



**PART A – GENERAL CONDITIONS OF CONTRACT**

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## A1. DEFINITIONS

In the Contract the following words shall have the following meanings unless the context requires otherwise:

"Approval" means the prior written consent of MHCLG and "Approve" and "Approved" shall be construed accordingly;

"Affected Party" means the Party seeking to claim relief in respect of a Force Majeure;

"Commercial Representative(s)" means the representative(s) of each Party for all commercial matters as named in the Contract;

"Commercially Sensitive Information" means the Confidential Information under this Contract comprising of commercially sensitive information relating to: -

- (a) the pricing of the Goods and / or Services;
- (b) details of the Contractor's IPR;
- (c) the Contractor's business and investment plans; and/or
- (d) the Contractor's trade secrets;

which the Contractor has indicated to MHCLG that, if disclosed by MHCLG, would cause the Contractor significant commercial disadvantage or material financial loss;

"Confidential Information" means all information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (howsoever it is conveyed and stored), including Commercially Sensitive Information, information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, Know-How, personnel, customers and suppliers of either Party and all Personal Data and sensitive Special Category Data within the meaning of the Data Protection Legislation, together with all information derived from the above;

"Contract" means the contract between MHCLG and the Contractor consisting of the following documents:

- a) Contract Award Letter; and
- b) this Annex B Part A General Conditions of Contract; and
- c) Annex B Part D Conditions of Contract for Services; and
- d) Annex A Specification; and
- e) Annex C Price Schedule; and
- f) Annex D Contractor's Proposal and any other terms and conditions, schedules or documents (or parts thereof) specified, in writing, by MHCLG to the Contractor;



“Contract Manager(s)” means the representative(s) of each Party who manages the Contract, whose appointment and contact details shall be notified to the other Party in writing;

"Contractor" means the individual, firm or company with whom MHCLG enters into the Contract;

"Contractor Background IPR" means:

- a) Intellectual Property Rights owned by the Contractor before the Effective Date, for example those subsisting in the Contractor's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor's Know-How or generic business methodologies; and/or
- b) Intellectual Property Rights created by the Contractor independently of this Contract;

“Contractor's Personnel” means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach” and “Data Protection Officer” have the meanings given to them in the GDPR;

"Crown" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

“Day” means calendar day unless otherwise defined;

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Legislation” means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;



“Data Protection Schedule” means the schedule to this Annex B Part A setting out relevant information in respect of the Processing of Personal Data under this Contract;

“Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

“Deliverables” means anything specified in the Contract to be delivered by the Contractor to MHCLG under the Contract including reports, manuals and other documentation and outputs;

"DOTAS" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

“DPA 2018” means the Data Protection Act 2018;

“Environmental Information Regulations or EIRs” means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“Environmental Policy” means to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of MHCLG;

"FOIA" means the Freedom of Information Act 2000, as amended from time to time and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"Force Majeure" means any event, occurrence, circumstance, matter or cause affecting the performance by either MHCLG or the Contractor of its obligations arising from:

- (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Contract;



- (b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- (c) acts of the Crown, local government or regulatory bodies;
- (d) fire, flood or any disaster; and
- (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
  - (i) any industrial dispute relating to the Contractor, the Contractor's Personnel (including any subsets of them) or any other failure in the Contractor or the Sub-Contractor's supply chain; and
  - (ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
  - (iii) any failure of delay caused by a lack of funds;

"General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

"Goods" means any such goods and associated documentation as are to be supplied by the Contractor (or by the Contractor's Sub-Contractor) to MHCLG pursuant to the Contract;

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others;

"Information" has the meaning given under Section 84 of the FOIA;



“Insolvency Event” means, in respect of the Contractor or Guarantor (as applicable):

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- c) a petition is presented for its winding up (which is not dismissed within fourteen (14) working days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) where the Contractor or Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

“Intellectual Property Rights” means:

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;



"Know-How" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and / or Services but excluding know-how already in the other Party's possession before the Effective Date;

"Law" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

"LED" means Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data;

"MHCLG" means the Secretary of State for the Ministry of Housing, Communities and Local Government;

"Occasion of Tax Non-Compliance" means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

"Material Breach" means any fundamental breach of a term of this Contract or breach of a fundamental term of the Contract;



“Open Book Data” means complete and accurate financial and non-financial information which is sufficient to enable MHCLG to verify payments payable by the Contractor to MHCLG under the Contract and payments forecast to be paid by the Contractor to MHCLG during the remainder of this Contract, including details and all assumptions relating to:

- (a) the Contractor’s costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all goods and/or services;
- (b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing:
  - (i) the unit costs and quantity of Goods and any other consumables and bought-in goods and/or services;
  - (ii) manpower resources broken down into the number and grade/role of all Contractor Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; and
  - (iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Contractor’s profit margin;

“Party” means a party to the Contract and “Parties” shall be construed accordingly;

“Persistent Breach” means any breach of the Contract continuously for 30 Days or more or a breach of the Contract that occurs on more than one occasion and for the avoidance of doubt includes inadequate performance;

“Prohibited Act” means any of the following:

- a) to directly or indirectly offer, promise or give any person working for or engaged by a public body a financial or other advantage to:
  - i) induce that person to perform improperly a relevant function or activity; or
  - ii) reward that person for improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- c) committing any offence:
  - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
  - ii) under legislation or common law concerning fraudulent acts; or
  - iii) defrauding, attempting to defraud or conspiring to defraud a public body; or



- iv) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

"Protective Measures" means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures adopted by it;

"Regulations" means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;

"Relevant Requirements" means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"Relevant Tax Authority" means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Contractor is established;

"Requests for Information" means a request for information or an apparent request relating to this Contract or the provision of the Goods and / or Services or an apparent request for such information under FOIA or the EIRs;

"Security Policy" means MHCLG's security policy in force as at the Effective Date (a copy of which has been supplied to the Contractor), as updated from time to time and notified to the Contractor;

"Services" means the services to be provided as specified in the Contract including the production of any Deliverables and any planning, preliminary and preparatory work;

"Special Category Data" means Personal Data falling within the categories set out in Article 9(1) of the GDPR;

"Sub-Contract" means any contract or agreement (or proposed contract or agreement) pursuant to which a third party:

- a) provides the Goods and/or Services (or any part of them);
- b) provides facilities or services necessary for the provision of the Goods and/or Services (or any part of them); and/or
- c) is responsible for the management, direction or control of the provision of the Goods and/or Services (or any part of them);



“Sub-Contractor” means any person other than the Contractor, who is a party to a Sub-Contract and the servants or agents of that person;

"Sub-processor" means any third party appointed to process Personal Data on behalf of the Contractor related to this Agreement

"Third Party IPR" means Intellectual Property Rights owned by a third party which is or will be used by the Contractor for the purpose of providing the Goods and/or Services;

“Transparency Reports” means the information relating to the Goods and / or Services and performance of this Contract which the Contractor is required to provide to MHCLG in accordance with the reporting requirements in this Contract;

“Valid Invoice” means an invoice issued by the Contractor to MHCLG that complies with the invoicing procedure in the Contract;

“Worker” means any one of the Contractor Personnel which MHCLG, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 – Tax Arrangements of Public Appointees <https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees> - applies in respect of the Goods and/or Services;

## **A2. INTERPRETATIONS**

A2.1 The Conditions of Contract shall take precedence over the other documents forming the Contract unless such documents include an express statement to the contrary.

