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QINETIQ

SPECIAL CONDITIONS

**AGREEMENT FOR THE PROVISION OF ACCESS TO AND USE THE ACE PodDev
ENVIRONMENT**

CONTENTS

1. Interpretation	3
2. Precedence	5
3. Provision of PodDev	6
4. Sub-contractor responsibilities	7
5. Not used.	9
6. Intellectual property rights.....	9
7. Data protection	9
8. Term and termination	12
9. Not used.	13
10. Not used.	13
11. Not used.	13
12. Entire agreement.....	13
Schedule 1: Data Processing	13

BACKGROUND

- (A) QinetiQ has procured the ACE PodDev Environment from NGUKL. The use of the ACE PodDev Environment is subject to terms and conditions of use.
- (B) Further to ongoing communications between QinetiQ and the Sub-contractor it has been identified that the Sub-contractor may require access to and/or use of the QinetiQ procured PodDev for one or more ACE commissions (“**Commission**”).
- (C) This agreement sets out the terms which apply to the use of PodDev by the Sub-contractor and any Sub-contractor Authorised Users. The Sub-contractor shall ensure all such Sub-contractor Authorised Users comply with these terms (“**Agreement**”).
- (D) PodDev is based upon Amazon Web Services (AWS) infrastructure and will be supported and maintained by NGUKL.

Agreed terms

1. Interpretation

The definitions and rules of interpretation in this clause apply in this Agreement.

1.1 Definitions:

ACE Community Agreement: means the agreement between the QinetiQ and the Sub-contractor in connection with the Accelerated Capability Environment (ACE) programme.

Authorised Users: any individual who QinetiQ have authorised to have access to and use PodDev.

AWS Policies: the AWS Acceptable Use Policy ([AWS Acceptable Use Policy \(amazon.com\)](#)), Privacy Policy) and Service Terms (<http://aws.amazon.com/serviceterms>) (and any successor or related locations designated by AWS) as may be updated by AWS from time to time.

AWS: Amazon Web Services.

Business Day: any day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 6.00 pm on any Business Day.

Commission Order Form: means the “CTF2”, as defined in the Community Agreement.

Contract Period: the period commencing on the Effective Date and ending on the expiration of the relevant CTF2.

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Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

Effective Date: means the date the Purchase Order was issued or as otherwise notified in writing by QinetiQ.

Inappropriate Content: means the infringement of any applicable laws or third party rights, such as material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Materials: any data or information used by Authorised Users on PodDev.

NGUKL: means the third party PodDev supplier, Northrop Grumman UK Limited, a company registered under the laws of England and Wales with company number 05989428, having its registered office at 2nd Floor Clareville House, 26-27 Oxendon Street, London, SW1Y 4EL, United Kingdom.

Personal Data: as defined in the Data Protection Legislation.

PodDev: an instance of the AWS Cloud Platform Accelerator Trusted Secure Enclaves: (LZA-TSE), used by ACE.

PodDev Account: the standard account(s) provided by ACE to each Authorised User to access the relevant enclave in PodDev during the Contract Period.

PodDev Use: the use of PodDev by Authorised Users for commissions in respect of the ACE programme as described in more detail in the Commission.

Sub-contractor Authorised Users: means all employees or third party persons engaged by the Sub-contractor including but not limited to, any subcontractor, parent company or subsidiary of the Sub-contractor who QinetiQ have authorised to have access to PodDev.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4) of the Data Protection Act 2018);

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Virus: any thing or device (including any software, code, file or programme) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause headings shall not affect the interpretation of this Agreement.
- 1.3 References to Clauses are (unless otherwise provided) references to the clauses of this Agreement.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, include the singular.
- 1.5 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.6 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. Precedence

- 2.1 The terms and conditions of the ACE Community Agreement are incorporated into this Agreement.
- 2.2 If there is any conflict or ambiguity between any of the provisions in this Agreement, the CTF2 and the ACE Community Agreement such conflict or inconsistency shall be resolved according to the following order of priority:
 - (a) the terms and conditions and schedules of this Agreement;
 - (b) the CTF2; and
 - (c) the ACE Community Agreement.

