

# Agreement for Use of the Hinkley Supply Chain Service (inc associated elements of the service and Data Use and Privacy Policy)

Last Updated: 6<sup>th</sup> June 2017

## IMPORTANT

This is an important document which you must consider carefully when choosing whether to register for and use the Hinkley Supply Chain Programme ("the Service") at any time. Please read the terms and conditions of this Agreement carefully and make sure that you understand them before accessing the service. By using the Hinkley Supply Chain Programme you confirm your agreement to these conditions. Please understand that if you refuse to accept the terms and conditions of this Agreement, you will not be eligible to receive the Service from us.

### 1 How this Agreement works and what it covers

- 1.1 This Agreement is a contract between you and us and applies to the services we provide to you in connection with the Hinkley Supply Chain Programme and associated services delivered by the Hinkley Supply Chain Team (including but not limited to SWMAS, GWE BusinessWest and Somerset Chamber of Commerce). The associated services may include Support for Hinkley Point C Supply Chain, Nuclear South West Inward Investment or other services introduced through this programme. Details of the latest offers from HSCP can be found here <https://www.swmas.co.uk/business-support/hinkley-supply-chain-programme>
- 1.2 The terms of the Data Use and Privacy Policy and the other documents referred to in this Agreement (including those described in Section 1.4 and Appendix 1 below) are incorporated by reference into this Agreement and provide additional terms and conditions related to the Service.
- 1.3 By accessing the Service, you agree that you have read the terms and conditions contained in this Agreement (including the Data Use and Privacy Policy – see Appendix 1) and agree to be bound by them. We recommend that you store or print-off a copy of this Agreement for your records.
- 1.4 This Agreement sets out the obligations we have to you and the obligations you have to us. It is made up of:
  - (a) the general terms and conditions set out below which will always apply;
  - (b) the Company Registration details held within the Hinkley Supply Chain Portal completed by you;
  - (c) each HSCP information form completed and signed by you, as applicable. Please note that some elements of the service may contain additional Special Terms and Conditions that will also apply to the type of additional service for which you are applying;
  - (d) each Project Acceptance completed and issued by us;

- (e) each State Aid Declaration completed and signed by you;
- (f) each SME Declaration completed by you;
- (g) the Data Use and Privacy Policy; and
- (h) your Marketing Preferences.

Further details on the above are set out in Section 5.1.

1.5 In this Agreement:

- (a) **we, us** and **our** means SWMAS Ltd, its partners, suppliers and their respective sub-contractors involved in the management and delivery of the Service (or any part of it) to you from time to time including Somerset Chamber of Commerce and Enterprise Ltd, GWE BusinessWest Ltd, Frazer Nash Ltd, Exelin Ltd as well as other partners we may appoint to deliver part of the Service; and
- (b) **you, your** and the **Applicant** means an enterprise which meets the eligibility requirements of an SME, is eligible and suitable for the Service and has registered for and/or receives the Service from us.

1.6 Some capitalised terms used in this Agreement have specific definitions, and we have provided them in Section 22 or otherwise in the text of this Agreement.

1.7 You will also find underlined words in this Agreement and on our Websites that hyperlink to relevant information.

1.8 If you have any questions about this Agreement or anything arising from them, please contact us at any time at [enquiries@hinkleysupplychain.co.uk](mailto:enquiries@hinkleysupplychain.co.uk) or call 01823 443425.

## 2 **Your Information**

2.1 By registering for and using the Service, you are committing to provide us with necessary information about your business and certain key contacts in your business with whom we will liaise in providing the Service to you.

2.2 Your information is important to us. Please see our Data Use and Privacy Policy (Appendix 1 below) for details of how we use your information and any personal data about key personnel who are authorised to act on your behalf that you provide to us.

## 3 **The Service**

3.1 The Service was established by the Heart of the South West, West of England and Gfirst Local Enterprise Partnerships and contracted to us through Somerset County Council to support businesses to engage with the Hinkley Point C project and other Nuclear sector opportunities.

3.2 If you meet the eligibility requirements for the Service, you may receive a tailored package of support to help you prepare for and meet the challenges presented by accessing the HPC project.

3.3 The Service is financed through a combination of funding from the Local Enterprise Partnerships, other public sector sources and private sector contributions. You must be in a position to dedicate appropriate resources

(both financial and your time in terms of input from senior management) to maximise the benefit of the Service.

#### **4 Assessing your eligibility and suitability for the Service**

4.1 Whether we can provide the Service to you will depend on whether you meet certain eligibility and suitability requirements for the Service.

4.2 The Service offers a range of products, not all of which are available to all companies. Your HSCT contact will help you identify appropriate products to support your growth.

##### ***How will I know if I am eligible for the Service?***

4.3 When you first get in contact with us to find out about the Service, whether this initial contact is made by phone, email, via the Websites or a referral, we will ask you some basic questions to help us assess whether you may be eligible for the Service.

4.4 Any information that you provide to us at this stage including any personal information of any contacts at your business will be subject to our Data Use and Privacy Policy.

##### ***How will I initiate access to the Service?***

4.5 In the first stage, you will be required to complete and submit details about your business in the Hinkley Supply Chain Portal. You may also be contacted by phone by a member of the HSCT who, during that phone call, will ask you a series of questions about your business, its ambitions and barriers to growth.

