

IT IS AGREED AS FOLLOWS:

1. Interpretation

1.1 **Definitions:**

Business Day	means a day other than a Saturday, Sunday or public holiday, in England when banks in London are open for business.
Charges	means the charges payable by the Customer for the supply of the Services by the Supplier, as set out in the Contract Details.
Commercially Sensitive Information	means the information comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss.
Conditions	means these terms and conditions set out in clause 1 (Interpretation) to clause 13 (General) (inclusive).
Confidential Information	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Supplier, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including Commercially Sensitive Information.
Contract	means the contract between the Customer and the Supplier for the supply of the Services in accordance with the Contract Details.
Control	means shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
Customer Materials	means all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier.
Deliverables	means all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer

	programs, data, reports and specifications (including drafts), and the Key Deliverables set out in the Contract Details.
Environmental Information Regulations	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
FOIA	means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
Group	means in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.
Information	has the meaning given under section 84 of FOIA.
Intellectual Property Rights	means patents, rights to inventions, copyright and related rights, trade marks business names and domain names, rights in get-up 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 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.
Request for Information	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
Services	means the services to be delivered by or on behalf of the Supplier under this agreement.

Services	means the services, including without limitation any Deliverables, to be provided by the Supplier pursuant to the Contract.
Services Start Date	means the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.
Sub-Contract	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof.
Sub-Contractor	means the third parties that enter into a Sub-Contract with the Supplier.
Supplier IPRs	means all Intellectual Property Rights either subsisting in the Deliverables (excluding any Customer Materials incorporated in them) or otherwise necessary or desirable to enable a Customer to receive and use the Services.

1.2 Interpretation:

- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.
- 1.2.2 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.
- 1.2.3 A reference to **writing** or **written** includes fax and email.

2. Commencement and term

The Contract shall commence on the date when it has been signed by both parties and shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other not less than 3 months' written notice to terminate, expiring on or after the first anniversary of the Services Start Date.

3. Supply of services

- 3.1 The Supplier shall supply the Services to the Customer from the Services Start Date in accordance with the Contract.

- 3.2 In performing the Services the Supplier shall meet, and time is of the essence as to, any performance dates specified.
- 3.3 In supplying the Services, the Supplier shall:
 - 3.3.1 perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 3.3.2 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
 - 3.3.3 appoint or, at the request of the Customer, replace without delay a manager, who shall have Customer to contractually bind the Supplier on all matters relating to the Services. The initial manager shall be the Supplier's representative;
 - 3.3.4 only use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
 - 3.3.5 ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Contract;
 - 3.3.6 ensure that the Services and Deliverables shall conform in all respects with the service description set out in the tender and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;
 - 3.3.7 provide all equipment, tools, vehicles and other items required to provide the Services;
 - 3.3.8 ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
 - 3.3.9 comply with:
 - 3.3.9.1 all applicable laws, statutes, regulations and codes from time to time in force.
 - 3.3.10 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises from time to time and are notified to the Supplier;
 - 3.3.11 hold all Customer Materials in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;

- 3.3.12 not do or omit to do anything which may cause the Customer to lose any licence, Customer, consent or permission on which it relies for the purposes of conducting its business;
- 3.3.13 notify the Customer in writing immediately upon the occurrence of a change of Control of the Supplier; and

4. Customer's obligations

4.1 The Customer shall:

- 4.1.1 provide such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of providing the Services;
- 4.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request; and

- 4.2 A failure by the Customer to comply with the terms of the Contract can only relieve the Supplier from complying with its obligations under the Contract with effect from the date on which the Supplier notifies the Customer in writing and in reasonable detail of the Customer's failure and its effect or anticipated effect on the Services.

5. Title to Deliverables and Customer Materials

- 5.1 Title to any Deliverables that are goods or in any physical media on which Deliverables are stored and title to any goods or materials transferred to the Customer as part of the Services shall pass to the Customer on the earlier of their delivery to the Customer or payment of the Charges for them. The Supplier transfers the Deliverables and all such goods and materials to the Customer free from all liens, charges and encumbrances.