3. Provision of PodDev

- 3.1 In consideration of the sums payable under the relevant Commission, QinetiQ shall permit the Sub-contractor Authorised Users to access PodDev for PodDev Use and through Cloud Platform Accounts, in accordance with this Agreement, the ACE Community Agreement and the relevant CTF2.
- 3.2 The Sub-contractor shall ensure that Sub-contractor Authorised Users, shall not breach the terms of access as outlined in Clause 3.1.
- 3.3 If the Sub-contractor breaches any of its obligations under this Agreement, QinetiQ has the right to terminate this Agreement with immediate effect.
- 3.4 QinetiQ has the right to terminate any Sub-contractor Authorised User's access to PodDev with immediate effect where such Sub-contractor Authorised User has breached the Agreement and/or any of the obligations with respect to access and/or use of PodDev in this Agreement.
- 3.5 Not used.
- 3.6 The Sub-contractor acknowledges that:
- (a) QinetiQ is procuring by contract, access to PodDev through a PodDev Account only and has no responsibility or liability for the actions or omissions of AWS and/or Sub-contractor Authorised Users with respect to PodDev and any PodDev Accounts;
 - (b) QinetiQ has no responsibility for, or control over, any Materials uploaded or used on PodDev by the Sub-contractor Authorised Users and shall not monitor PodDev. The Sub-contractor has sole responsibility for any Materials Sub-contractor Authorised Users upload and/or use on PodDev. QinetiQ shall notify the Sub-contractor if it becomes aware of an allegation that any Materials on PodDev may be Inappropriate Content and QinetiQ reserves the right to close the PodDev Account where it reasonably suspects such content is Inappropriate Content; and
 - (c) it shall be solely responsible for Sub-contractor Authorised Users use of PodDev, in accordance with the terms of use under this Agreement.
- 3.7 QinetiQ does not warrant:
- (a) That Sub-contractor Authorised Users shall be able to access PodDev during the Contract Period;
 - (b) that use of PodDev will be uninterrupted or error-free;

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- (c) that AWS shall not access or use PodDev in any way;
- (d) the satisfactory quality or fitness for purpose of PodDev, whether express, implied, statutory or otherwise; or

4. Sub-contractor responsibilities

4.1 The Sub-contractor shall:

- (a) provide QinetiQ with details of any persons the Sub-contractor wishes to have access to PodDev and which Commission environment they are to have access to;
- (b) notify QinetiQ of any Sub-contractor Authorised Users it wishes to remove from PodDev;
- (c) use, and shall procure that Sub-contractor Authorised Users use, PodDev through its PodDev Account for PodDev Use only and any other use of PodDev shall be prohibited;
- (d) comply with, and shall procure that Sub-contractor Authorised Users comply with, all applicable laws with respect to this Agreement and its use of PodDev and shall ensure any use of PodDev shall not breach any applicable laws;
- (e) be solely responsible for the use of PodDev by Sub-contractor Authorised Users, including but not limited to ensuring PodDev is not used, and ensuring Sub-contractor Authorised Users or other persons do not use PodDev:
 - (i) for any illegal or fraudulent activity;
 - (ii) to violate the rights of others;
 - (iii) to threaten, incite, promote or actively encourage violence, terrorism or other serious harm;
 - (iv) for any content or activity that promotes child sexual exploitation or abuse;
 - (v) to violate the security, integrity or availability of any user, network, computer or communications system, software application, network or computing device; or
 - (vi) to distribute, publish, send or facilitate the sending of unsolicited mass email or other messages, promotions, advertising or solicitations;
- (f) ensure only Sub-contractor Authorised Users use PodDev Accounts and only the PodDev Account assigned to them;
- (g) be solely responsible for any Materials used on PodDev and ensure that Materials do not contain Inappropriate Content and ensure that Sub-contractor Authorised Users do not upload, use or store any Materials which contain Inappropriate Content;