4.6 We will store and use the information you provide to enable us to attempt to match your business with potential opportunities. If we identify a potential match you will be contacted by the HSCT to undertake further aspects of the service which may include invitations to information briefing events, a telephone consultation or a face-to-face meeting with the HSCT to determine the most appropriate support (if any) that the Service can provide to your organisation. At this stage, we will further explore your business needs, goals, ambitions, any matched opportunities and barriers to winning business plus any other relevant information that we consider appropriate in connection with the Service.

##### ***Can I be sure I will be matched with an opportunity or given more assistance?***

We work in good faith and apply our reasonable endeavours to use the information you have provided to match your business with potential opportunities but we do not accept any liability for any failure on our part to do this. We cannot guarantee that everyone registering with the HSCP will be contacted regarding an opportunity or win work with HPC but we will aim to pass your details to prospective customers wherever we believe there is a potential match with their requirements. You are responsible for the quality and accuracy of the details you provide to us and we recommend that you regularly review your company registration information held on the Hinkley Supply Chain Portal to ensure it accurately reflects your business.

## 5 Registering for the Service

5.1 As part of the registration process, you will need to:

- (a) complete the Company Registration within the Hinkley Supply Chain Portal. By completing the Company Registration, you authorise us to maintain a record registered in your name and authorise us to share details of your business with other members of the HSCT, LEPs and SCC;
- (b) complete and sign a State Aid Declaration as part of the registration process and again any time you apply for support in connection with the Service. Without completing this, you will not be able to access some parts of the service. Section 8 below provides further information as to why we need you to complete this document;
- (c) review the SME Requirements and satisfy yourself that your business complies with the SME Requirements. This is important because you will be required to complete an SME Declaration as part of the registration process. Without it, you will not be able to apply for access to some parts of the service;
- (d) review and accept the Privacy Policy. By accepting the Privacy Policy, you expressly consent to our use and disclosure of your personal information and direct us to do so in the manner described in the Privacy Policy;
- (e) complete your Marketing Preferences. When making a decision about your marketing preferences, you are asked to remember that some of the main benefits of the Service are through us connecting you to customer opportunities and the range of Related Services (for example other publicly funded services) that may be of interest, benefit and value to you and your business; and

5.2 Please read the documents carefully before completing and/or accepting them. If you need any help in completing them or have queries about the documents, please contact the HSCT who will be happy to assist you.

Please note that your registration will not be deemed to have been accepted by us until the Hinkley Supply Chain Portal indicates that this is the case. If you do not complete all of the above, you will not be able to access some or all of the service.

### ***What information will the registration process require you to provide?***

5.3 When you register with us, you are required to provide information about your business and key personnel who are authorised to act on your behalf. By completing the Company Registration Form you are confirming that all such information that you provide to us is true, accurate, current and complete in all respects.

5.4 You acknowledge that the information that you provide to us (whether as part of the registration process or otherwise) may be used to validate your eligibility and suitability to participate in the Service and if found to be incorrect or misleading, you may, at our sole discretion, be disqualified from participating in the Service.

5.5 It is your responsibility to ensure that we have your current contact details

and the correct details for your key personnel who are authorised to act on your behalf in relation to the Service. Where we are required to send information to you, by law we have to send it to the most recent address we have for you.

- 5.6 If you do not tell us promptly about any change to your details, the security of your information could be at risk and you may not receive communications which could be important, including notices about changes to this Agreement which affect you. Should any of your registration information change, please notify us immediately at the following email address: [Enquiries@hinkleysupplychain.co.uk](mailto:Enquiries@hinkleysupplychain.co.uk). We may change registration requirements from time to time.
- 5.7 The Hinkley Supply Chain Portal password that we provide you is unique and should be kept secure. You must notify us immediately of any breach of security or unauthorised use of your password.

## 6 External Expert support

- 6.1 As part of the Service, we are able to provide you with access to a range of External Experts. Where an External Expert is involved, they (and not us) are responsible for providing you with a commercial proposal outlining their proposed service, any costs and for implementing the expert support that is detailed in their proposal with you.
- 6.2 The External Expert support falls into the following main categories described below:
- (a) **Leadership and Management Support** provides senior managers with the strategic skills to enable them to achieve the ambitions of their business.
  - (b) **Consultancy Support** is hands-on support providing solutions directly to businesses. Consulting Support is suitable for businesses who require a short term solution as well as those who may not have the capacity to develop and implement a solution. Consultancy Support is delivered by our partner organizations which include Frazer Nash Ltd, Exelin Ltd and other specialist consultants we may refer you to.
  - (c) **Training, Workshop and Masterclass Support** provides access to information and new skills aimed at helping your business and its staff to overcome barriers to accessing opportunities, and to enable the successful delivery of new business.
- 6.3 Special Terms and Conditions apply to each of the different types of Support in addition to these terms and conditions. These will be specified in each Application Form for the particular support for which you apply, so you are advised to carefully consider them before submitting each applicable Application Form.
- 6.4 You are responsible for managing the relationship with the selected External Expert
- 6.5 Where any part of the Service is being delivered on your premises, it is your responsibility to ensure that any reasonable adjustments are made to allow

the Service to be delivered by the External Expert in a safe environment in compliance with all relevant health and safety and other applicable laws, including disability discrimination. You must also ensure that you have suitable insurances (where relevant) in place.

