

STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SERVICES

REFERENCE: …………………………………

DATED: ……………………………………

between

1. OIL AND GAS AUTHORITY

and

1. ………………………………

[***Note:***

1. ***Cross-references to clauses be checked and/or finalised prior to signature (these have been highlighted and square-bracketed).***
2. ***Cross-references (e.g. in the definitions) to the contents of the schedules (e.g. Contract Offer Letter, Tender Documents etc) to be checked and/or finalised prior to external circulation.***
3. ***Commercial details to be completed/confirmed prior to signature***]

**Table of Contents**

[1. Definitions and Interpretation 5](#_Toc32416306)

[2. Services 11](#_Toc32416307)

[3. Contractor Obligations 12](#_Toc32416308)

[4. Charges, Invoicing and Payment 15](#_Toc32416309)

[5. Taxation 17](#_Toc32416310)

[6. Records and Audit 20](#_Toc32416311)

[7. Governance 21](#_Toc32416312)

[8. Term and Termination 22](#_Toc32416313)

[9. Transfer of Services 25](#_Toc32416314)

[10. Warranties 25](#_Toc32416315)

[11. Indemnities 28](#_Toc32416316)

[12. Limitation of Liability 29](#_Toc32416317)

[13. Intellectual Property 31](#_Toc32416318)

[14. OGA Property 32](#_Toc32416319)

[15. Contractor’s Personnel 33](#_Toc32416320)

[16. Confidentiality and Transparency 33](#_Toc32416321)

[17. Freedom of Information 36](#_Toc32416322)

[18. Anti-Bribery 37](#_Toc32416323)

[19. Compliance 38](#_Toc32416324)

[20. Data and Data Protection 40](#_Toc32416325)

[21. Security and Integrity 42](#_Toc32416326)

[22. Force Majeure 43](#_Toc32416327)

[23. Variation 43](#_Toc32416328)

[24. Conflicts of Interest 44](#_Toc32416329)

[25. Waiver 44](#_Toc32416330)

[26. Rights and Remedies 44](#_Toc32416331)

[27. Severance 45](#_Toc32416332)

[28. Entire Agreement 45](#_Toc32416333)

[29. Assignment and Subcontracting 45](#_Toc32416334)

[30. No Exclusivity 46](#_Toc32416335)

[31. Further Assurances 46](#_Toc32416336)

[32. Third Party Rights 46](#_Toc32416337)

[33. Notices 47](#_Toc32416338)

[34. Counterparts 47](#_Toc32416339)

[35. Dispute Resolution 47](#_Toc32416340)

[36. Governing Law 49](#_Toc32416341)

[37. Jurisdiction 49](#_Toc32416342)

[Schedule 1: Tender Documents 51](#_Toc32416343)

[Schedule 2: Contract Offer Letter 53](#_Toc32416344)

[Schedule 3: Contract Variation Form 54](#_Toc32416345)

**THIS AGREEMENT** is dated ……………………………………………………

**PARTIES**

1. **OIL AND GAS AUTHORITY** incorporated and registered in England and Wales with company number 09666504 whose registered office is at 21 Bloomsbury Street, London, United Kingdom, WC1B 3HF (“**OGA**”); and
2. ……………………………… incorporated and registered in ………………………… with company number …………… whose registered office is at …………………

…………………………………………………… (the “**Contractor**”),

(each a “**Party**” and together the “**Parties**”).

**BACKGROUND**

1. …………………………………………………….
2. …………………………………………………….
3. …………………………………………………….
4. …………………………………………………….

**AGREED TERMS**

# Definitions and Interpretation

* 1. The following definitions and rules of interpretation apply in this Agreement:

|  |  |
| --- | --- |
| “**Affiliates**” | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time; |
| “**Agreement**” | means this agreement between the OGA and the Contractor for the supply of the Services and includes the Appendices, Schedules and any other documents, specifications, plans and drawings which are incorporated by reference into this agreement; |
| “**Charges**” | means the agreed amount (excluding Value Added Tax) set out in the Contract Offer Letter to be paid in consideration for the performance of the Services in accordance with this Agreement;  [*to be updated in line with the Contract Offer Letter*] |
| “**Commencement Date**” | means, the date set out in the Contract Offer Letter, […];  [*to be updated in line with the Contract Offer Letter*] |
| “**Confidential Information**” | means:   1. all information received by the Contractor from or on behalf of the OGA relating to and connected with the OGA, this Agreement and/or the Services, including any such information that may be transferred directly from the Contractor to any Subcontractor; but 2. does not include this Agreement itself and the provisions of this Agreement where, or to the extent that, the OGA publishes them by virtue of clause [16.1.8]; |
| “**Contract Offer Letter**” | means the contract offer letter executed by the OGA and the Contractor for the performance of the Services which is the document set out at Schedule [2]; |
| “**Contract Specification**” | means the contract specification executed by the OGA and the Contractor for the performance of the Services which is set out at Schedule [1]; |
| “**Contract Variation Form**” | means the contract variation form which is set out in Schedule [3]; |
| “**Contractor Personnel**” | means any directors, officers, employees, staff, agents, consultants and contractors engaged by the Contractor in connection with this Agreement; |
| “**Contractor Representative**” | means the representative appointed by the Contractor pursuant to Clause [7.1.3]; |
| “**Control**” | has the meaning given in section 1124 of the Corporation Tax Act 2010, and “**controls**”, “**controlled**” and the expression “**change of control**” shall be construed accordingly; |
| “**Cybersecurity Requirements**” | means all applicable Laws, regulations, codes, guidance (from regulatory and advisory bodies), international and national standards, and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time, but in each case only to the extent legally binding; |
| “**Data Collection**” | has the meaning set out in the Contract Specification;  [*TBC how defined in the Contract Specification*] |
| “**Data Protection Legislation**” | means:   1. the UK Data Protection Legislation; and 2. any other European Union legislation and regulatory requirements in force from time to time which apply to a person and the use of Personal Data (including, without limitation, the privacy of electronic communications); |
| “**Documentation**” | means all documentation as:   1. is required to be provided by the Contractor to the OGA under this Agreement; 2. would reasonably be required by a competent third party adhering to Good Industry Practice contracted by the OGA to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Services; 3. is required by the Contractor in order to provide the Services; and/or 4. has been or shall be generated for the purpose of providing the Services; |
| “**Execution Date**” | means […];  [*date of signature to be inserted here*] |
| “**EIR**” | means the Environmental Information Regulations SI 2004 No. 3391; |
| “**FOIA**” | means the Freedom of Information Act 2000; |
| “**Force Majeure Event**” | means any event or combination of events outside the reasonable control of the affected Party which has prevented, or delayed, the performance of its obligations or exercising its rights under this Agreement and which was unforeseeable and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Contractor’s Personnel or any other failure in the Contractor’s supply chain; |
| “**Good Industry Practice**” | means the exercise of that degree of care, skill, diligence, prudence, efficacy, foresight and timeliness which would reasonably be expected at such time from a leading and expert provider of services similar to the Services to a customer like the OGA, such provider seeking to comply with its contractual obligations in full and complying with all applicable Laws; |
| “**Initial Term**” | means the period described in Clause [8.1.1]; |
| “**Intellectual Property Rights**” | patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; |
| “**Law**” | means any law, statute, subordinate legislation within the meaning of section 21(1) Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives of requirements of any regulatory body with which the OGA or Contractor is bound to comply; |
| “**Liabilities**” | means any actions, costs, claims, charges, liabilities, demands, fines, penalties, damages, compensation (whether direct or indirect and including all interest and penalties), losses, awards or expenses (including legal and other reasonable professional costs and expenses) and other liabilities; |
| “**NICs**” | means national insurance contributions; |
| “**Normal Business Hours**” | means 08:30 to 17:30 local UK time, each Working Day; |
| “**Occasion of Tax Non-Compliance**” | has the meaning given to it in Clause [5.3.5]; |
| “**OGA’s Premises**” | means land or buildings owned or occupied by OGA; |
| "**OGA Property**” | means anything issued or otherwise furnished relating to the Agreement by or on behalf of OGA, including documents, papers, data issued in electronic form and other materials; |
| “**OGA Representative**” | means the representative appointed by OGA pursuant to Clause [7.1.2]; |
| “**Personal Data**” | has the meaning set out in the Contract Specification;  [*TBC how defined in the Contract Specification*] |
| “**Purchase Order**” | means, when applicable, the document so described by OGA to purchase the Services; |
| “**Service Level**” | means the levels against which the provision of the Services may be measured, as set out the Contract Specification; |
| “**Services**" | means the services to be supplied under this Agreement in accordance with the Contract Specification; |
| “**Subcontractor**” | means any entity engaged by the Contractor to perform the Services; |
| “**Subcontractor Personnel**” | means any directors, officers, employees, staff, agents, consultants and contractors engaged by any Subcontractor in connection with this Agreement; |
| “**Tender Documents**” | includes the Contract Specification, the invitation to tender and the Contractor’s proposal and related correspondence between the OGA and the Contractor, as appended at Schedule [1];  [*TBC final composition of Tender Documents*] |
| “**Term**” | has the meaning given to it in Clause [8.1.2]; |
| “**Termination Notice**” | means a written notice of termination given by OGA to the Contractor, notifying the Contractor of the intention of OGA to terminate this Agreement with immediate effect or on such later date as the OGA may specify and setting out the grounds for termination; |
| “**Transaction Fee**” | has the meaning set out in the Contract Specification and the Contract Offer Letter;  [*TBC how defined in the Contract Specification and the Contract Offer Letter*] |
| “**Transfer Period**” | has the meaning set out in the Contract Specification; |
| “**Transfer Regulations**” | means the Transfer of Undertakings (Protection of Employment) Regulations 2006; |
| “**UK Data Protection Legislation**” | means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SU 2003/2426) as amended; |
| “**VAT**” | means value added tax, in accordance with the provisions of VAT Act 1994; |
| “**VAT Act 1994**” | means the Value Added Tax Act 1994; and |
| “**Working Day**” | means any day other than a Saturday, Sunday or public holiday in England, Wales and Scotland. |