A2.2 Unless the context requires otherwise:

(a) capitalised expressions shall have the meanings set out in Clause A1 of this Contract. If a capitalised expression does not have an interpretation in Clause A1 of this Contract, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning;

(b) the masculine includes the feminine and the neuter and vice versa;

(c) the singular includes the plural and vice versa;

(d) references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;



(e) references to “representations” shall be construed as references to present facts, to “warranties” as references to present and future facts and to “undertakings” as references to obligations under this Contract

A2.4 The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.

A2.5 Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof. In the case of a statute or statutory provision, the reference shall also be construed as a reference to all subordinate legislation made under such statute or statutory provision.

A2.6 Reference to any person shall include all legal persons of whatever kind and however constituted.

A2.7 Reference to a Condition is a reference to the whole of that Condition unless stated otherwise.

A2.8 Reference to a Clause or Sub-Clause is a reference to a paragraph within a Condition unless stated otherwise.

A2.9 The headings to the Conditions are included for ease of reference and shall not affect their interpretation.

### **A3. WARRANTIES AND REPRESENTATIONS**

A3.1 Without prejudice to any other warranties expressed in the Contract or implied by law the Contractor warrants and represents that:

A3.1.1 it has full capacity and authority and all necessary consents, including where required the consent of its parent company, to enter into and to perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

A3.1.2 the Contract shall be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments;

A3.1.3 it shall discharge its obligations hereunder with all due skill, care and diligence and in accordance with Good Industry Practice;



- A3.1.4 it owns, has obtained or shall obtain all the consents, licences, permits and approvals necessary for the Contractor to perform its duties under the Contract and shall comply with the terms of any such consents, licences, permits and approvals at all times. The cost of such consents, licences, permits and approvals shall be borne solely by the Contractor;
- A3.1.5 the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract;
- A3.1.6 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- A3.1.7 if the rates or prices payable under this Contract exceed or are likely to exceed five (5) million pounds, as at the Effective Date it has notified MHCLG in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
- A3.1.8 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Contractor Background IPRs and any other materials made available by the Contractor (and/or any Sub-Contractor) to MHCLG which are necessary for the performance of the Contractor's obligations under this Contract including the receipt of the Goods and/or Services by MHCLG;
- A3.1.9 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or MHCLG's Confidential Information (held in electronic form) owned by or under the control of, or used by, MHCLG;
- A3.1.10 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- A3.1.11 it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue; and



A3.1.12 for the term of the Contract and for a period of twelve (12) months after the termination or expiry of this Contract, the Contractor shall not employ or offer employment to any staff of MHCLG which have been associated with the provision of the Goods and/or Services without Approval or the prior written consent of MHCLG which shall not be unreasonably withheld.

A3.2 Each of the representations and warranties set out in Clause A3.1 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Contract.

A3.3 If at any time the Contractor becomes aware that a representation or warranty given by it under Clause A3.1 has been breached, is untrue or is misleading, it shall immediately notify MHCLG of the relevant occurrence in sufficient detail to enable MHCLG to make an accurate assessment of the situation.

A3.4 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination MHCLG may have in respect of breach of that provision by the Contractor which constitutes a Material Breach.

#### **A4. RELATIONSHIP OF THE PARTIES**

A4.1 Nothing in the Contract shall be construed as or have the effect of creating a partnership, a contract of employment or a relationship of principal and agent between the Contractor or the Contractor's Personnel and MHCLG.

A4.2 The Contractor shall not (and shall procure that the Contractor's Personnel do not) say or do anything that might lead any other person to believe that the Contractor or the Contractor's Personnel are acting as the partner, employee or agent of MHCLG.

A4.3 The Contractor shall not (and shall procure that the Contractor's Personnel do not) hold themselves out as having authority to bind MHCLG unless specifically permitted in writing by MHCLG's Commercial Representative.

A4.4 The Contractor's Personnel shall be appropriately experienced, qualified, trained, vetted and security cleared in accordance with the Security Policy.

A4.5 The Contractor shall supervise and manage the Contractor's Personnel properly in accordance with the Contract.

A4.6 If any of the Contractor's Personnel is not a British citizen, Swiss national or a national of a country in the European Economic Area, the Contractor shall ensure that the Contractor's Personnel has the necessary Home Office permission to work and shall ensure compliance with the Asylum and Immigration Act 1996.



## **A5. AMENDMENTS AND VARIATIONS**

- A5.1 Subject to Clause A5.2, no amendment or variation to the Contract involving a change in rates or prices shall be valid unless it has first been agreed in writing or via email by both Commercial Representatives of the Parties in accordance with any change control procedures set out in the Contract. Any other amendment or variation to the Contract shall be valid once agreed in writing by both Contract Managers of the Parties. Anything undertaken by the Contractor which is not authorised by the Contract, or any agreed amendment thereto, shall be undertaken at the sole risk of the Contractor. In the event of an amendment or variation being agreed the Contract rates and prices shall be subject to a fair and reasonable adjustment to be agreed between the Parties and recorded in writing.
- A5.2 Any amendment or variation to the Contract must be compliant with the Regulations.

## **A6. CONTRACT PRICES**

- A6.1 In consideration of and subject to the full and proper performance by the Contractor of its obligations under the Contract MHCLG shall pay to the Contractor the rates, prices and any expenses specified in the Contract.
- A6.2 All rates and prices are exclusive of Value Added Tax (VAT). If appropriate, VAT will be added at the relevant rate and will be shown as a separate net item on each invoice submitted.
- A6.2A The Contractor shall indemnify MHCLG on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on MHCLG at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under Clause A6.2 shall be paid in cleared funds by the Contractor to MHCLG not less than five (5) working days before the date upon which the tax or other liability is payable by MHCLG.
- A6.3 Except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the Contract shall be inclusive of all costs, including but not limited to staff, facilities, equipment, materials and all other expenses incurred by the Contractor in discharging its obligations under the Contract.
- A6.4 Invoices shall be submitted to the invoice address specified in the Contract.
- A6.5 All pricing on all documentation including but not limited to any invoices shall be quoted in Sterling.



