

TERMS AND CONDITIONS FOR THE PURCHASE OF SERVICES

This Agreement (the "**Agreement**") is made between **Cobham Mission Systems Wimborne Limited**, a company registered in England whose address is at Brook Road, Wimborne, Dorset, BH21 2BJ ("**Buyer**") issuing the order in which these terms are referenced and the recipient company ("**Supplier**") of such order.

Buyer and Supplier shall be known individually as "**Party**" and collectively as the "**Parties**".

1. Definitions

"Affiliate"	means a company or corporation under common control with or effectively controlled by or controlling a Party directly or indirectly either through the ownership or control of shares or other controlling Agreements.
"Confidential Information"	means any information received by one Party (the "receiving Party") from the other Party (the "disclosing Party") and which the receiving Party has been informed, or has a reasonable basis to believe, is confidential to the disclosing Party
"Services"	means the services outlined in a statement of work and subject of a purchase order that references these terms and conditions.
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time) (UK S/I number: 2006/246).
"TUPE Equivalent Legislation"	means any legislation in any jurisdiction which is equivalent to or similar to TUPE and/or the Acquired Rights Directive (Council Directive 2001/23/EC) insofar as it relates to the transfer of employees.

2. Agreement

- 2.1 Supplier represents and warrants that it shall provide the Services to Buyer precisely in accordance with any purchase order and pursuant to the negotiated terms set out herein. This Agreement and any documents expressly incorporated herein by reference comprise the entire Agreement between the Parties in relation to the matters referred to herein and supersede any previous Agreement, arrangement, communication and negotiation (whether written or oral) between the Parties relating thereto. In entering into this Agreement no Party may rely on any representation, warranty, collateral contract or other assurance (except those set out in this Agreement) made by or on behalf of the other Party on or before the date of this Agreement (and such are agreed to be merged into, and superseded by, the terms hereof), and each of the Parties waives all rights and remedies which, but for this clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance, provided that nothing in this clause shall limit or exclude any liability for fraud.
- 2.1.1 Supplier will use all best skill and care to supply Services in accordance with best industry practice and with the Buyer's requirements as detailed in this Agreement.
- 2.1.2 The Parties acknowledge that the pre-printed provisions appearing on the reverse of an invoice shall be deemed deleted and of no effect whatsoever. Supplier shall ensure that no such pre-printed terms are on an order acknowledgement sent to the Buyer.

3. General

- 3.1 Neither Party shall in any manner assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party, or act for or bind one another in any respect except as expressly permitted

under the terms of this Agreement.

- 3.2 The relationship of Buyer and Supplier under this Agreement is intended to be that of independent contractors. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, agency, trust, or other legal association of any kind between the Parties. A person who is not a Party to this Agreement may not enforce any of its terms.
- 3.3 During the term of this Agreement and for one year after termination or expiration of this Agreement, Supplier shall not either directly or indirectly employ, or solicit to employ, or cause to be solicited for employment, persons employed by Buyer at the relevant time, without Buyer's prior written consent.
- 3.4 Supplier's consultants visiting or working at any of Buyer's premises will comply with the security, confidentiality, safety and conduct policies at such premises as are notified by or on behalf of Buyer to Supplier in writing from time to time and shall conduct themselves in a professional manner.
- 3.5 Supplier shall at all times comply with all laws and regulations applicable to the provision of the Services to Buyer and any other laws pertaining to compliance with this Agreement and the Order and obtain all permits, registrations and approvals of governmental authorities and/or standard setting agencies that are necessary or advisable (in the judgment of Buyer or Supplier) in respect of the Works.
- 3.6 Supplier will at no additional fee for the period of eighteen months from the date of Buyer acceptance of the Services correct or procure correction promptly of any of the Services which fail to conform to the statement of work or the purchase order. Any correction shall be deemed to be Services for the purposes of this Agreement. This obligation shall survive termination or expiry of this agreement.