* 1. References to a “person” includes an individual, corporate, partnership, statutory authority or unincorporated or incorporated body (whether or not having a separate legal personality) and that person’s legal and personal representatives, successors or permitted assigns.
  2. References to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
  3. Unless the context otherwise requires, words in the singular shall include the plural and in the plural, shall include the singular.
  4. A reference to a statute, statutory provision, enactment, order, regulation or other similar instrument is a reference to it as amended, extended, consolidated, re-enacted or replaced from time to time.
  5. A reference to writing or written includes e-mail.
  6. References to Clauses and Schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.
  7. The headings in this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
  8. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
  9. Unless the context otherwise requires, any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done.
  10. If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

# Services

* 1. Provision of Services
     1. From and including the Commencement Date, the Contractor shall, in consideration for the payment of the Charges, provide the Services as specified in the Contract Specification in accordance with this Agreement.
     2. The OGA shall have the power to inspect and examine the provision of the Services at the Contractor's Premises at any reasonable time or, provided that the OGA gives reasonable written notice to the Contractor, at any other premises where any part of the Services is being provided.
     3. If, following provision of the Services, the OGA informs the Contractor in writing within a reasonable period of time that the OGA considers any part of the Services to be inadequate or in any way differing from the Contract Specification, otherwise than as the sole and direct result of material default or negligence on the part of the OGA, the Contractor shall, at his own expense, re-schedule and provide the Services correctly within such reasonable time as may be specified by the OGA.
  2. Delay: the OGA
     1. For good cause, the OGA may require in writing:

1. at any time up to and including the Commencement Date, that the Contractor delays the provision of the Services (or any part of them) until such time following the Commencement Date as may be specified by the OGA; or
2. at any time after the Commencement Date, that the Contractor suspends the provision of the Services (or any part of them).
   * 1. Subject to Clauses [2.2.3 and 2.2.4], if the OGA exercises its rights under Clause [2.2.1] then the OGA shall be responsible for the losses reasonably and properly incurred and documented by the Contractor as a result of such suspension or delay, *unless*:
3. such suspension or delay is caused by a breach of this Agreement, or a breach of duty or fault or negligence by the Contractor; or
4. where the reason for the suspension of the Services arises from circumstances beyond the control of the OGA.
   * 1. The Contractor shall take all reasonable steps to mitigate any losses incurred as a result of a suspension or delay in the provision of the Services under Clause [2.2.1].
     2. The Contractor may recover from the OGA, pursuant to Clause [2.2.2], only for those losses which:
5. were reasonably foreseeable by the OGA as the sole and direct result of the suspension or delay; and
6. relate to the cost of any commitments entered into by the Contractor which cannot be met as a result of the suspension or delay and in respect of which:
7. where the Contractor has already paid in relation to the commitment, the Contractor cannot obtain a refund; and
8. where the Contractor has not already paid in relation to the commitment, the Contractor is obliged to pay.
   1. Delay: the Contractor
      1. If the provision of the whole or any part of the Services by the Contractor is delayed:
9. solely and directly as a result of an act, outside of the scope of this Agreement, on the part of the OGA;
10. solely and directly by an industrial dispute (other than by an industrial dispute solely occurring within the Contractor’s or any of its Subcontractor’s organisation); or
11. any other cause which the Contractor using all reasonable endeavours could not have prevented,

then the Contractor may be allowed a reasonable extension of time for performance. For the purposes of this Clause [2.3.1], the Contractor shall be deemed to have been able to prevent causes of delay that are within the reasonable control of Contractor Personnel and its Subcontractors (including that Subcontractor’s Personnel).

* + 1. The Contractor shall reimburse the OGA for all reasonable costs incurred by the OGA which have arisen as a direct consequence of the Contractor’s delay in the performance of this Agreement which the Contractor had failed to remedy after being given reasonable notice by the OGA.

# Contractor Obligations

* 1. The Contractor shall:
     1. at all times allocate sufficient resources and properly trained personnel with the appropriate technical expertise to provide due and proper performance of the Services in accordance with this Agreement;
     2. obtain and maintain throughout the Term of this Agreement all the consents, approvals, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary for the provision of the Services;
     3. maintain throughout the Term of this Agreement a policy or policies of insurance with a reputable insurance company in accordance with Clause [11.3];
     4. ensure that any Documentation and training provided by the Contractor to the OGA are comprehensive, accurate and prepared in accordance with Good Industry Practice;
     5. provide the OGA with such assistance and support as the OGA may reasonably require during the Term in respect of the provision of the Services;
     6. gather, collate and provide such information and co-operation as the OGA may reasonably request for the purposes of ascertaining the Contractor’s compliance with its obligations under this Agreement;
     7. notify the OGA in writing of any actual or potential change of control as soon as practicably possible;
     8. notify the OGA in writing within five (5) Working Days of the occurrence of any actions, suits or proceedings or regulatory investigations before any court or administrative or regulatory body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
     9. ensure that neither it, nor any of its Affiliates, Contractor Personnel or Subcontractors (including Subcontractor Personnel), embarrasses the OGA, issues any public comment or public statement (whether to press, in social media, or otherwise) which could reasonably be considered to be adverse to the OGA’s interests in any material respect, or otherwise bring the OGA into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the OGA, regardless of whether or not such act or omission is related to the Contractor’s obligations under this Agreement; and
     10. ensure that, when providing the Services, it does not interfere with the activities of the OGA, its employees, staff, agents, consultants, contractors or suppliers.
  2. The Contractor shall:
     1. remedy any breach of its obligations in Clause [3.1] which are capable of remedy in accordance with the process provided in the Contract Offer Letter; and
     2. meet all the costs of, and incidental to, the performance of such remedial work,

and if the Contractor fails to comply with its obligations under this Clause [3.2] within the specified timeframe then the OGA may terminate this Agreement pursuant to Clause [8.2.1].