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- (h) ensure any interactions with PodDev do not harm, restrict or have any detrimental impact on any other Authorised Users of PodDev;
- (i) ensure that any user identification code, password or any other piece of information provided in respect of access to PodDev is kept confidential and notify QinetiQ as soon as it becomes aware of any unauthorised use of PodDev by any person;
- (j) comply with, and shall procure that Sub-contractor Authorised Users comply with, the AWS Policies with respect to this Agreement and its use of PodDev and shall ensure any use of PodDev shall not breach any AWS Policies; and
- (k) ensure that any uploading, storage or use of any Materials on PodDev by Sub-contractor Authorised Users does not breach, or cause the breach of, any applicable laws, including but not limited to the International Traffic in Arms Regulations (ITAR) or any export control laws.

4.2 The Sub-contractor shall not, and shall procure that Sub-contractor Authorised Users shall not:

- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of PodDev in any form or media or by any means;
- (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of PodDev;
- (c) access and/or use any part of PodDev in order to build a product or service which competes with PodDev;
- (d) subject to Clause 13, licence, sell, rent, lease, transfer, assign, distribute, display, disclose, provide or otherwise commercially exploit or otherwise make PodDev available to any third party except the Sub-contractor Authorised Users;
- (e) introduce or permit the introduction of any Virus into PodDev;
- (f) allow PodDev to become the subject of any charge, lien or encumbrance; or
- (g) permit any unauthorised user to access PodDev.

4.3 The Sub-contractor shall be liable for the actions or omissions of the Sub-contractor Authorised Users in relation to PodDev as if they were the actions or omissions of the Sub-contractor.

5. Not used.

6. Intellectual property rights

6.1 The Sub-contractor acknowledges that all Intellectual Property Rights in PodDev belong, and shall belong, to the relevant third-party owners (as the case may be) and the Parties shall have no rights in or to PodDev other than the right to use it in accordance with the terms of this Agreement.

6.2 Sub-contractor Authorised Users have the right to upload Materials to PodDev through the PodDev Account solely for PodDev Use and the use of Materials on PodDev shall not change the title to any Intellectual Property Rights in such Materials.

7. Data protection

7.1 For the purposes of this Clause 7, the terms **controller, data subject, personal data, personal data breach, processor, processing and sub-processor** shall have the meaning given to them in the Data Protection Legislation.

7.2 The Parties shall comply with all applicable requirements under any Data Protection Legislation. This Clause 7 is in addition to, and does not relieve, remove or replace a party's obligations or rights under Data Protection Legislation.

7.3 The Parties have determined that, for the purposes of the Data Protection Legislation and with respect to any personal data provided by or on behalf of the Sub-contractor for setting up and/or controlling Sub-contractor Authorised Users' access to PodDev, the Sub-contractor is an independent data controller and QinetiQ is a processor and NGUKL are an authorised sub-processor.

7.4 Should the determination in Clause 7.3 change, each Party shall work together in good faith to make any changes which are necessary to this Clause 7 and Schedule 1.

7.5 Without prejudice to the generality of Clause 7.2, the Sub-contractor shall ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of personal data to QinetiQ and NGUKL with respect of Clause 7.3.

7.6 Schedule 1 sets out the nature and purpose of processing, the duration of the processing and the types of personal data and categories of data subject.

7.7 QinetiQ will procure by contract that NGUKL will not access or use, or disclose to any third party, any personal data except, in each case, as necessary to control access to PodDev or as necessary to comply with law or a court order.

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7.8 Without prejudice to the generality of Clause 7.2, the processor shall, in relation to any personal data processed in accordance with Clause 7.3:

- (a) process that personal data only on the documented written instructions of the controller which are set out in Schedule 1 unless the processor is required by Data Protection Legislation to otherwise process that personal data. Where the processor is relying on Data Protection Legislation as the basis for processing personal data, the processor shall notify the controller of this before performing the processing required by the Data Protection Legislation unless the Data Protection Legislation prohibits the processor from so notifying the controller on important grounds of public interest. The processor shall inform the controller if, in the opinion of the processor, the instructions of the controller infringe Data Protection Legislation;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the controller, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- (d) not transfer any personal data outside of the UK unless the prior written consent of the controller has been obtained, and the following conditions are fulfilled:
 - (i) the controller or the processor has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the processor complies with reasonable instructions notified to it in advance by the controller with respect to the processing of the personal data;

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- (e) assist the controller, at the controller's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the controller without undue delay on becoming aware of a personal data breach;
- (g) at the written direction of the controller, delete or return personal data and copies thereof to the controller on termination of the Agreement unless required by Data Protection Legislation to store the personal data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this Clause 7.