4. Price and Payment

- 4.1 During the term of this Agreement, Supplier shall be reimbursed in accordance with the statement of work and the purchase order.
- 4.2 Buyer shall pay to Supplier the invoiced fees in the currency of payment all as set out in this Agreement within Seventy-Five (75) days of receipt of a correct invoice. All payments shall be made to Supplier at the address shown in this Agreement. Buyer may make adjustments or withhold payment if Buyer reasonably deems that any invoices are not submitted in accordance with this Agreement, due to any shortages or failures, or for any failure to comply with the requirements of this Agreement.
- 4.3 The fees and any other sums payable by Buyer are gross amounts inclusive of
 - 4.3.1 any value added tax and all other foreign, federal, local, sales or use taxes
 - 4.3.2 all charges including, but not limited to, packaging material, packing, shipping, loading, carriage, insurance and delivery of the Products to Buyer's specified place of delivery; and
 - 4.3.3 any duties, imposts and levies.

5. Intellectual Property Rights

- 5.1 Subject to the pre-existing rights of third parties, all Intellectual Property Rights generated under this Agreement in any deliverables or in the provision of services shall vest in and be the exclusive property of the Buyer.
- 5.2 Each Party acknowledges that all Intellectual Property Rights vesting in either Party prior to the date of this Agreement are and shall remain the sole property of that Party.

6. LIABILITY AND INDEMNITY

- 6.1 SUPPLIER REPRESENTS AND WARRANTS THAT IT HAS THE AUTHORITY TO PERFORM ALL ITS OBLIGATIONS AND GRANT THE RIGHTS GRANTED PURSUANT TO THIS AGREEMENT.
- 6.2 SUPPLIER SHALL BE LIABLE TO BUYER FOR ALL DAMAGES, COSTS, EXPENSES AND ANY OTHER SUMS INCURRED OR CHARGED THAT BUYER MAY SUFFER IN CONNECTION WITH ANY ACTS OR OMISSIONS OF SUPPLIER UNDER THIS AGREEMENT. SUPPLIER SHALL INDEMNIFY, KEEP INDEMNIFIED AND HOLD HARMLESS BUYER FROM AND AGAINST ANY CLAIMS BY THIRD PARTIES WHICH ARE CAUSED BY OR ARISE OUT OF OR IN CONNECTION WITH ANY ACT OR OMISSION OF BUYER CARRIED OUT PURSUANT TO INSTRUCTIONS OF SUPPLIER; OR ANY BREACH BY SUPPLIER OF ANY TERMS OF THIS AGREEMENT
- 6.3 NOTWITHSTANDING ANYTHING STATED HEREIN NOTHING SHALL EXCLUDE OR LIMIT THE LIABILITY OF EITHER

PARTY: FOR DEATH OR PERSONAL INJURY ARISING AS A RESULT OF THE NEGLIGENCE OF THE OTHER OR ITS EMPLOYEES; OR FOR FRAUDULENT MISREPRESENTATION; OR FOR GROSS NEGLIGENCE; OR FOR ANY LIABILITY ARISING PURSUANT TO CLAUSES 6.2, 6.6, 8, 9 AND 10; OR FOR ANY MATTER FOR WHICH IT WOULD BE ILLEGAL FOR THE RELEVANT PARTY TO EXCLUDE OR LIMIT OR TO ATTEMPT TO EXCLUDE OR LIMIT ITS LIABILITY.