* 1. Progress Reports
     1. Where formal progress reports are required, the Contractor shall render such reports at such time and in such form as may be specified by the OGA, or as otherwise agreed in writing between the Contractor and the OGA.
     2. The submission and acceptance of progress reports shall not prejudice any rights of the OGA under the Agreement.
  2. Subcontractors
     1. An obligation on the Contractor to do, or refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that any Subcontractors also do, or refrain from doing, such act or thing.
  3. Monitoring and Management Information
     1. Where requested by the OGA, the Contractor shall supply to the OGA and/or the Cabinet Office such information relating to the Services and to the Contractor’s management and performance of this Agreement as specified in the OGA’s request.
     2. The information referred to in Clause [3.5.1] may include: line item amount, invoice line description, invoice line number, currency code, order date, VAT inclusion flag, VAT rate, list price, number of items, unit of purchase quantity, price per unit, supplier service code, service description and/or name, UNSPSC code, taxonomy code and/or name, geographical, project code, project description, project start date, project delivery date (estimate and actual), total project cost and project stage. The information may also include information relating to the capability of the Contractor (and any key Subcontractor) to continue to provide the Services and satisfy the obligations under this Agreement (including information on matters referred to in regulations 23 to 27 of the Public Contracts Regulations 2006).
     3. The information referred to in Clause [3.5.1] shall be supplied in such form and within such timescales as the OGA or the Cabinet Office may reasonably require.
     4. The Contractor agrees that the OGA may provide the Cabinet Office, any other government department or agency or any other person or entity referred to in Clause [16.2], with information obtained under this Clause [3.5] and any other information relating to the Services procured and any payments made under this Agreement.
     5. Upon receipt of the information supplied by the Contractor in response to a request under Clause [3.5.1] or receipt of information provided by the OGA to the Cabinet Office under Clause [3.5.4], the Contractor hereby consents to the Cabinet Office (acting through the Government Procurement Service):

1. storing and analysing the information and producing statistics; and
2. sharing the information or any statistics produced using the information in accordance with Clause [16.2].
   * 1. Subject to provision of at least one (1) calendar month’s written notice to the Contractor, the OGA may make changes to the type of information which the Contractor is required to supply.
   1. Ongoing obligation
      1. The Contractor shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause [3.6] and, where applicable, the Tender Documents.
      2. Pursuant to Clause [3.6.1], the Contractor shall identify and report to the OGA once every 12 months on:
3. the emergence of new and evolving relevant technologies which could improve the provision of the Services and those technological advances potentially available to the Contractor and the OGA which the Parties may wish to adopt;
4. new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
5. new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the OGA which might result in efficiency or productivity gains or reduction of operational risk;
6. changes in business processes and ways of working that would enable the Services to be provided at a lower cost and/ or with greater benefits to the OGA; and/or
7. changes to IT, business processes and ways of working that would enable the reductions in the total energy consumed in the provision of the Services.
   * 1. The Contractor shall ensure that the information that it provides to the OGA shall be sufficient for the OGA to decide whether any improvement should be implemented. The Contractor shall provide any further information that the OGA requests within such reasonable time as may be specified by the OGA.

If the OGA decides to incorporate any improvement identified by the Contractor, then the Parties shall agree the terms in writing in accordance with Clause [23].

# Charges, Invoicing and Payment

* 1. Charges
     1. In consideration of the provision of the Services by the Contractor, the OGA shall pay the Charges during the Term in accordance with the Contract Offer Letter and this Clause [4]. For the avoidance of doubt, the Charges exclude the Transaction Fees.
     2. Except as otherwise provided, each Party shall bear its own costs and expenses incurred in respect of compliance with its obligations under this Agreement.
  2. Invoicing
     1. All amounts, fees and charges payable under this Agreement shall be invoiced and paid in Pounds Sterling unless otherwise agreed in writing between the Parties.
     2. The OGA shall pay the Charges in accordance with Clause [4.3] after receiving a correctly submitted invoice as set out in this Clause [4.2].
     3. The Contractor shall submit invoices at the times and intervals set out in [the Contract Offer Letter].
     4. The Contractor shall ensure that any invoice it submits sets out:

1. the OGA’s Purchase Order or contract number;
2. the Charges payable and such supporting information required by the OGA to verify the accuracy of the invoice including timesheets (where applicable) and a breakdown of the Services supplied in the invoice period; and
3. its confirmation that the Services (or relevant part of the Services referred to on the invoice) have been fully performed.
   1. Payment
      1. Unless otherwise set out in the [Contract Offer Letter], the OGA shall pay the Charges within 30 days of receipt of the correctly submitted and fully documented invoice.
      2. The OGA may reduce payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of OGA.
      3. If the Contractor considers that payment for a correctly submitted and fully documented invoice is overdue, it should, in the first instance, contact the Head of Finance in writing. In the event that the matter is not resolved to the Contractor’s satisfaction (acting reasonably), it should write to the Head of Procurement setting out its case. The Head of Procurement shall ensure that the complaint is dealt with by an official who is independent of the main contact and that the Contractor is not treated adversely in future for having made a complaint.
      4. If the OGA fails to pay any undisputed Charges properly invoiced under this Agreement, the Contractor shall have the right to charge interest on the overdue amount at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
      5. Pursuant to Clause [4.3.4], for the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last day of a period of 30 days commencing on the day when the OGA received the correctly submitted and properly documented invoice.
      6. The OGA may set-off any amount owed by the Contractor to the OGA against any amount then due, or which at any time thereafter may become due, to the Contractor under this Agreement or under any other agreement or arrangement between the Contractor and the OGA.
      7. Any over-payment by the OGA to the Contractor, whether in respect of the Charges or Value Added Tax shall be a sum of money recoverable from the Contractor pursuant to Clause [4.3.6] or otherwise.

# Taxation

* 1. VAT
     1. The OGA shall pay to the Contractor, in addition to the Charges, where appropriate, a sum equal to the VAT chargeable on the provision of the Services in accordance with this Agreement.
     2. Any invoice or other request for payment of monies due to the Contractor under this Agreement shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the VAT Act 1994.
     3. The Contractor shall, if requested by the OGA, furnish such information as may be reasonably required by the OGA relating to the amount of VAT chargeable on the Services.
  2. Income tax and NICs
     1. Where the Contractor is liable to be taxed in the UK in respect of consideration received under this Agreement, the Contractor shall comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
     2. Where the Contractor is liable for NICs in respect of consideration received under this Agreement, the Contractor shall comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
     3. The OGA may, at any time during the Term, require the Contractor to provide information to demonstrate that:

1. the Contractor has complied with Clauses [5.2.1 and 5.2.2]; or
2. the Contractor or the Contractor Personnel are not liable to the relevant taxes.
   * 1. A request under Clause [5.2.3] may specify the information which the Contractor must provide and a reasonable deadline for response.
     2. The OGA may supply any information which it receives under Clause [5.2.3] to the Commissioners of Her Majesty’s Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
     3. The Contractor shall:
3. ensure that any Subcontractor (including Subcontractor Personnel) and Contractor Personnel are engaged on, and comply with, conditions equivalent to those in Clauses [5.2.1 to 5.2.5] and this Clause [5.2.6]; and
4. on request, provide the OGA with evidence to satisfy the OGA that the Contractor complied with Clause [5.2.6(a)].
   * 1. The Parties have the right to require any Subcontractor (including Subcontractor Personnel) or Contractor Personnel to provide information to them equivalent to Clause [5.2.3], and the Contractor shall obtain that information where requested by the OGA.
     2. The OGA may terminate this Agreement pursuant to Clause [8.2.1] where:
5. the Contractor does not comply with any requirement of this Clause [5]; or
6. the Contractor Personnel, any Subcontractor or Subcontractor Personnel do not comply with the obligations imposed on them under Clause [5.2.6].
   * 1. In particular the OGA may terminate this Agreement under Clause [5.2.8] where:
7. in the case of a request under Clause [5.2.3]:
8. the Contractor fails to provide information in response to the request within the deadline specified; or
9. the Contractor provides information which is inadequate to demonstrate how the Contractor or (where relevant) any Subcontractor, Subcontractor Personnel or Contractor Personnel have complied with the conditions set out or referred to in Clauses [5.2.1 to 5.2.6] (inclusive);
10. the OGA receives information which demonstrates, to its reasonable satisfaction that the Contractor, any Subcontractor, Subcontractor Personnel or Contractor Personnel, are not complying with this Clause [5.2].
    1. Non-compliance
       1. This Clause [5.3] applies where the consideration payable by the Contractor under this Agreement equals or exceeds £5,000,000 (five million pounds).
       2. If, at any point during the Term an Occasion of Tax Non-Compliance occurs, the Contractor shall:
11. notify the OGA in writing of such fact within five (5) Working Days of its occurrence; and
12. promptly provide to the OGA:
13. details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
14. such other information in relation to the Occasion of Tax Non-Compliance as the OGA may reasonably require.
    * 1. In the event that:
15. the Contractor commits a breach of its obligation to notify the OGA of any Occasion of Tax Non-Compliance as required by Clause [5.3.2]; or
16. the Contractor fails to provide details of proposed mitigating factors as required by Clause [5.3.2] which, in the reasonable opinion of the OGA, are acceptable,

the OGA may terminate this Agreement in accordance with Clause [8.2.1].