## 7 **Rights to reject**

- 7.1 We reserve the right to reject any application for support or terminate existing support where we determine that there are reasonable grounds for concern that there may be a potential conflict of interest or a potential misuse of public funds. We may exclude you from the Service if there are reasonable grounds to show that you have abused the Service.

## 8 **State Aid Requirements**

### ***What are the State Aid Requirements and why do they apply to this Agreement?***

- 8.1 Funding made available by Local Enterprise Partnerships and other Public Bodies acting through us to provide to you is known as *de minimis* aid under the State Aid Regulations. Further details on the State Aid Regulations as well as a list of possible forms of state aid and what does not constitute state aid can be found here <https://www.gov.uk/state-aid>.
- 8.2 Under the State Aid Regulations before awarding you any support which comprises *de minimis* aid, we are required to check whether you (or any entity in your group) will have received, in the last three fiscal years (previous two fiscal and current fiscal year), more than €200,000 (€100,000 if you are an entity operating in the road transport sector) of *de minimis* aid taking into account the relevant amount.
- 8.3 The applicable Euro/Sterling exchange rate that you should use to determine the Euro equivalent of any amount of *de minimis* aid you have received in Pounds Sterling to assess whether the aforementioned thresholds have been exceeded is based on the [Bank of England Daily Spot Check Rate](#).
- 8.4 To determine what level of *de minimis* aid you have received, you will be required to confirm how much *de minimis* aid you have already received in the same financial year in which you are applying for support (based on your accounting year by reference to your accounting reference date) as well as in the previous two financial years. So, to be clear, we will need details of any *de minimis* aid that you have received for 3 financial years (including the year that you are making the application for the support).
- 8.5 The value of the support we will provide through the service will vary from business to business based on the extent of support offered and taken up but may be up to £3000. In calculating the amount of aid for *de minimis* purposes, we will use a figure of £3000 at the start of any support. This is then added as the amount of the aid (being *de minimis* aid) for which you are applying through the Hinkley Supply Chain Programme to determine whether you have exceeded the thresholds specified in Section 8.2. If you have exceeded the relevant thresholds, then you will be ineligible for support. This is why we ask you at the outset during the registration process to carefully review the State Aid Requirements to make sure that you are a

suitable candidate for the Service and can satisfy the State Aid Requirements. We will advise you of the actual value once the support is concluded to enable you to comply with any future state aid notifications.

***When do you need to provide a State Aid Declaration?***

- 8.6 The full State Aid Declaration form will be made available in the relevant Support Application Form. You will need to carefully review them and complete them as accurately and fully as possible and then print out, sign them and date them and send the completed, signed and dated document to your HSCT contact. Each State Aid Declaration that you sign will form part of our agreement with you and the terms and conditions of this Agreement will apply to each such declaration.
- 8.7 A failure by you to complete a State Aid Declaration shall be deemed a material breach of our Agreement with you entitling us, at our discretion, to terminate our Agreement with you or suspend the provision of the Service to you until such time as you have provided an accurate and complete State Aid Declaration.
- 8.8 If, as a result of your failure to complete a State Aid Declaration with accurate up-to-date information, a sum has to be repaid by us for breaching *de minimis* rules, we maintain the right to reclaim the repaid amount from you as a debt due from you to us.

9 **Not used**

10 **R&D Tax Credits**

Important: You agree that you have been informed that if you receive the benefit of the Service and subsequently apply for additional support in relation to a specific research and development activity you may not be able to apply for R&D tax credits in connection with any costs that your business has incurred which relate to that specific activity. It is important that you check with your accountant before applying for *de minimis* aid through this programme if this is likely to apply to you.

11 **Ending this Agreement**

***When can we end this Agreement or stop providing the Service to you?***

- 11.1 We may end this Agreement (or stop providing the Service):
  - (a) immediately if you are in material or persistent breach of this Agreement which is incapable of remedy or if the breach is capable of remedy, you fail to remedy the breach within a reasonable period of time;
  - (b) immediately if we reasonably believe that you have seriously or persistently broken or attempted to break any of the terms of this Agreement or any additional conditions or any other agreement you have with us including:
    - (i) failure to make payment in accordance with the Agreement (note payment is restricted to certain elements of the Service);
    - (ii) by giving us any false information at any time (for example by

giving false *de minimis* information in the State Aid Declaration to secure support or by suggesting inaccurate financial information);

- (iii) by committing any fraud or dishonesty or acting in any manner which in our opinion brings or is likely to bring the Service into disrepute or is materially adverse to our interests or those of our funders, partners or our subcontractors or the Service, including any damage to our respective reputations;
  - (iv) if you (by your officers, employees, agents or otherwise) shall be incompetent, guilty of a criminal offence and/or any negligence or wilful neglect of duty or commits any material breach of his obligations hereunder;
  - (v) we receive and uphold a complaint about conduct of you or any of your personnel engaged in the Service;
  - (vi) behaving in a manner (for example by abusing people who work for us or who we refer you to) that makes it inappropriate for us to continue to provide the Service to you;
  - (vii) putting us in a position where we might break any law, regulation, code or other duty which applies to us if we continue to provide the Service to you; or
  - (viii) using (or allowing someone else to use) your Hinkley Supply Chain Portal account illegally or for any criminal activity;
- (c) at our convenience, at any time by providing you with 7 days' notice in writing;
  - (d) immediately, in the event that the Service is no longer provided by us or otherwise ends by reason of Government policy; or
  - (e) in the circumstances described above