- 6.4 SUBJECT TO CLAUSE 6.3, BUYER'S AGGREGATE LIABILITY UNDER ANY PURCHASE ORDER IS LIMITED TO 100% OF THE TOTAL AMOUNT OF FEES WHICH HAVE BEEN PAID UNDER SUCH PURCHASE ORDER.
- 6.5 BUYER WILL HAVE NO LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT IN RESPECT OF: LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF CONTRACTS, LOSS OF GOODWILL, LOSS OF ANTICIPATED EARNINGS OR SAVINGS (IN EACH CASE WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL); OR LOSS OF USE OR VALUE OR DAMAGE OF ANY DATA OR EQUIPMENT (INCLUDING SOFTWARE), WASTED MANAGEMENT, OPERATION OR OTHER TIME (IN EACH CASE WHETHER DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL); OR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSS, HOWSOEVER ARISING.
- 6.6 SUPPLIER WARRANTS THAT THE SERVICES WILL NOT INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. SUPPLIER WILL INDEMNIFY, KEEP INDEMNIFIED AND HOLD HARMLESS BUYER FROM, AND AT ITS OWN COST DEFEND ANY ACTION BROUGHT AGAINST BUYER BASED UPON, A CLAIM, LEGAL ACTION OR ALLEGATION THAT THE SERVICES OR INTELLECTUAL PROPERTY RIGHT CREATED BY SUPPLIER PURSUANT TO THIS AGREEMENT OR THE ORDER (WHETHER CREATED USING BUYER'S SOFTWARE OR CREATED BY ANY OTHER MEANS WHATSOEVER) INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY AND WILL PAY THE AMOUNT OF ANY SETTLEMENT OR THE COSTS AND DAMAGES AWARDED INCLUDING REASONABLE LEGAL FEES (IF ANY) IN SUCH ACTION. FOLLOWING NOTICE OF A CLAIM OR A THREATENED OR ACTUAL ACTION SUPPLIER SHALL (WITHOUT PREJUDICE TO BUYER'S OTHER RIGHTS):
- 6.6.1 PROVIDE FOR BUYER THE RIGHT TO CONTINUE TO USE THE SERVICES OR INTELLECTUAL PROPERTY RIGHT; OR
 - 6.6.2 REPLACE OR MODIFY THE SERVICES OR INTELLECTUAL PROPERTY RIGHT SO AS TO MAKE IT NON-INFRINGING OF ANY THIRD PARTY RIGHTS AND SUPPLIER SHALL ENSURE THAT SUCH REPLACEMENT OR MODIFICATION SHALL PERFORM IN A MANNER IDENTICAL IN ALL MATERIAL RESPECTS TO THE, SERVICES OR INTELLECTUAL PROPERTY RIGHT AS IT WAS PRIOR TO SUCH REPLACEMENT OR MODIFICATION.
- 6.7 SUPPLIER SHALL PURCHASE, RENEW AND MAINTAIN AS NECESSARY SUFFICIENT PUBLIC LIABILITY, TANGIBLE PROPERTY AND PROFESSIONAL INDEMNITY INSURANCE AND SUPPLIER SHALL PROVIDE TO BUYER A COPY OF THE RELEVANT INSURANCE POLICIES UPON REQUEST.

7. Term and Termination

- 7.1 This Agreement shall remain in force until the first anniversary of the Effective Date when it shall expire.
- 7.2 Any Services which are subject purchase order which is not complete at the time of expiry shall continue under the terms of this agreement until all obligations are complete.
- 7.3 This Agreement or any purchase order may be terminated by Buyer serving two weeks' notice in writing on Supplier.
- 7.4 The applicable terms in clauses 3.6, 5, 6, 7, 8, 9, 10 and 11 shall survive termination or expiry of this agreement.

8. Confidentiality Obligations

- 8.1 Each Party agrees to maintain Confidential Information received from the other in confidence and not to use or disclose such Confidential Information, without the prior written approval of the disclosing Party, except as required to comply with any order of a court or any applicable rule, regulation or law of any jurisdiction. Confidential information shall not include that which:
- 8.1.1 is in the public domain prior to disclosure to the receiving Party;
 - 8.1.2 becomes part of the public domain through no unauthorized act or omission on the part of the receiving Party;
 - 8.1.3 is lawfully in the possession of the receiving Party prior to disclosure by the disclosing Party; or

