



navca
local focus national voice

Standard Service Contract Terms

VERSION: May 2022.

1. INTERPRETATION

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Contract: the contract between NAVCA and the Supplier for the supply of the Services as set out in the Contract Details, these standard terms and conditions, the Mandatory Policies, and any Supplemental Information.

Deliverables: all documents, reports and research material developed by the Supplier or its agents, subcontractors and personnel as part of or in connection with the Services in any form, including without limitation computer files, data, specifications (including drafts), and the Key Deliverables set out in the Contract Details.

Intellectual Property Rights: copyright and neighbouring and related rights, moral rights, trade marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, 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, 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.

NAVCA Materials: all materials and data supplied by NAVCA to the Supplier.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the provisions of the Contract.

Supplier IPRs: all Intellectual Property Rights either subsisting in the Deliverables (excluding any NAVCA Materials incorporated in them) or otherwise necessary or desirable to enable NAVCA to receive and use the Services.

1.2 Interpretation:

1.2.1 All other definitions set out in the relevant Contract Details shall apply to these Standard Service Contract Terms.

1.2.2 Any words following the terms **including**, **include**, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3 A reference to **writing** or **written** includes email but not any other messaging platform such as WhatsApp or Telegram.

2. SUPPLY OF SERVICES

2.1 The Supplier's Representative shall have authority to contractually bind the Supplier on all matters relating to the Services.

2.2 The Supplier shall supply the Services to NAVCA from the Services Start Date as specified in the Contract meeting any Key Dates.

2.3 In supplying the Services, the Supplier shall:

2.3.1 perform the Services with the highest level of care, skill and diligence complying with best practice in the Supplier's industry, profession or trade;

2.3.2 co-operate with NAVCA in all matters relating to the Services, and comply with all instructions of NAVCA;

- 2.3.3 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;
- 2.3.4 obtain and maintain all consents, licences and permissions (statutory, regulatory, contractual or otherwise) required to enable the Supplier to comply with its obligations in the Contract;
- 2.3.5 ensure that the Services and Deliverables shall conform in all respects with the Service specifications agreed between the parties and that the Deliverables shall be fit for any purpose that NAVCA expressly or impliedly makes known to the Supplier;
- 2.3.6 provide all equipment, vehicles and other items required to provide the Services;
- 2.3.7 comply with the Mandatory Policies and all applicable laws, statutes, regulations and codes from time to time in force;
- 2.3.8 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of NAVCA's premises from time to time and are notified to the Supplier; and
- 2.3.9 hold all NAVCA Materials in safe custody at its own risk, maintain them in good condition until returned to NAVCA, and not dispose of or use NAVCA Materials other than in compliance with NAVCA's written instructions or authorisation.

3. NAVCA'S OBLIGATIONS

- 3.1 NAVCA shall:
 - 3.1.1 provide such access to NAVCA's Materials as may reasonably be requested by the Supplier and agreed with NAVCA to provide the Services; and
 - 3.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.
- 3.2 A failure by NAVCA 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 NAVCA in writing and in reasonable detail of NAVCA's failure and its effect or anticipated effect on the Services.

4. INTELLECTUAL PROPERTY

- 4.1 The Supplier and its licensors shall retain ownership of all Supplier IPRs. NAVCA and its licensors shall retain ownership of all Intellectual Property Rights in NAVCA Materials.
- 4.2 The Supplier grants NAVCA, or shall procure the direct grant to NAVCA of, a fully paid-up, worldwide, exclusive, royalty-free, licence to copy and modify the Supplier IPRs to receive and use the Services during the Contract or after its termination.
- 4.3 NAVCA may sub-license the rights granted in clause 4.2 to any of NAVCA's customers at any time.
- 4.4 NAVCA grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify NAVCA Materials for the term of the Contract to provide the Services to NAVCA.

5. CHARGES AND PAYMENT

- 5.1 In consideration for the provision of the Services, NAVCA shall pay the Supplier the Charges.
- 5.2 All amounts payable by NAVCA exclude amounts in respect of value added tax (**VAT**) which NAVCA shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 5.3 Unless agreed otherwise by the parties, the Supplier shall submit invoices for the Charges plus VAT if applicable to NAVCA upon the completion of the delivery of the Services. Each invoice shall include all supporting information reasonably required by NAVCA.