***When can you end this Agreement or stop receiving the Service from us?***

11.2 You can end this Agreement:

- (a) if we are in material breach of this Agreement which is incapable of remedy or if the breach is capable of remedy, we fail to remedy the breach within a reasonable period of time; or
- (b) at any time at your convenience by providing us with 7 days' notice in writing.

***What are the consequences of termination?***

11.3 If the Agreement is terminated:

- (a) you agree that we may immediately deactivate your Hinkley Supply Chain Portal account but will retain related data, as we are required to hold the information for regulatory or audit purposes;
- (b) it is your responsibility to notify your chosen External Expert(s) that this Agreement has been terminated you will be responsible for paying the External Expert in full

11.4 Termination of this Agreement does not affect our or your accrued rights and liabilities.

## 12 **No Advice Given**

12.1 For the avoidance of doubt, nothing in this Agreement or delivery of the Service or any funding partly or wholly related to the Service is or shall be constituted as any form of financial, management or consultancy advice by us. We accept no liability for decisions which you make in running your own business.

12.2 All guidance, reports and communications (including any conclusions, recommendations, and forecasts) that we provide or issue or make to you in connection with the Service (including in connection with any bid or proposal that you make to win business with EDF, its subcontractors or suppliers), whether made verbally or in writing, are made by us in good faith and on the basis of the information available to us at that time whether from the information that you have provided to us at any point in time (and whether in writing or verbally) including subsequent information that you provide to us or that we have obtained because the information is in the public domain.

12.3 The validity of the information you provide to us or that we obtain from public sources will depend, amongst other factors, on the effective co-ordination between you and your personnel and us to ensure that we are given and have the most current, up-to-date and accurate information to enable us to provide the Service to you.

12.4 No condition, warranty or representation, express or implied, is given as to the results or performance obtained or to be obtained from the Service provided by us and you shall be responsible for the proper adaptation of the guidance and reports we provide or make available to you as part of the Service to your own particular circumstances.

12.5 Any guidance or reports given by us to you are for your use within your business and only for the purpose agreed by us and are not to be disclosed or reproduced to third parties without our prior written consent. We do not accept any responsibility or liability for any loss suffered by you or a third party to whom you have passed any such guidance or reports. Further we do not accept any responsibility or liability for any loss that you suffer as a result of you using any guidance or report for any purpose not agreed at the time the Service was provided.

12.6 We cannot warrant that the work will be outside the scope of any patent or registered design, and will not be liable to you for any loss or claim which is not reasonably foreseeable on acceptance of these terms and conditions and any subsequent support we provide.

## 13 **Liability**

13.1 Nothing in this agreement seeks to limit or exclude liability for death and personal injury arising from either of our negligence or that of our respective employees and agents. None of us seek to exclude our liability for fraudulent misrepresentation by ourselves or our employees or agents or for any other matter for which it would be illegal to exclude or attempt to exclude liability.

- 13.2 Our total aggregate liability to you under or in connection with this Agreement (whether such liability arises under statute or in contract, tort or otherwise) shall not exceed £3,000.
- 13.3 Subject to Section 13.1, to the maximum extent permitted by applicable law we will not be liable to you for any of the following losses:
- (a) (i) loss of current or future income or revenue; (ii) loss of business or opportunities; (iii) loss of profits; (iv) loss of anticipated savings or benefits; (v) loss of data; (vi) loss of reputation or (vii) special loss or damage, in each case, whether such losses are direct or indirect; and/or
  - (b) any indirect or consequential loss or damage (including any of the losses of the type described in Section 13.3(a) to the extent that such losses or damages are indirect or consequential).
- 13.4 We are also not responsible for failure to meet any of our obligations under this Agreement where such failure is due to events beyond our reasonable control, including but not limited to, acts of God, war, fire, flood, labour dispute, strike, lock-out, riot, civil commotion, malicious damage, explosion, damage, government action or any other similar event.
- 13.5 We do not accept any responsibility for any liability that arises out of your relationship with any External Expert or from any aspect of any project or activity undertaken by an External Expert on your behalf. Under no circumstances shall we be liable to you for any loss, damage, cost or other liability which occurs as a result of, or in connection with an External Expert's provision of services to you. Any project or activity undertaken by an External Expert on your behalf will be subject to any terms and conditions that you agree directly with that External Expert.
- 13.6 For the avoidance of doubt, time shall not be of the essence and we will not incur any liability to you in respect of any failure to deliver the Service or any part of it by any specified date. However, we will use our reasonable endeavours to meet any timescales we agree with you.
- 14 **Changes in our Funding**
- We reserve the right to amend or remove the services available to you should our funders change their funding of the Service at any stage.
- 15 **Confidentiality**
- 15.1 We shall treat as and keep confidential all information whether of a technical, commercial or any other nature that is received from you, that is disclosed to us by, or on behalf of, you and, to the extent permitted by law, shall not, during the period of an Agreement, or at any time after its termination, divulge any such information to any person not authorised by you to receive it (save that we can disclose that information in accordance with our Privacy policy for the purposes set out in that policy) and shall not utilise any secret or confidential knowledge or information acquired in connection with that Agreement to your detriment or prejudice or use the same for any purposes save for the purposes of carrying out our obligations under this Agreement.
- 15.2 However Section 15.1 shall not extend to any information already known to you or us prior to its disclosure by the other or lawfully received from a third