* + 1. In this Clause [5.3], “**Occasion of Tax Non-Compliance**” means:

1. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 that is found on or after 1 April 2013 to be incorrect as a result of:
2. 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 that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
3. 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 the DOTAS or any equivalent or similar regime;

and/or

1. any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 that 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 Commencement Date or to a penalty for civil fraud or evasion.
   * 1. For the purpose of Clause [5.3.4]:
2. “**DOTAS**” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs 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 s.132A Social Security Administration Act 1992;
3. “**General Anti-Abuse Rule**” means:
4. the legislation in Part 5 of the Finance Act 2013; and
5. any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
6. “**Halifax Abuse Principle**” means the principle explained in the CJEU Case C-255/02 Halifax and others; and
7. “**Relevant Tax Authority**” means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

# Records and Audit

* 1. During the Term, and for a period of six (6) years after termination or expiry of this Agreement, the Contractor shall keep (and shall procure that any Subcontractor shall keep) complete and accurate accounts, records and vouchers (which shall be maintained in accordance with Good Industry Practice) relating to this Agreement, including:
     1. all charges, prices, costs and expenses associated with and invoiced in respect of the Services (including all expenditure reimbursed by the OGA, all payments made by the OGA in respect of the Services and the Transaction Fees); and
     2. the Contractor’s performance against the Service Levels.
  2. The Contractor, and its Subcontractors, shall permit the OGA, acting by its officers, agents or independent auditor, on request and at all reasonable times to examine all accounts, records and vouchers at the premises of the Contractor, and its Subcontractors, or at such other places as the OGA shall direct (including the Contractor’s, and its Subcontractor’s, data processing facilities), and to take copies of such accounts, records and vouchers, and the Contractor, and its Subcontractors, shall provide the OGA or its independent auditor with such supporting documents and explanations as the OGA may request to examine the manner in which the Services are supplied and to ascertain compliance with this Agreement.
  3. If, on examination, the OGA determines that any charges, prices, costs or expenses exceed the amounts properly chargeable to, or recoverable from, the OGA, the Contractor shall, without affecting the OGA’s rights, promptly refund to the OGA the amount over-charged and any costs of such examination by the OGA.

# Governance

* 1. Representatives
     1. Each Party shall have at least one representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
     2. The OGA shall notify the Contractor of the identity of the OGA Representatives in accordance with the Contract Offer Letter within 5 Working Days of the Execution Date. The OGA may, by written notice to the Contractor, revoke or amend the authority of the OGA Representatives or appoint new OGA Representatives.
     3. The identity and relevant contact details for the Contractor Representative shall be set out in the [Contract Offer Letter]. The Contractor shall not remove or replace the Contractor Representative unless:

1. requested to do so by the OGA;
2. the Contractor Representative resigns, retires or dies or is on maternity or long-term sick leave or other long-term absence;
3. the Contractor Representative’s employment or contractual arrangement with the Contractor or any Subcontractor is terminated for material breach of contract by the Contractor Representative; or
4. the Contractor obtains the OGA’s prior written consent (such consent not to be unreasonably withheld or delayed).
   1. Contractor Status
      1. Nothing in this Agreement shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the OGA and the Contractor.

# Term and Termination

* 1. Term
     1. This Agreement shall commence on the Commencement Date and shall continue until [*insert date*] (the “**Initial** **Term**”), unless otherwise terminated in accordance with this Clause [8], and subject always to the terms of any relevant Transfer Period.
     2. At the end of the Initial Term, the OGA shall have the right to renew this Agreement for a further two (2) year period by notifying the Contractor in writing at least [six (6) months] before the end of the Initial Term and any further renewals or extensions will be subject to the written agreement of the Parties, (such renewal periods (if any) together with the Initial Term and any Transfer Period, the “**Term**”).
  2. Termination
     1. Without affecting any other right or remedy available to it, the OGA may terminate this Agreement by issuing a Termination Notice to the Contractor:

1. for good cause at any time, including, where applicable, where this Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared under Article 258 of the Treaty on the Functioning of the EU];
2. if the Contractor commits a material breach of any term of this Agreement which is irremediable or (if such breach is remediable) fails to remedy that breach in accordance with the process provided in the Contract Offer Letter [or as otherwise notified in writing and within such reasonable time as the OGA may specify];
3. if the Contractor commits a material breach of any warranty given by it pursuant to Clause [10];
4. if the Contractor repeatedly breaches any of the terms and conditions of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of this Agreement;
5. if the Contractor commits any breach of Clauses [5], […];
6. where a right of termination is expressly reserved in this Agreement, including pursuant to:
7. Clause [3.2];
8. Clause [5.2.8];
9. Clause [5.2.9];
10. Clause [5.3.3];
11. Clause [15.4];
12. Clause [18.3];
13. Clause [19.2.3];
14. Clause [24.2];
15. Clause [24.3];
16. […].
17. if the Contractor commits a breach of its obligation to notify the OGA of any Occasion of Tax Non-Compliance as required by Clause [5.3.2];
18. if the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words “it is proved to the satisfaction of the court” did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
19. if the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
20. if a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor other than for the sole purpose of a scheme of solvent amalgamation of the Contractor with one or more companies or the solvent reconstruction of the Contractor;
21. if an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor;
22. if the holder of a qualifying floating charge over the assets of the Contractor has become entitled to appoint or has appointed an administrative receiver;
23. if a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
24. if a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforce on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 10 Working Days;
25. if any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses [8.2.1(e) to 8.2.1(o)] (inclusive);
26. if the Contractor suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
27. if there is a change of control of the Contractor unless the OGA has given its prior written consent to the particular change of control, which subsequently takes place as proposed;
28. if a Force Majeure Event occurs for a continuous period of more than 90 days;
29. if the OGA has become aware that the Contractor should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement; or
30. if this Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

and this Agreement shall terminate on the date specified in the Termination Notice.