A6.6 MHCLG will make payment by BACS within 30 Days of receipt of a Valid Invoice or the date the invoice was due whichever is the later save where the invoice is disputed or where the Contractor fails to submit information in accordance with Clause A6.7 below. Payments arising under the Contract shall be made in Sterling. Late payment shall not constitute a fundamental breach of the Contract.

A6.7 The Contractor will submit to MHCLG such records as MHCLG may reasonably require to enable MHCLG to verify the information and the amounts referred to in that invoice.

A6.8 Where the Contractor enters into a Sub-Contract for the purpose of performing its obligations under the Contract, it shall cause the following terms to be included in such Sub-Contract:

A6.81 requiring payment to be made by the Contractor to the Sub-Contractor within a specified period not exceeding 30 Days from receipt of a Valid Invoice as defined by the Sub-Contract;

A6.82 requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Contractor in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;

A6.83 conferring a right to MHCLG to publish the Contractor's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;

A6.84 giving the Contractor a right to terminate the Sub-Contract if the sub-contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and

A6.85 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause A6.8.

A6.8A The Contractor shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
- (b) include within its reports, in connection with the Contract, to MHCLG a summary of its compliance with this Clause A6.8B(a), such data to be certified each quarter by a director of the Contractor as being accurate and not misleading.



- A6.8B Any invoices submitted by a Sub-Contractor to the Contractor shall be considered and verified by the Contractor in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Contractor failing to regard an invoice as valid and undisputed.
- A6.8C Notwithstanding any provision of Clauses A17 (Confidentiality) and A22 (Right to Publish and Publicity) if the Contractor notifies MHCLG that the Contractor has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or MHCLG otherwise discovers the same, MHCLG shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- A6.9 Any statute, enactment, order, regulation or other similar instrument not existing or any statute, enactment, order, regulation or other similar instrument modified which the Contractor would not have the opportunity to consider at the time of formulating its rates and prices and which is not reasonably foreseeable, may, at the discretion of MHCLG cause the rates and price(s) to change.
- A6.10 In performing its obligations under the Contract, the Contractor is prohibited from taking or seeking to take advantage of any particular taxation regime (including the use of any offshore tax haven) which will or may enable the Contractor to avoid liability for any taxation in the United Kingdom. In the event that the Contractor or the Contractor's Personnel or anyone acting on the Contractor's behalf (with or without its knowledge) breaches this Clause MHCLG reserves the right to terminate the Contract by notice in writing with immediate effect and recover from the Contractor any loss resulting from such termination including the administrative costs of re-tendering the requirement and any difference in the rates or prices which MHCLG may have to pay to a new contractor where such rates or prices are higher than the rates or prices payable under the Contract.
- A6.11 Where the Contractor or any Contractor Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Contractor shall:
- A6.11.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- A6.11.2 indemnify MHCLG against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Goods and / or Services by the Contractor or any Contractor Personnel.



A6.12 In the event that any one of the Contractor Personnel is a Worker who receives consideration relating to the Goods and / or Services, then, in addition to its obligations under Clause A6.11, the Contractor shall ensure that its contract with the Worker contains the following requirements:

A6.12.1 that MHCLG may, at any time during the term of the Contract, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause A6.11, or why those requirements do not apply to it. In such case, MHCLG may specify the information which the Worker must provide and the period within which that information must be provided;

A6.12.2 that the Worker's contract may be terminated at MHCLG's request if:

A6.12.2.1 the Worker fails to provide the information requested by MHCLG within the time specified by MHCLG under Clause A6.12.1; and/or

A6.12.2.2 the Worker provides information which MHCLG considers is inadequate to demonstrate how the Worker complies with Clauses A6.11.1 or A6.11.2 or confirms that the Worker is not complying with those requirements; and

A6.12.2 that MHCLG may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

## **A7. RECOVERY OF SUMS DUE**

A7.1 Without prejudice to MHCLG's other rights and remedies wherever any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other agreement or contract with MHCLG or with any other government department, office or agency.

## **A8. INDEMNITIES**

A8.1 Subject to Clause A8.2 and without prejudice to any rights or remedies of MHCLG the Contractor shall indemnify and keep indemnified MHCLG, its servants and agents fully against all actions, claims, proceedings, damages, legal costs, expenses and any other liabilities whatsoever incurred by or made against MHCLG, its servants or agents in respect of any loss or damage or personal injury (including death) arising out of, in respect of or in connection with the Contract.



A8.2 If:

- (a) all other contractors, Sub-Contractors or advisers engaged in connection with the performance of the Contract have provided contractual undertakings on terms no less onerous than those set out in these Conditions to MHCLG in respect of the carrying out of their obligations; and
- (b) all such other contractors, Sub-Contractors or advisers have paid to MHCLG such sum as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage,

the liability of the Contractor under Clause A8.1 shall be limited to such sums as it would be just and equitable for the Contractor to pay having regard to the extent of its responsibility for the loss or damage.

A8.3 The indemnity contained in Clause A8.1 shall not apply to the extent that the loss, damage or personnel injury (including death) is caused by the negligent or wilful act of MHCLG, its servants or agents.

A8.4 The Contractor shall indemnify and keep indemnified MHCLG, its servants and agents fully against any tax, national insurance contributions or similar impost in respect of the Contractor's Personnel.

A8.5 MHCLG undertakes not to make any claims against the Contractor's Personnel. The Contractor is vicariously liable for the actions of the Contractor's Personnel.

A8.6 Except where the Law sets out otherwise or there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Contractor or the Contractor's Personnel the Contractor's liability under this Contract shall be limited to the amount of £1,000,000 exclusive of VAT.

## **A9. INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

A9.1 Without prejudice to any rights or remedies of MHCLG the Contractor shall indemnify and keep indemnified MHCLG, its servants and agents fully against all actions, claims, proceedings, damages, legal costs, expenses and any other liabilities whatsoever arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights arising out of, in respect of or in connection with the Contract except to the extent that the infringement or alleged infringement is due to material furnished or made available to the Contractor by MHCLG. This indemnity covers claims concerning an actual or alleged infringement by MHCLG if the infringement arises as a consequence of any actual or alleged infringement of an Intellectual Property Right by or on behalf of the Contractor.