party, or any information already existing in the public domain at the date of its disclosure by you or which you or we are required to disclose pursuant to a statutory, legal or regulatory obligation.

- 15.3 We shall effect and maintain adequate security measures to safeguard your confidential information from unauthorised access, use, copying or dissemination.

## 16 **Intellectual Property**

- 16.1 Nothing in this Agreement shall affect the intellectual property rights held by you or us before the date of your registration for the Service.

- 16.2 Unless otherwise specified in this Agreement, all intellectual property rights developed in the provision of the Service will vest in us or our licensors. We may use know-how acquired, principles learned or developed or experience gained during the performance of the Service to provide services to other businesses and persons.

- 16.3 All intellectual property rights in any bespoke Support Plan developed for you shall vest in you and you hereby grant us a non-exclusive, royalty-free, irrevocable licence to use the Support Plan in connection with the provision of the Service and thereafter for our own internal business purposes.

- 16.4 Any intellectual property rights generated during your engagement of an External Expert shall be subject to those terms of engagement.

- 16.5 Where we or you use intellectual property owned by a third party during the continuance of the Service:

- (a) we warrant to you that we have obtained all relevant licences allowing us to use such intellectual property; and
- (b) you warrant to us that you have obtained all relevant licences allowing you to use such intellectual property.

- 16.6 Neither you nor us may use any trademarks, brands or service marks of the other without the other's prior written approval.

## 17 **Notices**

- 17.1 You agree that we may provide notice or other information to you by posting it on the Websites (including the posting of information which is only accessed by you by logging into your account), emailing it to the email address listed in your account, mailing it to the street address listed in your account, calling you by phone, or sending you a "text"/SMS message. You must have internet access and an e-mail account to receive communications and information relating to the Service.

- 17.2 Such notice shall be considered to be received by you within 24 hours of the time it is posted to the Websites or emailed to you. If the notice is sent by mail, we will consider it to have been received by you three Business Days after it is sent.

- 17.3 Notices to us made in connection with this Agreement must be sent by postal mail to Hinkley Supply Chain Programme, Somerset Energy Innovation Centre, Bristol Road, Bridgwater, Somerset TA6 4FJ and marked for the attention of the HSCP Programme Manager.

## 18 **Publicity**

- 18.1 Neither you nor us shall publicise nor make announcements about the Service provided to you or this Agreement or any matters referred to in this Agreement without the prior approval of the other. Except as expressly permitted under this Agreement, neither you or us shall make or permit to be made any press or other public announcement in relation to this Agreement or to any aspect of the proposed collaboration between the us, other than in such terms as the we may from time to time agree in writing.
- 18.2 Notwithstanding Section 18.1 and subject to its obligations in relation to Section 15 Confidential Information, we shall have a right to produce case studies, publications, videos, press releases or articles about you and/or the Service but not to the extent that the same cause you any commercial harm and only following reasonable discussion with you as to the method or timing of such case studies, publications, press releases or articles. We will permit you to review any such publications, press releases, online activity or articles in advance of publication to ensure that no commercially-sensitive information is involved.

## 19 **General**

- 19.1 **Third Party Rights:** This Agreement is personal to you and a person who is not a party to it will have no right to enforce any of its terms under the Contracts (Rights of Third Parties Act) 1999, but this shall not affect any right or remedy of a third party which exists or is available apart from that Act.
- 19.2 **Assignment/Transfer:** You may not transfer, assign or charge any of your rights or obligations under this Agreement. We reserve the right to transfer or assign this Agreement or any right or obligation under this Agreement at any time without your consent.
- 19.3 **Disputes:** We and you shall use our respective best efforts to negotiate in good faith and settle amicably any dispute arising under this Agreement (a "Dispute"). If you have a dispute or difference with us, you should contact us at [enquiries@hinkleysupplychain.co.uk](mailto:enquiries@hinkleysupplychain.co.uk)
- 19.4 **Entire Agreement:** This Agreement, together with any other documents referred to in it contain the entire agreement and understanding between you and us in relation the Service and they replace all earlier agreements, arrangements, statements and understandings with you, except for any fraud or fraudulent statement by either you or us.
- 19.5 **No Waiver:** If we choose not to exercise any of our rights against you immediately this will not constitute a waiver of such rights and we can still do so later or in any other situation where you breach this Agreement.
- 19.6 **Invalidity:** If any part of this Agreement is unenforceable, unlawful or void in any relevant jurisdiction then that part shall be separated from the rest of the Agreement which shall continue to be valid and enforceable.
- 19.7 **No Partnership:** Nothing in this Agreement creates any partnership or joint venture between you and us, or the relationship between you and us of principal and agent.
- 19.8 **English Language:** This Agreement is in English and we will only write and communicate with you in English.