- 8.1.4 is independently developed by employees of the receiving Party with no access to the Confidential Information.
- 8.2 In the event that a receiving Party is required by judicial or administrative process to disclose Confidential Information of the disclosing Party, it shall promptly notify the disclosing Party and allow the disclosing Party a reasonable time to oppose such process. Each Party agrees that the Confidential Information shall be disclosed only on a need-to-know basis to their employees, officers, directors, Affiliates, agents, professional advisors or others that are likewise subject to a confidentiality obligation. Each Party shall protect the Confidential Information of the other by using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized disclosure or use thereof that such Party uses to protect its own confidential information of like nature. The Parties hereby acknowledge that damages may not be an adequate remedy for any breach of this clause 8 and that either Party will therefore be entitled to apply for injunctive relief from any court of competent jurisdiction to restrain any breach or threatened breach of this clause 8.
- 8.3 Upon termination or expiration of this Agreement, each Party agrees at the request of the other Party to destroy and certify destruction thereof of all Confidential Information in its possession received from the other save insofar as the receiving Party needs such Confidential Information to fulfil its post-termination obligations to the other Party or to Customers.

9. Buyer Data

- 9.1 Supplier shall, and shall procure that Supplier's sub-contractors shall, comply with the European Union Data Protection Directive, the Telecoms Data Protection Directive 1997 and the Data Protection Act 1998 (the "Legislation") in relation to any personal data (as defined in the Legislation) relating to or originating from the Buyer or its employees to which Supplier and its sub-contractors gain access for the purposes of or pursuant to the arrangements contemplated by this Agreement.
- 9.2 Supplier undertakes that except where otherwise agreed by the Parties in writing:
- 9.2.1 neither Supplier nor any of its sub-contractors shall process, or direct the processing of any personal data relating to or originating from Buyer or its employees other than in the UK;
 - 9.2.2 Supplier and its sub-contractors each have in place now and shall on a continuing basis take all reasonable technical and organisational measures to keep all personal data relating to or originating from Buyer or its employees secure and to protect the personal data against accidental loss or unlawful destruction, alteration, disclosure or access; and
 - 9.2.3 except to the extent otherwise required by law, Supplier and its sub-contractors shall each act in relation to personal data relating to or originating from the Buyer or its employees only in accordance with Buyer's instructions except to the extent that Supplier can show that the instructions are not in accordance with the Legislation.
- 9.3 Supplier acknowledges and agrees that Buyer Data is the exclusive property of the Buyer and that:
- 9.3.1 all Intellectual Property Rights in Buyer Data is and shall remain owned by the Buyer notwithstanding any Modifications created or developed to or in respect of Buyer Data by or on behalf of Supplier or its sub-contractors; and
 - 9.3.2 neither Supplier nor any of its sub-contractors shall delete or remove any copyright notices contained within or relating to any Buyer Data.
- 9.4 Supplier shall not have any right to nor shall it permit the:
- 9.4.1 use of Buyer Data by Supplier or any sub-contractor otherwise than for the benefit of the Buyer and in accordance with this Agreement; or
 - 9.4.2 disclosure of any Buyer Data except to Supplier's employees or permitted sub-contractors of Supplier on a need to know basis directly concerned with the performance of its obligations and Supplier shall maintain and make available to Buyer on reasonable notice a log identifying such Supplier's employees and the extent of their access to Buyer Data from time to time; or
 - 9.4.3 unless required by law, disclosure of any Buyer Data to any persons to whom Supplier is able to disclose such Buyer Data in accordance with the terms of this Agreement unless such persons are made aware, prior to disclosure, of the confidential nature thereof and that they owe a duty of confidence to the Buyer in respect of such information and Supplier to use best endeavours to ensure that such persons comply

with such duty; or

9.4.4 use of Buyer Data by Supplier or any sub-contractor in any way that would be harmful to the Buyer.