- 5.4 NAVCA shall pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to a UK bank account nominated in writing by the Supplier.
- 5.5 If NAVCA 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 9 (Termination), NAVCA 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%.
- 5.6 NAVCA may at any time, without notice to the Supplier, set off any liability of the Supplier to NAVCA against any liability of NAVCA to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by NAVCA of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

6. INDEMNITIES

- 6.1 The Supplier shall indemnify NAVCA against all liabilities, costs, expenses, damages and losses suffered or incurred by NAVCA arising out of or in connection with any claim brought against NAVCA for:
- 6.1.1 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 NAVCA and its licensees and sub-licensees;
 - 6.1.2 the Supplier's actual or alleged failure to comply with its confidentiality obligations under clause 12.3 (Confidentiality) or
 - 6.1.3 the Supplier's actual or alleged failure to comply with its data processing obligations under clause 12.4 (Data protection).
- 6.2 Clause 6.1 shall survive termination of the Contract.

7. LIMITATION OF LIABILITY

- 7.1 References to liability in this clause 6 include every kind of liability arising under or in connection with this Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise. Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 7.2 Nothing in the Contract shall limit the Supplier's liability under clause 6.1 (Indemnities).
- 7.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- 7.3.1 death or personal injury caused by negligence;
 - 7.3.2 fraud or fraudulent misrepresentation; and
 - 7.3.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.4 Subject to clause 7.1 (No limitation in respect of deliberate default), clause 7.2 (Liability under identified clauses) and clause 7.3 (Liabilities which cannot legally be limited) neither party's total liability to the other party shall not exceed 110% of the Charges.
- 7.5 The caps on the parties' liabilities shall not be reduced by payment of an uncapped liability.

8. INSURANCE

- 8.1 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 NAVCA on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

9. DISPUTES

- 9.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then the parties shall attempt in good faith to resolve the Dispute.
- 9.2 If the parties are for any reason unable to resolve the Dispute within 10 Business Days, the parties will attempt to settle it by mediation following the CEDR Model Mediation Procedure. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. The mediation will start no later than 15 Business Days after the date of the ADR notice.

10. TERMINATION

- 10.1 Without affecting any other right or remedy available to it, NAVCA may terminate the Contract with immediate effect by giving written notice to the Supplier if:
 - 10.1.1 the Supplier's resources deteriorate to such an extent that in NAVCA's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 10.1.2 any of the Key Dates are not met; or
 - 10.1.3 the Supplier commits a breach of clause 2.3.7.
- 10.2 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:
 - 10.2.1 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 10 Business Days after being notified in writing to do so;
 - 10.2.2 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 for a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
 - 10.2.3 the other party suspends, threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business or activities.
- 10.3 If NAVCA terminates this Contract under clause 10.1 or clause 10.2, it shall also have the right to terminate any other contracts for the Supplier's provision of services to NAVCA with immediate effect by giving written notice to the Supplier.
- 10.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after the termination of the Contract shall remain in full force and effect.
- 10.5 Termination 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, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

11. EXIT ARRANGEMENTS

- 11.1 On termination of the Contract for whatever reason, the Supplier shall immediately deliver to NAVCA all Deliverables whether or not complete, and return all NAVCA Materials. 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
- 11.2 On termination of the Contract for whatever reason, the Supplier shall also, if so requested by NAVCA, provide all assistance reasonably required by NAVCA to facilitate the smooth transition of the Services to NAVCA or any replacement supplier appointed by it.

12. GENERAL

- 12.1 **Unforeseen Circumstances.** 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 results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance means that a Key Date is not met, or, in NAVCA's opinion, is unlikely to be met, NAVCA may terminate the Contract by giving 10 Business Days' written notice to the Supplier.
- 12.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of NAVCA. If NAVCA 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.
- 12.3 **Confidentiality.** Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, activities, affairs, customers, clients or suppliers of the other party, except each party may disclose the other party's confidential information:
- 12.3.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information to carry 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 12.3; and
 - 12.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.4 **Data Protection.** Both parties will comply with all applicable requirements of the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- 12.5 **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.
- 12.6 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.7 **Waiver.** 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 right or remedy. 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.
- 12.8 **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 clause 12.8 shall not affect the validity and enforceability of the rest of the Contract.
- 12.9 **Notices.** Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 12.9.1 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
 - 12.9.2 sent by email to the other party's Representative's email address;
- and shall be deemed to have been received if delivered by hand, 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 if sent by email, at the time of transmission, or, if this time falls outside 9am to 5pm on a Business Day, when business hours resume.

- 12.10 **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.
- 12.11 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) 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.
- 12.12 **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.