7.9 In respect of clause 7.3, the controller consents to QinetiQ appointing NGUKL as a sub processor. The controller does not consent to the processor appointing any other third party processor of personal data under this Agreement.

7.10 The Sub-contractor shall:

- (a) notify all Sub-contractor Authorised Users that their personal data will be transferred to QinetiQ and/or NGUKL for the purposes of providing access to PodDev in accordance with Clause 7.3;
- (b) ensure all Sub-contractor Authorised Users:
 - (i) consent to the processing of their personal data under this Agreement;
 - (ii) are aware of the confidential nature of the personal data uploaded, used and/or stored on PodDev and put in place sufficient protective measures to ensure such personal data remains confidential;
 - (iii) do not use any personal data stored on PodDev for any purpose other than the authorised use of PodDev;
 - (iv) do not access personal data on PodDev outside the UK;
 - (v) shall comply at all times with the obligations to protect personal data in this clause and the Data Protection Legislation; and

7.11 The Sub-contractor shall fully indemnify and keep indemnified QinetiQ against all claims, demands, actions, costs, expenses (including legal costs and disbursements), losses and damages arising from or incurred in connection with any breach by the Sub-contractor Authorised Users of Data Protection Legislation or this Clause 7 and/or any claims by Sub-contractor Authorised Users as a direct result of QinetiQ's and/or NGUKL's processing of personal data in relation to the processing of personal data in accordance with Clause 7.3, the terms of this Agreement AND solely to the extent that such processing is in accordance with the controller's written instructions as set out in Schedule 1.

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7.12 Without prejudice to Clause 7.3, the Sub-contractor shall ensure that neither it nor Sub-contractor Authorised Users upload or otherwise transfer any personal data onto PodDev without the prior written consent of QinetiQ and shall ensure that the required data protection artefacts are agreed as required by Data Protection Legislation, including but not limited to Data Protection Agreements.

8. Term and termination

8.1 This Agreement shall commence on the Effective Date and shall continue, unless terminated earlier in accordance with this [Error! Bookmark not defined.](#) Clause 8, for the Contract Period.

8.2 Without affecting any other right or remedy, this Agreement shall automatically terminate upon the termination or expiry of the relevant Commission.

8.3 Without affecting any other right or remedy available to it, QinetiQ may terminate this Agreement at any time with immediate effect and without any liability to the Sub-contractor or otherwise.

8.4 Not used.

8.5 On expiry or termination of this Agreement:

- (a) the Sub-contractor shall, and shall procure that all Sub-contractor Authorised Users, shall, immediately stop all use of PodDev and PodDev Accounts and the Sub-contractor shall prevent all Sub-contractor Authorised Users' access to PodDev;
- (b) all licences granted by QinetiQ in connection with this Agreement shall terminate immediately; and
- (c) PodDev, including any Materials in it, shall be deleted.

8.6 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

8.7 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

9. Not used.

10. Not used.

11. Not used.

12. Entire agreement

12.1 This Agreement, the ACE Community Agreement and the relevant CTF2 constitutes the entire agreement between the Parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

12.2 Each Party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

Schedule 1: Data Processing

Nature and purpose of processing	1. Processing of personal data to facilitate access to PodDev for Sub-contractor Authorised Users. 2. Storage of personal data on PodDev by Sub-contractor Authorised Users when using PodDev in accordance with this Agreement.
Duration of the processing	Duration of the Agreement.
Types of personal data	Names, email addresses, telephone numbers, business addresses.
Categories of data subject	Sub-contractor Authorised Users.