- 19.9 **Governing Law:** This Agreement and any issues or disputes of whatever nature arising or out of or in any way relating to it or its formation (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 the laws of England and Wales. We and you submit to the exclusive jurisdiction of the courts of England and Wales.
- 19.10 **Non solicitation:** It is a condition of acceptance of this Agreement that you will not recruit or employ either directly or indirectly either full or part-time any person who is employed or contracted by us on or in connection with the delivery of the Service without our prior consent in writing either during the continuance of the Project or for a period of 12 months from the completion thereof. If you are in breach of this condition you agree to pay us on demand a sum equal to 3 months salary and benefits (based on our calculation of costs relating to our costs for the individual concerned).
- 19.11 **Variation:** No variation to the Agreement, or documentation supporting the Agreement, shall be effective unless agreed in writing by duly authorised representatives of the parties. Such agreement may be delivered by hand, post, facsimile or e-mail in accordance with Section 9 above.

## 20 **Updating this Agreement**

We reserve the right to update this Agreement (including the Data Use and Privacy Policy) from time to time. For example, we may need to make changes to the Agreement if the State Aid Requirements or SME Requirements change or if our funders introduce some new requirements with which we and you are required to comply. If we do so we will place a prominent notice on the Websites directing you to where you can read the updated Agreement. If you have any questions about any updates please feel free to contact us at [enquiries@Hinkleysupplychain.co.uk](mailto:enquiries@Hinkleysupplychain.co.uk). Your continued use of the Service will constitute your acceptance to any changes made to this Agreement after such updates.

## 21 **Complaints about the Service**

We want to hear from you if you feel unhappy about the Service that you have received from us. Letting us know your concerns gives us the opportunity to put matters right for you and improve the Service. If you have reason to complain you may do so in person, in writing by post or email or by telephone. Details of our complaints handling procedures are available by request from [enquiries@Hinkleysupplychain.co.uk](mailto:enquiries@Hinkleysupplychain.co.uk)

## 22 **Terms we use in this Agreement**

The meanings of the capitalised terms that we use in this Agreement are described below:

**Agreement** means this Agreement between you and us incorporating these general terms and conditions and each of the documents incorporated into this Agreement by reference from time to time including the Privacy Policy and those other documents referred to in Section 1.4;

**Hinkley Supply Chain Team member** means an individual who is appointed by us to be your principal point of contact with us and to provide ongoing support to you whilst you are receiving the Service;

**Support Plan** means a plan created by us working with you following a diagnostic review of your business, needs and barriers to growth indicating the areas in which we or an External Expert may be able to assist your business in reaching its goals and as may be updated between you and us from time to time with our agreement;

**Support** means the support described in Section 6.2;

**Hinkley Supply Chain Portal** means the Company Registration Portal to be completed by you to register with us to receive the Service;

**Consultancy Support** means the support described in Section 6.2;

**Contribution Amount** means the fees payable by you for the provision of the Service under this Agreement, as more particularly described in Section **Error! Reference source not found.**;

**Deliverables** means the information, works, documents, products, specifications, instructions, toolkits, plans, drawings, databases, patterns, models, designs and other materials, and any reports, to be produced by or on behalf of the External Expert in the course of providing the Service;

**External Expert** means an individual vetted by us for their business experience who is able to provide support to you to meet the objectives set out in your Support Plan;

**Privacy** means the Data Use and Privacy Policy which sets out how we use your information and which can be found here in Appendix 1

**Service** has the meaning given to that term in Section 1.1;

**Service Provider** means SWMAS Ltd, its suppliers and their respective sub-contractors involved in the management and delivery of the Service (or any part of it) to you from time to time;

**SME** as defined by the European Commission, is an enterprise:

- (a) that has fewer than 250 employees; and
- (b) has either (a) annual turnover not exceeding €50 million (or the equivalent amount in GBP based on Bank of England Daily Spot Check Rate found at <http://www.bankofengland.co.uk/boeapps/iadb/Rates.asp?into=> or (b) an annual balance-sheet total not exceeding €43 million (or the equivalent amount in GBP based on Bank of England Daily Spot Check Rate found at <http://www.bankofengland.co.uk/boeapps/iadb/Rates.asp?into=>); and
- (c) of whose capital or voting rights, 25 per cent or more is not owned by one enterprise, or jointly by several enterprises, that fall outside this definition of an SME. This threshold may be exceeded in the following two cases: (a) if the enterprise is held by public investment corporations, venture capital companies or institutional investors provided no control is exercised either individually or jointly, or (b) if the capital is spread in such a way that it is not possible to determine by whom it is held and if the enterprise declares that it can legitimately presume that it is not owned as to 25% or more by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME.