* + 1. On termination or expiry of this Agreement for any reason [(unless otherwise provided in the Contract Specification)]:

1. the Contractor shall return all the OGA’s Confidential Information to the OGA, and destroy or permanently erase (to the extent technically practicable) all copies of the OGA’s Confidential Information made by the Contractor and the Contractor shall use reasonable endeavours to ensure that anyone to whom the Contractor has supplied Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, within such reasonable timeframe as specified by the OGA and comply with Clause [16];
2. any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this Agreement, which existed at or before the date of termination, shall not be affected or prejudiced; and
3. [Clauses 6, 8.2.2, 8.2.3, 11.2, 10, 11, 12, 16 to 35] and any other provision of this Agreement that either expressly or by implication has effect after termination shall remain in force.

* + 1. Where the OGA terminates this Agreement pursuant to Clause [8.2.1], the OGA shall be entitled, without prejudice, to any other rights or remedies, to recover from the Contractor in full the amount of any loss suffered by the OGA resulting from the termination, including the costs reasonably incurred by the OGA of making other arrangements for the provision of the services and any additional expenditure incurred by the OGA throughout the remainder of the Term as at the date of the Termination Notice.

# Transfer of Services

* 1. Where the OGA intends to continue with services equivalent to any, or all, of the Services after termination or expiry of this Agreement, either by performing such services by itself or by the appointment of a replacement contractor(s), the Contractor shall (where relevant, in accordance with the Contract Specification and both during the Term and, where relevant, after its expiry or termination):
     1. provide all information reasonably requested to allow the OGA to conduct the procurement for any replacement services; and
     2. use all reasonable endeavours to ensure that the transition is undertaken with minimum disruption to the OGA.
  2. Without prejudice to Clause [9.1], the Contractor shall, at times and intervals specified by the OGA, provide the OGA (for the benefit of the OGA, any replacement contractor and any economic operator bidding to provide the replacement services) such information as the OGA may require relating to the application or potential application of Transfer of Undertakings (Protection of Employment) Regulations 2006 including the provision of employee liability information.
  3. Without prejudice to Clause [9.1], the Contractor shall co-operate fully during the transition and any Transfer Period and provide access to all data, documents, manuals, working instructions, reports and any information, whether held in electronic or written form, which the OGA considers necessary.

# Warranties

* 1. Contractor

The Contractor represents and warrants that:

* + 1. it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
    2. it has full capacity and authority to enter into and perform its obligations under this Agreement;
    3. this Agreement is executed by its duly authorised representative(s);
    4. all written statements and representations in any written submissions made by the Contractor as part of the procurement process, in the Tender Documents and any other documents submitted remain true and accurate except to the extent that such statements and representations have been expressly superseded or varied by this Agreement or to the extent that the Contractor has otherwise disclosed to the OGA in writing prior to the Execution Date;
    5. it will perform the Services with all due professional skill, care and diligence, in a timely and efficient manner, using appropriately qualified and experienced Contractor Personnel and in accordance with Good Industry Practice and applicable Law;
    6. the Services shall conform with all descriptions and specifications set out in this Agreement and shall comply with all applicable Laws and regulations;
    7. the Services shall comply with all applicable Cybersecurity Requirements and were and shall at all times be developed in accordance with them;
    8. the processing of the Data Collection, the Personal Data or other data which is processed by the Contractor on or after the Commencement Date in connection with this Agreement will not result in breach of any applicable Cybersecurity Requirements;
    9. it shall co-operate with the OGA in all matters relating to the Services and comply with the OGA’s instructions;
    10. there are no actions, suits or proceedings or regulatory investigations before any court or administrative or regulatory body or arbitration tribunal pending or, to its knowledge, threated against it or any of its Affiliates, that might affect its ability to perform its obligations under this Agreement;
    11. pursuant to Clause [5.3], it has notified the OGA in writing of any Occasions of Tax Non-Compliance an any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
    12. 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;
    13. its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law, regulation or obligation applicable to it, nor any of the OGA’s policies, and will not cause or result in a default under any agreement by which it is bound;
    14. its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application;
    15. it has all the rights in relation to the Services that are necessary to grant all the rights it purports to grant and perform all the obligations it agrees to perform under, and in accordance with, the terms of this Agreement;
    16. the Services and all other technology, items and materials provided by the Contractor under this Agreement, do not violate, infringe or misappropriate any Intellectual Property Rights or other proprietary rights of any person;
    17. it has obtained and will maintain all necessary consents, approvals, licences or authorisations required to enter into and for the performance of its obligations under this Agreement;
    18. 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 Agreement; and
    19. it has obtained and will maintain appropriate levels of insurance of all risks and liabilities which may be incurred by the Contractor pursuant to this Agreement and it shall provide reasonable evidence of this to the OGA within five (5) Working Days’ of a request by the OGA.
  1. OGA

The OGA represents and warrants that:

* + 1. it has full capacity and authority to enter into and perform its obligations under this Agreement;
    2. this Agreement is executed by its duly authorised representative(s);
    3. it shall comply with all applicable Laws and regulations with respect to its obligations under this Agreement; and
    4. it has obtained and will maintain all necessary consents, approvals, licences or authorisations required for the performance of its obligations under this Agreement.
  1. The representations and warranties set out in Clause [10.1] shall be deemed to be repeated by the Contractor on the Commencement Date by reference to the facts then existing.
  2. Each of the representations and warranties set out in Clauses [10.1] and [10.2] 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 other undertaking in this Agreement.
  3. If at any time a Party becomes aware that a representation or warranty given by it under Clause [10.1] or [10.2] respectively has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
  4. The fact that any provision of this Agreement is expressed as a warranty shall not preclude any right of termination which the OGA may have in respect of breach of that provision by the Contractor.