- 5.2 All Customer Materials are the exclusive property of the Customer.

6. Intellectual property

- 6.1 The Supplier and its licensors shall retain ownership of all Supplier IPRs. The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.
- 6.2 The Supplier grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy and modify the Supplier IPRs for the purpose of receiving and using the Services during the term of the Contract and for the duration of any exit assistance services provided under clause 12.1.2.
- 6.3 The Customer may sub-license the rights granted in clause 6.2 to any the Customer's Group and its customers.
- 6.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of the

Contract for the purpose of providing the Services to the Customer in accordance with the Contract.

- 6.5 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Services by the Customer and its licensees and sub-licensees. This clause 6.5 shall survive termination of the Contract.

7. Charges and payment

- 7.1 In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this clause 7.
- 7.2 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT) which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 7.3 The Supplier shall submit invoices for the Charges plus VAT if applicable to the Customer monthly in arrear, on or after the last day of each month. Each invoice shall include all supporting information reasonably required by the Customer.
- 7.4 The Customer shall pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.
- 7.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 10 (Termination), the Customer 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 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.6 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

8. Limitation of liability

- 8.1 Nothing in the Contract:
- 8.1.1 shall limit or exclude the Supplier's or the Customer's liability for:

- 8.1.1.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - 8.1.1.2 fraud or fraudulent misrepresentation;
 - 8.1.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - 8.1.1.4 any other liability which cannot be limited or excluded by applicable law; or
- 8.1.2 shall limit or exclude the Supplier's liability under clause 6.5 of these Conditions.
- 8.2 Subject to clause 8.1 of these Conditions:
 - 8.2.1 neither party to the Contract shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with the Contract;
 - 8.2.2 the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% of the total charges payable by the Customer under the Contract; and
 - 8.2.3 the Customer's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% of the total charges paid by the Customer under the Contract.
- 8.3 Notwithstanding the provisions of clause 8.2.1, the losses for which the Supplier assumes responsibility and which shall (subject to clause 8.2.2 and clause 8.2.3) be recoverable by the Customer include:
 - 8.3.1 sums paid by the Customer to the Supplier pursuant to the Contract, in respect of any services not provided in accordance with the terms of the Contract;
 - 8.3.2 wasted expenditure;
 - 8.3.3 additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
 - 8.3.4 losses incurred by the Customer arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Supplier personnel, regulator or customer of the Customer) against the Customer caused by the act or omission of the Supplier;

8.3.5 anticipated savings;

8.4 No amounts awarded or agreed to be paid under clause 6.5 shall count towards the cap on the Supplier's liability under clause 8.2.2.

8.5 The rights of the Customer under the Contract are in addition to, and not exclusive of, any rights or remedies provided by common law.

9. Insurance

During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall produce to the Customer on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

10. Freedom of information

10.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

10.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;

10.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

10.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request For Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

10.1.4 not respond directly to a Request For Information unless authorised in writing to do so by the Customer.

10.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

11. Termination

- 11.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
 - 11.1.1 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 11.1.2 the Supplier commits a breach of clause 3.3.9.
- 11.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 11.2.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 11.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or
 - 11.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 11.4 Termination or expiry of the Contract shall not affect any of the 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 Contract which existed at or before the date of termination or expiry.

12. Exit arrangements

- 12.1 On termination of the Contract for whatever reason:
 - 12.1.1 the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and
 - 12.1.2 the Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it.

13. General

- 13.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 12 weeks the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.
- 13.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.
- 13.3 **Confidentiality.**
- 13.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as permitted by clause 13.3.2.
- 13.3.2 Each party may disclose the other party's confidential information:
- 13.3.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.3; and
- 13.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory Customer.
- 13.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 13.4 **Entire agreement.** The Contract 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.
- 13.5 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.6 **Waiver.**
- 13.6.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 13.6.2 A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy

provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 13.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 13.8 **Notices.**
- 13.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be: delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to its main email address
- 13.8.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, on the next Business Day after transmission.
- 13.8.3 This clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.9 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract
- 13.10 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, the law of England and Wales.
- 13.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.