For further information see:

[http://ec.europa.eu/enterprise/policies/sme/files/sme\\_definition/sme\\_user\\_guide\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/files/sme_definition/sme_user_guide_en.pdf)

**SME Declaration** means the declaration to be given by you to us confirming that you are a SME which qualifies for support in accordance with Section 5.1(c);

**Special Terms and Conditions** means any special terms and conditions that apply to this Agreement as more particularly described in a Support Application Form;

**State Aid Declaration** means the declaration to be given by you to us confirming the amount of *de minimis* aid received by you in the last 3 years in compliance with the State Aid Regulations, together with any additional conditions that apply to this Agreement;

**State Aid Regulations** means the European state aid regulations Commission Regulation (EC) No. 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty to *de minimis* aid (OJ L352, P1-8) as the same may be amended from time to time and details of which can be found here <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013R1407>;

**Websites** means [www.swmas.co.uk/HSCP](http://www.swmas.co.uk/HSCP)

## Appendix 1 - Data Use and Privacy Policy

### 23 What information do we collect about you?

The information we collect about you is made up from the information you and others give us when:

- you use our website and the Hinkley Supply Chain Portal;
- you contact or communicate with us whether by completing and submitting any forms or requests or reviews on the website or by calling us or submitting an online enquiry or emailing us;
- you use our services;
- you take part in surveys or questionnaires or provide us with any feedback;
- we communicate with you, whether in writing, in person, over the phone or otherwise; and
- you interact with us via social media, such as LinkedIn, YouTube, Facebook or Twitter.

In addition, we may receive personal information about you from third parties such as those who have referred you to the Service and its website(s).

We store all the information you provide to us, including information provided via forms you complete on our website, and information which we may collect from your browsing. Our server, in common with nearly all web servers, logs each page

that is downloaded from the site. Any new information you provide to us may be used to update an existing record we hold for you.

By providing us with your information or agreeing to let a third party provide your information to us, you agree that we can process the information we collect about you (including personal data) for the purposes set out in this policy.

**24 What about sensitive information?**

We do not generally seek to collect sensitive personal information about users of our website and services and where we do there are specific reasons for doing so, which will be made clear in those instances. One such reason we might need to ask you for such information is where you are applying for training grants for your employees and in so doing we need to understand the current level of training and experience your employees have completed, but we note this is not relevant to all clients. If we do seek to collect sensitive information we will ask you to explicitly consent to our proposed uses of that information at the time of collection. We use the term “sensitive personal information” to mean information about topics such as personality and private life, racial or ethnic origin, colour, membership of political parties or movements, or other such sensitive topics.

**25 Can you give us information about another person?**

If you give us information about another person then we accept it on the understanding from you that you have made the other person aware of how we will use and disclose their information and the other person has given you permission to provide their details to us. You should not provide us with others' personal information if this is not the case.

**OUR USE OF YOUR INFORMATION**

**26 How do we use your information?**

***General***

We will use your information for the following main purposes:

- to assess your eligibility and suitability to the services you have asked us to provide;
- to provide the services that you have asked us to provide;
- to manage your participation in the relevant part(s) of the Service provided to you (including identifying you to a potential customer or supplier, application(s) for support and invitations to events and participation in new or other elements of the programme);

- to communicate with you **(a)** about the services you have asked us to provide; **(b)** about any changes to the website (including its design and functionality) and/or our services; and **(c)** in connection with any surveys, questionnaires or feedback requests that we may undertake with you;
- to refer you to third parties who provide Related Services (as defined below) where a need for such services is identified, as part of and in connection with the provision of the services we provide to you (and in such circumstances such third parties will be provided with relevant and necessary contact details and other information for this purpose only);
- to refer you to third parties who may market their services to you when we have your express permission to do so (please see paragraph 6 below for further details);
- to improve our services;
- to update and enhance our records about you and your business and/or company or organisation;
- for internal analysis and research, evaluation, monitoring and audit purposes;
- to comply with legal and regulatory requirements; and
- to monitor, analyse, research and evaluate the performance of the Service. This will be conducted in order to determine, amongst other things, whether our funders objectives for the relevant programme are being achieved, how to improve the support and growth opportunities provided to businesses, how to improve the relevant programme itself and in order that we can share any reports and findings with each other (and the Related Parties described below) on an anonymised basis. This may include matching business information (such as, contact data, publicly available information (e.g. board membership, published articles, press releases, your public posts on social media sites if relevant for business purpose), your responses to targeted e-mails (including web activity following links from our e-mails), website activity of registered users of our website) contained in your information to other data sources in order to understand more about similar organisations and general patterns and trends (reported data will always be anonymised).

***Service Provider its partners and suppliers***

SWMAS Ltd (registered number 04332659 whose registered office is Mary Street House, Mary Street, Taunton, Somerset, TA1 3NW)

SWMAS' partners and suppliers may include but are not limited to the following and, as such, may change from time to time:

Somerset Chamber of Commerce and Industry Ltd (registered number 03025625 whose registered address is Equity House, Blackbrook Business Park, Blackbrook Park Avenue, Taunton, Somerset, TA1 2PX)

GWE BusinessWest Ltd (registered number 06399340 whose registered address is Leigh Court Business Centre Pill Road, Abbots Leigh, Bristol, BS8 3RA)

Fraser Nash Consultancy Ltd (registered number 2562870 whose registered address is Devonport Royal Dockyard, Plymouth, PL1 4SG)

Exelin Ltd (registered number 08352040 whose registered office is Mary Street House, Mary Street, Taunton, Somerset, TA1 3NW)

### ***Contacting you***

We may each contact you separately (by phone, post, email and/or text/SMS) about the Service.