- A9.2 The Contractor shall immediately notify MHCLG if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Rights which may affect the performance of the Contract.
- A9.3 MHCLG shall immediately notify the Contractor if any claim or demand is made or action brought against MHCLG for infringement or alleged infringement of any Intellectual Property Rights in connection to the Contract.
- A9.4 Subject to the limitation on the indemnity in Clause A9.1 in respect of material furnished or made available to the Contractor by MHCLG the Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and MHCLG hereby agrees to grant to the Contractor exclusive control of any such litigation and negotiations.
- A9.5 MHCLG shall at the request and cost of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against MHCLG or the Contractor for infringement or alleged infringement of any Intellectual Property Rights in connection with the performance of the Contract.
- A9.6 MHCLG shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by MHCLG or the Contractor in connection with the performance of the Contract.

## **A10. INSURANCE**

- A10.1 The Contractor shall effect and maintain with an insurance company or companies acceptable to MHCLG a policy or policies of insurance to provide a level of cover sufficient for all the matters which are the subject of the indemnities and undertakings on the part of the Contractor contained in the Contract and in accordance with any legal requirements for the time being in force.
- A10.2 Where the Contractor Sub-Contracts part of this Contract, the Contractor shall procure that any Sub-Contractor effects and maintains insurance to cover its liabilities under that Sub-Contract, but this shall not relieve the Contractor of any of his obligation and liabilities under the Contract.
- A10.3 Where, in compliance with Clause A10.1, the Contractor effects professional indemnity insurance, the insurance policy and any renewal shall cover liabilities under this Contract during the term of the Contract and for 6 years after the expiry or earlier termination of the Contract.
- A10.4 If requested, the Contractor shall provide a certificate evidencing the existence of such policies to MHCLG, together with receipts or other evidence of payment of the latest premiums due under such policies.



A10.5 If the Contractor fails to comply with this Condition A10 MHCLG may make alternative arrangements necessary to protect its interest and may recover the costs of such arrangements from the Contractor.

A10.6 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract.

## **A11. FORCE MAJEURE**

A11.1 If either Party becomes aware of circumstances of Force Majeure which give rise or which are likely to give rise to any delay in or failure to perform its obligations under the Contract it shall immediately notify the other Party by the most expeditious method available and shall inform the Party of the period which it is estimated that such delay or failure shall continue.

A11.2 Neither Party shall be liable to the other Party if such delay or failure is due to Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, its obligations under the Contract for the duration of the Force Majeure. However, if any such event prevents the Contractor from performing all of its obligations under the Contract for a period in excess of 3 months, MHCLG may terminate the Contract in writing with immediate effect.

A11.3 The Contractor shall not be entitled to any payment for that part of the Contract which the Contractor was unable to perform as a result of Force Majeure.

A11.4 The Contractor shall and shall procure that its Sub-Contractors maintain at all times a disaster recovery and business continuity plan, in accordance with Good Industry Practice, in respect of a Force Majeure event or any other event which may affect the Contractor's ability to meet its obligations under the Contract (including loss of computer and business systems, loss or failure of equipment, loss of utilities or premises, industrial relations problems, failures in the supply chain and loss of Contractor's Personnel). Such plans shall be delivered to MHCLG on request. MHCLG shall be entitled to make suggested changes to the plans which the Contractor, acting reasonably, shall consider and, after consultation and agreement with MHCLG, put in place.

## **A12. PREVENTION OF FRAUD AND BRIBERY**

A12.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor Personnel, have at any time prior to the Effective Date:

A12.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or



A12.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

A12.2 The Contractor shall not during the term of the Contract:

A12.2.1 commit a Prohibited Act; and/or

A12.2.2 do or suffer anything to be done which would cause MHCLG or any of the MHCLG's employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

A12.3 The Contractor shall during the term of the Contract:

A12.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

A12.3.2 keep appropriate records of its compliance with its obligations under Clause A12.3.1 and make such records available to MHCLG on request;

A12.3.3 if so required by MHCLG, within twenty (20) working days of the Effective Date, and annually thereafter, certify to MHCLG in writing that the Contractor and all persons associated with it or its Sub-Contractors or other persons who are supplying the Goods and/or Services in connection with this Contract are compliant with the Relevant Requirements. The Contractor shall provide such supporting evidence of compliance as MHCLG may reasonably request; and

A12.3.4. have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to MHCLG on request) to prevent it and any Contractor Personnel or any person acting on the Contractor's behalf from committing a Prohibited Act.

A12.4 The Contractor shall immediately notify MHCLG in writing if it becomes aware of any breach of Clause A12.1, or has reason to believe that it has or any of the Contractor Personnel have:

A12.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

A12.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or



A12.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

A12.5 If the Contractor makes a notification to MHCLG pursuant to Clause 12.4, the Contractor shall respond promptly to the MHCLG's enquiries, co-operate with any investigation, and allow MHCLG to audit any books, records and/or any other relevant documentation in accordance with Clause A20 (Production and Retention of Documentation).

A12.6 If the Contractor breaches Clause A12.3, MHCLG may by notice:

A12.6.1 require the Contractor to remove from performance of this Contract any Contractor Personnel whose acts or omissions have caused the Contractor's breach; or

A12.6.2 immediately terminate this Contract for Material Breach.

A12.7 Any notice served by MHCLG under Clause 12.4 shall specify the nature of the Prohibited Act, the identity of the Party who MHCLG believes has committed the Prohibited Act and the action that MHCLG has elected to take (including, where relevant, the date on which this Contract shall terminate).

### **A13. EQUALITY AND DIVERSITY**

A13.1 The Contractor shall.

(a) perform its obligations under this Contract (including those in relation to provision of the Goods and/or Services) in accordance with:

- (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
- (ii) any other requirements and instructions which MHCLG reasonably imposes in connection with any equality obligations imposed on MHCLG at any time under applicable equality Law;

(b) take all necessary steps, and inform MHCLG of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

### **A14. THIRD PARTY RIGHTS**

A14.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which expressly or by implication confer a benefit on him or her without prior written agreement of both Parties. This Condition does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and the provisions of this Condition do not apply to the Crown.



## **A15. ENVIRONMENTAL REQUIREMENTS**

A15.1 The Contractor shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Contract (including the EIRs). In addition the Contractor shall comply with MHCLG's Environmental Policy made available to the Contractor from time to time.

A15.2 In performing its obligations under the Contract the Contractor shall (to the extent applicable to the Contract):

A15.2.1 demonstrate low carbon resource efficiency, including minimising the use of energy, water, wood, paper and other resources;

A15.2.2 reduce waste;

A15.2.3 phase out the use of ozone depleting substances; and

A15.2.4 minimise the release of greenhouse gases (including carbon dioxide emissions), volatile organic compounds and other substances damaging to health and the environment.

A15.3 All written work, including reports, in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer water and used on both sides where appropriate.

