply with any trade, financial or other sanctions regime which apply in relation to its business including, without limitation, sanctions and embargos imposed by: (i) the UN, EU, UK or US (including regimes administered by the United States Department of the Treasury, Office of Foreign Assets Control (OFAC) and Her Majesty's Treasury); and (ii) any other such regime which applies in relation to a Party's business.

26. GOVERNING LAW AND JURISDICTION

26.1. The Contract 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 English law.

26.2. The Parties irrevocably agree that the English courts shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract, 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.