We may each contact you separately (by phone, post, email and/or text/SMS) about Opportunities or Related Services that we think may be of interest, benefit and value to you, but, in this case, only in accordance with your marketing preferences (see in paragraph 6 below for further details). **Related Opportunities and Services** are relevant services/programmes/schemes/funding/grants made available to or provided in connection with and potential Opportunities with customers aligned to the Service from time to time.

We may give your details to Related Parties (as defined below) to enable them to contact you (by phone, post, email and/or text/SMS), and provide targeted marketing and information to you about Related Opportunities and Services that may be of interest, benefit and value to you, but in this case, only where we have your express permission to do so (see paragraph 6 below for further details).

**Related Parties** are potential customers for your business, current and future sponsors or funders and providers of support which, in each case, provide the Related Services as well as other providers of other different elements of the Related Services and other selected third parties who provide Related Services.

We may each contact you separately (by phone, post, email and/or text/SMS) about other opportunities and services that we provide that we think may be of interest, benefit and value to you, but, in this case, only in accordance with your marketing preferences (see in paragraph 6 below for further details).

### ***Collating and combining information and personal data***

We do collate information about site traffic and other commercial information and may also use and disclose such information in aggregate (so that no individuals are identified) for marketing and strategic development purposes.

We use customer relationship management (**CRM**) database technology to manage and track our interactions with you and your interactions with Related Parties (for example, when we refer you to such parties as part of the services we provide to you or when they refer you to us, in line with any applicable consents and permissions that you have given). Our CRM database includes personal data belonging to your personnel (and other companies or entities with whom we already have a business relationship or want to develop one). The personal data used for these purposes includes relevant business information, such as: contact data, publicly available information (e.g. board membership, published articles, press releases, if relevant for business purpose), your responses to targeted e-mail (including web activity following links from our e-mails), website activity of registered users of our website, and other business information derived from our personal interactions with you.

### ***Surveys, questionnaires & feedback***

We occasionally run customer surveys or issue questionnaires or request feedback to understand more about your needs and how we could improve our services. Participation in any research is confidential and voluntary, and results are handled in such a way that they do not identify individual respondents, unless you advise us when completing the survey, questionnaire or feedback documentation that you wish to be contacted. For the purposes of analysing survey/questionnaire/feedback data, we may combine your answers with other data which we have, but we will do so in a way that does not affect the anonymity of the survey results. Please note that we will share any reports and findings of our surveys, questionnaires and feedback on an anonymised basis with each other and the Related Parties from time to time.

#### **27 Do we use your information for marketing purposes?**

Rest assured, we dislike unsolicited marketing (such as spam emails) as much as you. By giving us your information, you agree that we can send you information (including, for example, newsletters, surveys or flyers) about Opportunities and the Service from time to time. Naturally, we won't send you information about Opportunities, Related Services and/ or our own services, nor give Related Parties your information to allow them to send you information about the Related Services, without your express consent, although as part of the Service we can and will refer you to Related Parties where this is appropriate.

We want to make sure that you are only receiving information that is of interest to you and your business and to make sure that we are only sharing your information with third parties if you are happy for us to do so. We will ask you to tell us your preferences regarding marketing communications when you enter into an agreement for the services.

And you need not worry if, later, you change your mind as you can let us know of changes you wish to make to your marketing preferences, and/ or the information you receive about the Service, at any time and we will update our records accordingly.

### **DISCLOSING YOUR INFORMATION TO THIRD PARTIES**

#### **28 Are we concerned about keeping your information secure?**

We take security issues seriously. We have implemented appropriate steps to help maintain the security of our information systems and processes and prevent the accidental destruction, loss or unauthorised disclosure of the information we collect.

#### **29 To whom may we disclose your information?**

We may disclose your personal information to: our agents and service providers to collect, hold and process on our behalf your personal information for the purposes set out in this policy. These agents and service providers act on our instructions and will only use your information as we tell them to.

We may disclose your information to third parties (including the police and other governmental bodies) as required by law or if we think the disclosure may help to prevent, detect and deal with crime or fraud.

We may give your information to third parties to allow them to market their goods and services to you and/or, refer other services to you, but only with your express consent (please see paragraph 6 above). We may also disclose information to the parties and for the purposes set out in paragraph 5 above.

We will not sell your information to a third party, except in the unlikely event that we sell or transfer our business, or a substantial part of it; in which case we may sell your information as part of the sale to allow the purchaser to carry on providing some or all of our services to you.

### 30 **How will I know about changes to your policy?**

If we decide to change our policy (which we reserve the right to do at any time), we will let you know about the changes by publishing the updated version on our website. You should, therefore, check our website regularly so that you are always aware of what information we collect, how we use it and under what circumstances we disclose it.

We are committed to protecting and respecting your privacy and will continue to do so in any future changes we make to this policy. We will take your continued use of our services after that date of your acceptance of the change and so if an amendment is not acceptable to you then you should stop using the website and our services.

Last update: 6<sup>th</sup> June 2017

SWMAS Ltd on behalf of the suppliers of the Service.