A15.4 Without prejudice to the generality of the foregoing, the Contractor shall promptly provide all such information regarding the environmental impact of the Contract as may reasonably be requested by MHCLG.

A15.5 The Contractor shall meet all reasonable requests by MHCLG for information evidencing compliance with the provisions of this Condition A15 by the Contractor.

## **A16. NOTICES**

A16.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.



A16.2 Any notice or other communication pursuant to the Contract must be sent by letter (sent by hand, first class post, registered post or by recorded delivery) or transmitted by electronic mail (confirmed by letter) to the address of the other Party set out in the Contract or as notified to the other Party from time to time. Provided the relevant notice or communication is not returned as undelivered, the notice or communication shall be deemed to have been given two working days after the day on which the letter is posted or four hours, in the case of letters handed over, electronic mail or sooner where the other Party acknowledges receipt of such notice or communication.

## **A17. CONFIDENTIALITY**

A17.1 Each Party:

A17.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

A17.1.2 shall not disclose any Confidential Information belonging to the other Party to any other persons without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or where disclosure is otherwise expressly permitted by the provisions of the Contract.

A17.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from MHCLG under or in connection with the Contract:

A17.2.1 is given only to such of the Contractor's Personnel engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for performance of the Contract;

A17.2.2 is treated as confidential and not disclosed (without Approval) or used by the Contractor or any of the Contractor's Personnel otherwise than for the purposes of the Contract.

A17.3 Where it is considered necessary in the opinion of MHCLG, the Contractor shall ensure that the Contractor's Personnel sign a confidentiality undertaking prior to any involvement in the Contract.

A17.4 The provisions of Clauses A17.1 to A17.3 shall not apply to any Confidential Information received by one Party from the other:

A17.4.1 which is or becomes public knowledge (otherwise than by a breach of this Condition A17);



- A17.4.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - A17.4.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - A17.4.4 which has been independently developed by the receiving Party without access to the Confidential Information;
  - A17.4.5 which must be disclosed pursuant to a legal obligation placed upon the Party making the disclosure including, but not limited to, obligations under FOIA and Environmental Information Regulations;
  - A17.4.6 where the receiving Party has reasonable grounds to believe that the disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- A17.5 Nothing in this Condition 17 shall prevent MHCLG:
- A17.5.1 disclosing any Confidential Information for the purposes of the examination and certification of MHCLG's accounts or any examination pursuant to the National Audit Act 1983;
  - A17.5.2 disclosing any Confidential Information to any government department, office or agency or to any person engaged in providing any services to MHCLG for any purpose relating to or ancillary to the Contract providing that in disclosing the Confidential Information MHCLG discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate;
  - A17.5.3 disclosing any Confidential Information relating to the Contract, including payments made under the Contract, to Crown Commercial Service or in accordance with the provisions of Condition A20.1;
  - A17.5.4 disclosing any Confidential Information, which arises out of or in connection with any legal challenge or potential legal challenge against MHCLG arising out of or in connection with this Contract; and
  - A17.5.5 disclosing any Confidential Information the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;



- A17.6 Nothing in this Condition A17 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in the a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- A17.7 In the event that the Contractor fails to comply with this Condition A17, MHCLG reserves the right to terminate the Contract by notice in writing with immediate effect and recover from the Contractor any loss resulting from such termination.
- A17.8 The provisions of this Condition A17 are without prejudice to the provisions of the Official Secrets Act 1911 to 1989 and Section 182 of the Finance Act 1989.
- A17.9 Upon termination (for whatever reason) or expiry of the Contract, the Parties shall each return to the other any Confidential Information that it possesses at the time of termination or expiry, and dispose of any such Confidential Information as the other Party may reasonably direct.

**A18. OFFICIAL SECRETS ACT**

- A18.1 The Contractor shall take all reasonable steps to ensure that the Contractor's Personnel are aware of the provisions of the Official Secrets Acts 1911 to 1989 and Section 182 of the Finance Act 1989, and understand that these provisions apply during and after the Contract.

**A19. DATA PROTECTION**

- A19.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, MHCLG is the Controller and the Contractor is the Processor unless otherwise specified in Schedule A. The only processing that the Processor is authorised to do is listed in Schedule A by the Controller and may not be determined by the Processor.
- A19.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- A19.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and



- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

A19.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule A, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule A);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and



- (d) not transfer Personal Data outside of the EU 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 (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (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 (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

A19.5 Subject to clause A19.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

A19.6 The Processor's obligation to notify under clause A19.5 shall include the provision of further information to the Controller in phases, as details become available.



- A19.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause A19.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- A19.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- A19.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- A19.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- A19.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;



- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 19 such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

- A19.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- A19.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- A19.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- A19.15 Where the Parties include two or more Joint Controllers as identified in Schedule A in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule A in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

## **A20. PRODUCTION AND RETENTION OF DOCUMENTATION**

- A20.1 The Contractor shall maintain and produce such accounts, documents (including working documents), records and management information relating to this Contract, including any Open Book Data, as MHCLG may reasonably request at any time during this Contract. Where requested by MHCLG, the Contractor shall provide management information to the Office of Government Commerce and the Contractor hereby consents to the Office of Government Commerce:
- A20.1.1 storing and analysing such management information and producing statistics; and
  - A20.1.2 sharing the management information or any statistics produced with any government department, office or agency.
- A20.2 The Contractor shall be responsible for the accuracy of all such accounts, documents (including working documents) and records supplied to MHCLG by the Contractor and shall pay MHCLG any extra costs occasioned by any discrepancies, errors or omissions therein.



- A20.3 The Contractor shall keep and maintain until six years after the Contract has been completed and/or terminated, or as long a period as may be agreed between the Parties, accounts, documents and records to the satisfaction of MHCLG of the Contract and all expenditures which are reimbursable by MHCLG.
- A20.4 The Contractor shall on request by MHCLG and at no extra cost afford MHCLG or any representative of MHCLG such access to those accounts, documents and records as may be required by MHCLG and shall provide reasonable assistance during the term of the Contract for the purpose of carrying out any audit of the Contractor's compliance with the Contract.
- A20.5 If any audit reveals an error or incorrect charge in any invoice relating to the Contract, an appropriate correcting payment or credit shall be promptly made either by MHCLG or the Contractor respectively.
- A20.6 The right to the accounts, documents and records shall not apply to the extent that an examination would cause the Contractor to breach confidentiality obligations to other clients.
- A20.7 For the purpose of the examination and certification of MHCLG's accounts, or any examination pursuant to the National Audit Act 1983, of the economy, efficiency and effectiveness with which MHCLG has used its resources, the Contractor shall allow the Comptroller and Auditor General to verify the Open Book Data and examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as the Comptroller or Auditor General considers necessary. This Clause A20.7 does not constitute a requirement or contract for the examination, certification or inspection of the accounts of the Contractor under the National Audit Act 1983.