- 9.5 If any Buyer Data is lost or corrupted as a result of any act or omission of any of Supplier or its sub-contractors, Supplier shall restore Buyer Data at its own expense to the most recent back-up point. Buyer shall ensure that Buyer Data in its possession or control is backed up regularly in accordance with its policy on performing back-up of Buyer Data.
- 9.6 Supplier shall ensure that each Supplier sub-contractor who processes personal data (as defined in the Legislation) of the Buyer shall enter into an agreement undertaking to Supplier in equivalent terms to the undertakings given by Supplier to the Buyer in this clause.

10. No Transfer

- 10.1 The Parties do not consider that the commencement, termination or expiry of all or any part of this Agreement or an order or of the provision of the Services or any part of the Services pursuant to, or contemplated by, this Agreement will operate to transfer the employment of any employee or other person whether under TUPE, any TUPE Equivalent Legislation or otherwise.
- 10.2 Notwithstanding the foregoing:
- 10.2.1 during such period as is reasonable being in any event not less than six (6) months prior to the expiry of this Agreement or at any time after Buyer or Supplier has given notice to terminate this Agreement, or to cease the provision of any of the Services or actually ceased to provide any of the Services:
- i. Supplier shall promptly on Buyer's request fully and accurately disclose to Buyer details of the number, identity, age, identity of employer, terms and conditions of employment (including remuneration, benefits, pension arrangements, job title and job description), proportion of time spent in the provision of the relevant Services and employment history in relation to any individuals employed or engaged in the provision of the relevant Services and such other information as Buyer may require in relation to such individuals. Buyer shall be entitled to pass on any information provided pursuant to this clause to any of its Affiliates and to any person intending to tender or tendering for any contract for the provision of services that are similar in nature to the relevant Services, subject to such third party (where such third party is not an Affiliate of the Buyer) being bound by confidentiality obligations on equivalent terms to those set out in clause 8 of this Agreement and Buyer shall be entitled to rely upon and warrant the accuracy of any such information to any future service provider, and Supplier shall indemnify Buyer (for itself and any of its Affiliates and/or any future service provider) against any costs, expenses, liabilities, damages and losses arising out of any failure by Supplier to provide information under this clause and/or the provision of inaccurate information; and
 - ii. Supplier shall not vary the terms and conditions of employment or engagement of any individual wholly or mainly assigned to the provision of the Services or redeploy, replace or dismiss any of the individuals so assigned or employ or engage any additional individual in the provision of the Services, without the prior written consent of Buyer.
- 10.3 Supplier shall indemnify and keep indemnified Buyer (for itself and any Affiliate of Buyer and/or any future service provider) against all and any costs, expenses, liabilities, damages, and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise or be made against Buyer or any Affiliate of Buyer or any future service provider by virtue of the operation of TUPE or any TUPE Equivalent Legislation in connection with the termination of this Agreement or the termination of the provision of any of the Services (or any part of the Services) and which is made or brought by any individual who at or before the date of such termination is or was employed or engaged in the provision of the Services or who alleges that he or she was so employed or engaged and relates to circumstances or events arising or occurring at any time (including any dismissal or alleged dismissal of any such person by Buyer or any Affiliate of Buyer or any future service provider).
- 10.4 Save where clause 10.3 applies, Buyer shall indemnify and keep indemnified Supplier (for itself and any Affiliate of Supplier) against all and any costs, expenses, liabilities, damages, and losses arising out of any claim, action, demand or proceeding which arises or is alleged to arise or be made against Supplier or any Affiliate of Supplier by virtue of the operation of TUPE or any TUPE Equivalent Legislation in connection with the termination of this

Agreement or the termination of the provision of any of the Services (or any part of the Services) and which is made or brought by any individual who at or before the date of such termination is or was employed or engaged by Buyer in the provision of the Services or who alleges that he or she was so employed or engaged and relates to circumstances or events arising or occurring at any time (including any dismissal or alleged dismissal of any such person by Supplier or any Affiliate of Supplier).

11. Law

11.1 The formation, existence, construction, performance, validity, interpretation and all aspects whatsoever of the Agreement or an order or of any term of the Agreement or an order including any non-contractual obligations arising out of or in connection with the Agreement or an order will be governed by English law.