## **A21. FREEDOM OF INFORMATION**

- A21.1 The Contractor acknowledges that MHCLG is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with MHCLG (at the Contractor's expense) to enable MHCLG to comply with its Information disclosure requirements.
- A21.2 The Contractor shall and shall procure that its Sub-Contractors shall:
- A21.2.1 transfer to MHCLG any Request for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information;
  - A21.2.2 provide MHCLG with a copy of all Information in its possession or power in the form that MHCLG requires within five working days (or such other period as MHCLG may specify) of MHCLG requesting the Information; and



- A21.2.3 provide all necessary assistance as reasonably requested by MHCLG to enable MHCLG to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- A21.3 MHCLG shall be responsible for determining at its absolute discretion whether any Information is exempt from disclosure under the FOIA or the Environmental Information Regulations.
- A21.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by MHCLG.
- A21.5 The Contractor acknowledges that MHCLG may under the FOIA or the Environmental Information Regulations be obliged to disclose Information:
- A21.5.1 without consulting with the Contractor; or
- A21.5.2 following consultation with the Contractor and having taken its views into account.
- A21.6 MHCLG shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) MHCLG shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.
- A21.7 The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit MHCLG to inspect such records as requested from time to time.

## **A22. RIGHT TO PUBLISH AND PUBLICITY**

- A22.1 The Parties agree that, except for any information in the Contract which would be exempt from disclosure under the provisions of the Freedom of Information Act 2005 (FOIA) or under the Environmental Information Regulations 2004 (EIR), the content of the Contract and the Transparency Reports ("together the Transparency Information") are not Confidential Information. MHCLG shall, in its absolute discretion, determine whether the Transparency Information would be exempt from disclosure in accordance with the provisions of the FOIA or the EIR. The Contractor hereby agrees that, notwithstanding any other term of the Contract, MHCLG may publish the Transparency Information in its entirety to the general public including any agreed changes to the Transparency Information, having first redacted any information which would be exempt from disclosure under the provisions of the FOIA or EIR, before such publication.



A22.2 MHCLG may discuss with the Contractor its proposed decision with regard to whether any Transparency Information should be redacted in accordance with these provisions before publication of such information and will consider any representations made by the Contractor with regard to the extent of the redaction, if any, but the final decision as to both redaction and publication will be for MHCLG alone to make.

A22.2A If MHCLG believes that publication of any element of the Transparency Information would be contrary to the public interest, MHCLG shall be entitled to exclude such information from publication. MHCLG acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, MHCLG acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Contractor.

A22.2B MHCLG shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Contractor.

A22.2C The Contractor agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Goods and / or Services shall be provided to MHCLG on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. MHCLG may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information and Confidential Information (subject to Clause 34.3.7(c)) and Open Book Data) publish such Information. The Contractor shall provide to MHCLG within 5 working days (or such other period as MHCLG may reasonably specify) any such Information requested by MHCLG.

A22.3 The Contractor shall assist and cooperate with MHCLG (at the Contractor's expense) to enable MHCLG to publish the Transparency Information including the preparation of the Transparency Reports, in a timely manner in accordance with this Contract.

A22.4 Neither the Contractor nor the Contractor's Personnel shall make any press announcements or publicise the Transparency Information or any part thereof in any way, without the prior consent in writing of MHCLG upon such terms as may be agreed.



**A23. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY**

A23.1 MHCLG may terminate the Contract with immediate effect by notice in writing to the Contractor (or the Contractor's representative in the event of A23.1.7) where:

A23.1.1 the Contractor or its parent company or ultimate parent company undergoes a change of control, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988; or

A23.1.2 the Contractor is an individual and a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor, or the Contractor makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if a trustee in bankruptcy or a supervisor under an individual voluntary arrangement is appointed to manage the Contractor's affairs; or

A23.1.3 the Contractor is a company and the company passes a resolution for winding up or dissolution (otherwise than exclusively for the purposes of and followed by an amalgamation or reconstruction) or an application is made for an administration order in relation to it, or any party gives or files notice of an intention to appoint an administrator of it or such an administrator is appointed, or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager or supervisor or provisional liquidator is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or

A23.1.4 the Contractor is a firm, or a number of persons acting together in any capacity and any event in Sub-Clauses A23.1.2 or A23.1.3 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or

A23.1.5 the Contractor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or

A23.1.6 any similar event occurs within the United Kingdom under the law of any other jurisdiction; or

A23.1.7 the Contractor is an individual and he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or



- A23.1.8 the Contractor is an individual and he suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of his business; or
- A23.1.9 an Insolvency Event, which is not already covered in this Clause 23.1, affecting the Contractor occurs.
- A23.2 The Contractor (or the Contractor's representative in the event of A23.1.7) shall notify MHCLG in writing immediately upon the occurrence of any of the events mentioned in Clause A23.1.
- A23.3 In relation to Sub-Clause A23.1.1 MHCLG may only exercise its right to terminate under Clause A23.1 where there are reasonable grounds for MHCLG to do so within six months of a change of control and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs.

#### **A24. TERMINATION ON DEFAULT**

- A24.1 MHCLG may at any time by notice in writing terminate the Contract with immediate effect if the Contractor or the Contractor's Personnel is deemed to have committed a Material Breach of the Contract and:
- A24.1.1 the Material Breach is capable of remedy and the Contractor or the Contractor's Personnel shall have failed to remedy the Material Breach within 30 Days of being required by MHCLG in writing to do so; or
- A24.1.2 the Material Breach is not capable of remedy.
- A24.2 Without prejudice to the provisions of Clause A24.1, where MHCLG considers that the Contractor or the Contractor's Personnel has committed a Persistent Breach, MHCLG shall be entitled to serve a notice on the Contractor:
- A24.2.1 specifying that it is a notice of Persistent Breach;
- A24.2.2 giving sufficient details of the Persistent Breach to enable the Contractor to identify the same; and
- A24.2.3 stating that such breach is a breach which, if it recurs or continues, may result in a termination of the Contract.
- A24.3 If 30 Days after service of a notice of Persistent Breach as described in Clause A24.2, the Contractor or the Contractor's Personnel has failed to demonstrate to the satisfaction of MHCLG that the breach specified has not recurred or continued and that the Contractor or the Contractor's Personnel has put in place measures to ensure that such breach does not recur, then MHCLG may deem such failure to be a Material Breach not capable of remedy for the purposes of Clause A24.1 and may terminate this Contract under the provisions of that Clause.



## **A25. CONSEQUENCES OF TERMINATION AND EXPIRY**

A25.1 Any expiry or termination of the Contract howsoever arising shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to MHCLG and shall not affect the continued operation of Conditions A1, A2, A3, A4, A7, A8, A9, A10, A14, A16, A17, A18, A19, A20, A21, A22, A25, A26, A29, A30, A31, A33, A34, A36, A37, A40 and A41.

A25.2 Without prejudice to any other rights or remedies of MHCLG, in the event of termination of the Contract as provided by Condition A23 or A24, MHCLG shall be entitled to either accept receipt of, or decline to receive any part of the Contract already completed by the Contractor but not yet paid for by MHCLG and to engage an alternative contractor to undertake the outstanding balance of the Contract. The Contractor shall indemnify MHCLG against all reasonable costs incurred in doing so. Such costs shall include the administrative costs of re-tendering the requirement and any difference in the rates or prices which MHCLG may have to pay to the new contractor where such rates or prices are higher than the rates or prices payable under the Contract.

A25.3 In the event that MHCLG accepts receipt of any part of the Contract already completed by the Contractor but not yet paid for by MHCLG, MHCLG shall pay to the Contractor a reasonable charge for the partially completed Contract.

A25.4 Prior to or upon expiry or termination of the Contract for any reason, the Contractor:

A25.4.1 shall, at no cost to MHCLG, promptly provide such assistance and comply with such timetable as MHCLG may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or termination of the Contract,

A25.4.2 shall comply with any reasonable direction by MHCLG as to which of its obligations to perform as a priority under the Contract during the notice period;

A25.4.3 shall not knowingly do anything, or make any omission, which may adversely affect the orderly transfer of responsibility upon the expiry or termination of the Contract; and

A25.4.4 shall deliver up to MHCLG and/or destroy all Confidential Information pursuant to Clause A17.9.



## A26. DISPUTE RESOLUTION

A26.1 Any dispute arising out of or in relation to the Contract shall be notified in the first instance to the Contract Managers of the Parties who will attempt in good faith to resolve the dispute through negotiations. Where the dispute cannot be resolved by the Contract Managers of the Parties within one month or such other period as is agreed between the Parties in writing, either Party may refer the dispute to senior representatives of the Department and/or the Contractor for further negotiations.

### Mediation

A26.2 If the dispute cannot be resolved by the Parties within one month or such other period as is agreed between the Parties in writing pursuant to Clause A26.1, either of the Parties may refer the dispute to mediation. If the Parties agree and the dispute is referred mediation neither Party shall be entitled to commence or pursue any legal proceedings until the mediation procedure has been exhausted.

A26.3 The mediator shall be appointed by agreement between the Parties, or in the event of a failure to agree within 7 Days or if the agreed mediator is unable or unwilling to act, either Party may apply to the Centre for Effective Dispute Resolution (“CEDR”) to nominate the mediator.

A26.4 The Parties shall within 7 Days of the appointment of the mediator meet with the mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations.

A26.5 Unless otherwise agreed in writing, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

A26.6 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

A26.7 If the Parties fail to reach agreement on the appointment of a mediator under Clause A26.3 or within 60 Days of the mediator being appointed, or such longer period as the Parties may agree, then any dispute between them may be referred to the courts unless MHCLG at any time before the court proceedings are commenced serves a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clauses A26.9-A26.11.

A26.8 If the Contractor intends to commence court proceedings, it shall serve written notice on MHCLG of its intentions and MHCLG shall have 21 Days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause A26.9-A26.11.



### Arbitration

- A26.9 A sole arbitrator shall be agreed between the Parties or in the event of a failure to agree within 5 Days of the referral to arbitration or if the agreed arbitrator is unable or unwilling to act, the arbitrator shall be appointed by the London Court of International Arbitration (“LCIA”).
- A26.10 Any arbitration shall be governed by the provisions of the Arbitration Act 1996 and the LCIA procedural rules in force at the date the dispute was referred to arbitration.
- A26.11 The arbitration proceedings shall take place in London and shall be governed by and interpretations made in accordance with English law.
- A26.12 The fees of the mediator or arbitrator shall be borne by the Parties in the proportion as shall be determined by the mediator or arbitrator respectively having regard to all pertinent matters, including the conduct of the parties.
- A26.13 Nothing in this Condition A26 shall prevent either Party from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

### **A27. CONTINUATION OF CONTRACT IN EVENT OF DISPUTES**

- A27.1 If any dispute of any kind whatsoever arises between the Parties in connection with or arising out of the Contract the Contractor shall at MHCLG’s discretion continue to perform the Contract with all due diligence pending settlement of the dispute.

### **A28. TRANSFER AND SUB-CONTRACTING**

- A28.1 The Contractor shall not assign, novate, Sub-Contract, charge or otherwise dispose of the Contract or any part of the Contract without the prior written consent of MHCLG which shall not be unreasonably withheld.
- A28.2 The Contractor shall ensure that any Sub-Contractor complies with the terms of this Contract, so far as they are applicable. Sub-Contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.
- A28.3 Where MHCLG has consented to the placing of Sub-Contracts, the Contractor shall, on request by MHCLG and within a reasonable time, send copies of the Sub-Contracts to MHCLG.



A28.4 Without prejudice to any entitlement to transfer its rights and obligations pursuant to a statutory transfer (which shall be governed by the terms set out therein), MHCLG shall be entitled to assign, novate or otherwise dispose of the Contract to any public sector body or any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by MHCLG at no cost to MHCLG or its successor provided that where any such assignment, novation or other disposal increases the burden of the Contractor's obligations under the Contract, the Contractor shall be entitled to such charges as may be agreed in writing between MHCLG's Commercial Representative and the Contractor to compensate for such additional burdens.

**A29. SEVERABILITY**

A29.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, MHCLG and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

**A30. WAIVER**

A30.1 Any delay, neglect or forbearance on the part of either Party in enforcing against the other Party any provision of the Contract shall neither be nor be deemed to be a waiver or in any way prejudice any right or remedy of that Party under the Contract and shall not cause any diminution of the obligations established by the Contract.

A30.2 A waiver shall not be effective unless it is expressly stated in writing to be a waiver and is signed by the Party waiving the right or remedy.

A30.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy from any other or subsequent breach of Contract.

**A31. CONFLICTS OF INTEREST**

A31.1 The Contractor shall use all reasonable endeavours to ensure that neither the Contractor nor any of the Contractor's Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to MHCLG under the provisions of the Contract. The Contractor will disclose to MHCLG full particulars of any such conflict of interest which may arise.



A31.2 If, in the reasonable opinion of MHCLG, a conflict of interest arises then the Contractor shall take all necessary measures as are required by MHCLG to resolve the conflict of interest or alleviate its effect, at the Contractor's expense.

A31.3 If a resolution of the conflict of interest is not possible then without prejudice to any rights or remedies of MHCLG, MHCLG shall have the right to terminate the Contract with immediate effect and recover from the Contractor any loss resulting from such termination.

A31.4 Where MHCLG is of the opinion that a conflict of interest which existed at the time of the award of the Contract could have been discovered by a competent contractor and ought to have been disclosed by the Contractor, MHCLG may terminate the Contract immediately and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

#### **A32. ADDITIONAL CLAIMS**

A32.1 No claims for additional payment or time shall be allowed on the grounds of any matter for which a competent contractor would have made due allowance or which the Contractor could reasonably have discovered by a visit to MHCLG's premises, reference to MHCLG, or such other means as may have been appropriate.

#### **A33. GOVERNING LAW**

A33.1 The Contract shall be governed by and construed in accordance with English law and the Contractor hereby irrevocably submits to the exclusive jurisdiction of the English courts.

#### **A34. ENTIRE CONTRACT**

A34.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract and, save as may be expressly referred to or referenced herein, supersedes all prior representations, negotiations and understandings, whether written or oral, with respect hereto.

A34.2 Any terms, conditions or general reservations printed on any documentation passing between the Parties shall not be applicable to the Contract.

A34.3 Clause A34.1 shall not exclude any liability in respect of any fraudulent misrepresentation.



### **A35. CYBER ESSENTIALS SCHEME CONDITION**

A35.1 Where MHCLG has notified the Contractor that the award of this Contract is conditional upon receipt of a valid Cyber Essentials Scheme Basic Certificate or Cyber Essentials Scheme Plus Certificate or equivalent, then on or prior to the execution of this Contract, as a condition for the award of this Contract, the Contractor shall deliver to MHCLG evidence of the same.

A35.2 Where the Contractor continues to Process Cyber Essentials Scheme Data during the term of the Contract the Contractor shall deliver to MHCLG evidence of renewal of a valid Cyber Essentials Scheme Basic Certificate or Cyber Essentials Scheme Plus Certificate or equivalent on each anniversary of the first applicable certificate obtained by the Contractor under Clause A35.1.

A35.3 Where the Contractor is due to Process Cyber Essentials Scheme Data after the Effective Date but before the end of the term of the Contract, the Contractor shall deliver to MHCLG evidence of:

A35.3.1 a valid Cyber Essentials Scheme Basic Certificate or Cyber Essentials Scheme Plus Certificate or equivalent (before the Contractor Processes any such Cyber Essentials Scheme Data); and

A35.3.2 renewal of a valid Cyber Essentials Scheme Basic Certificate or Cyber Essentials Scheme Plus Certificate or equivalent on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Contractor under Clause A35.3.1.

A35.4 In the event that the Contractor fails to comply with Clauses A35.2 or A35.3 (as applicable), MHCLG reserves the right to terminate this Contract for Material Breach.

### **A36 DUE DILIGENCE**

A36.1 The Contractor acknowledges that:

A36.1.1 MHCLG has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this Contract;

A36.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

A36.1.3 it has raised all relevant due diligence questions with MHCLG before the Effective Date; and

A36.1.4 it has undertaken all necessary due diligence and has entered into this Contract in reliance on its own due diligence alone.



A36.2 The Contractor shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Contractor be entitled to recover any additional costs or charges, arising as a result of:

A36.2.1 any misinterpretation of the requirements of MHCLG in this Contract;

A36.2.2 any failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or

A36.2.3 failure by the Contractor to undertake its own due diligence.

**A37 Not Used**

**A38 Not Used**

### **A39 TERMINATION FOR BREACH OF THE REGULATIONS**

A39.1 MHCLG may terminate this Contract by issuing a notice, in writing, to the Contractor on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

### **A40 INTELLECTUAL PROPERTY RIGHTS**

A40.1 All Intellectual Property Rights or other similar protection in any specifications, instructions, plans, data, drawings, databases, patterns, models, designs or other material furnished to or made available to the Contractor by MHCLG pursuant to the Contract shall remain the property of MHCLG.

A40.2 All pre-existing Intellectual Property Rights or other similar protection in any specifications, instructions, plans, data, drawings, databases, patterns, models, designs or other material existing prior to the date of the Contract date and furnished to or made available to MHCLG by the Contractor pursuant to the Contract shall remain the property of the Contractor. The Contractor hereby grants to MHCLG and the Crown a non-exclusive, royalty free, perpetual and irrevocable licence to use, reproduce, modify, adapt, amend, enhance and otherwise deal with (and to authorise a third party on behalf of MHCLG or the Crown, such third party having signed a confidentiality undertaking, to use, reproduce, modify, adapt, amend, enhance and otherwise deal with) the Contractor's pre-existing Intellectual Property Rights for MHCLG or the Crown's own internal purposes, to allow MHCLG or the Crown to exploit the Intellectual Property Rights or similar generated under the Contract and for any other purposes specified in the Contract.



A40.3 All Deliverables, reports and other documents or similar and all Intellectual Property Rights or other similar protection arising out of the performance by the Contractor's Personnel of their duties hereunder are hereby assigned to and shall vest in MHCLG absolutely, unless the Parties agree otherwise in writing, and the Contractor or the Contractor's Personnel shall enter into such documentation and perform such acts as MHCLG may request to properly vest such rights in MHCLG.

#### **A41 INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT**

A41.1 If an action, claim or demand for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of MHCLG (not to be unreasonably withheld or delayed) either:

A41.1.1 modify any or all of the Goods and / or Services without reducing the performance of the same so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutates mutandis to such modified or substituted Goods and / or Services; or

A41.1.2 procure a licence (at the Contractor's cost) to provide the Goods and / or Services, which are the subject of the alleged infringement, on terms which are acceptable to MHCLG.

#### **A42 TERMINATION BY MHCLG FOR CONVENIENCE**

A42.1 MHCLG shall have the right to terminate this Contract at any time giving the Contractor at least thirty (30) Working Days' written notice.

#### **A43 Not Used**



**SCHEDULE A - DATA PROTECTION**

**For the purposes of this Contract, Schedule A does not apply as the Contractor is the Data Controller.**

1. The Contractor shall comply with any further written instructions with respect to processing by MHCLG.
2. Any such further instructions shall be incorporated into this Data Protection Schedule.

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Location of processing	<i>[Specify the jurisdiction in which the processing will take place and whether within the UK/EU or not]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>