# Indemnities

* 1. The Contractor shall hold harmless, indemnify, and keep indemnified, the OGA in full and on demand from and against all Liabilities suffered, incurred, awarded against or paid out by the OGA arising out of or in connection with:
     1. any claim, demand, proceeding or action made against the OGA for actual or alleged infringement of a third party’s Intellectual Property Rights arising out of or in connection with the Services, their use or otherwise in relation to them;
     2. any breach of the warranties in Clause [10];
     3. any breach of Clause [16];
     4. any breach of Clause [20];
     5. any breach of Clause [21];
     6. any claim, demand, proceeding or action made by the OGA’s staff or agents, or by third parties, in respect of any death or personal injury;
     7. any claim, demand, proceeding or action made by the OGA’s staff or agents, or by third parties, in respect of any loss or destruction of or damage to property;
     8. any breach of the OGA’s regulatory obligations directly or indirectly resulting from any breach of this Agreement; and
     9. any claims and proceedings, including all costs and expenses incurred in connection therewith, arising from the corruption, loss, destruction, alteration (other than by lawful processing permitted by this Agreement) or degradation of electronic data and hold it harmless against all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Agreement which results in such corruption, loss or degradation,

where such Liabilities arise as a direct or indirect result of any act or omission of the Contractor, a Subcontractor, the Contractor Personnel, the Subcontractor Personnel, the Contractor’s Affiliates or the Subcontractor’s Affilaites.

* 1. TUPE

The Contractor shall indemnify the OGA against all Liabilities arising from:

* + 1. any claim by or on behalf of any employee of the Contractor (or any Subcontractor) against the OGA (or any contractor of the OGA) arising from or originating during his employment with the Contractor (or his employment with any Subcontractor) or its termination before any transfer of employment, howsoever arising under the Transfer Regulations;
    2. any act or omission by the Contractor (or by any of its Subcontractors) in relation to any Contractor Personnel (or any Subcontractor Personnel) or their representatives including any Liability arising out of any failure by the Contractor (or any Subcontractor) to comply with their obligations under regulations [11, 13 or 14] of the Transfer Regulations;
    3. any claim by or on behalf of any person employed by the Contractor (or any Subcontractor) that the person was dismissed on or before any transfer of employment, howsoever arising under the Transfer Regulations and any Liability in respect of such dismissal; and/or
    4. any person claiming or alleging (or anyone claiming or alleging on his behalf) that his contract of employment has effect as if originally made between him and the OGA (or any contractor of the OGA).
  1. Insurance

[*check alignment with Limitation of Liability clause before finalising drafting*]

The Contractor shall effect, prior to the Execution Date, with a reputable insurance company a policy or policies of insurance providing an adequate level of cover (which shall not include unreasonable excesses or deductibles which are unusual for that type of insurance) in respect of all risks which may be incurred by the Contractor in respect of the obligations assumed and the indemnities provided under this Agreement, which in any event shall not be less than [£4,000,000], and shall within 10 Working Days of receipt of a written request from the OGA produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due thereunder, and shall give immediate notice to the OGA in the event of any cancellation or vitiation of any of the policies.

# Limitation of Liability

* 1. The following provisions set out the entire limitations on the financial liability of the Parties (including any Liability for the acts or omissions of its Contractor Personnel, any Subcontractors and any Subcontractor Personnel) to the other in respect of:
     1. any breach of this Agreement howsoever arising; and
     2. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
  2. Nothing in this Agreement excludes either Party’s liability (including any liability for the acts or omissions of its Contractor Personnel, any Subcontractors and any Subcontractor Personnel):
     1. for death or personal injury caused by that Party’s negligence;
     2. for fraud or fraudulent misrepresentation or theft or criminal activity; or
     3. any other matter which, by Law, may not be excluded or limited.
  3. Subject to Clauses [12.2 and 12.4]:
     1. neither Party shall in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

1. loss of profits;
2. loss of business;
3. loss of revenue;
4. loss of or damage to goodwill;
5. loss of savings (whether anticipated or otherwise);
6. pure economic loss; and/or
7. any indirect, special or consequential loss or damage; and
   * 1. the limitation of each Party’s total liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation, (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited per claim to twice the value of this Agreement or such other sum as may be agreed in writing between the Head of Procurement on behalf of the OGA and the Contractor.
   1. The limitations of liability in this Clause [12] shall not apply to the liability of the Contractor:
      1. for any indemnity in this Agreement (whether in respect of performance of the indemnity or its breach);
      2. for any breach of any regulatory requirement by the Contractor which directly or indirectly results in the imposition of any fine or sanction on the OGA or the OGA otherwise incurring any liability;
      3. pursuant to Clause [8.2.3] in the event that the OGA has terminated this Agreement pursuant to Clauses [8.2.1(c)] and [8.2.1(d)]; and
      4. for any breach of Clauses [13], [16], [18], [19], [20] and [21].
   2. Nothing in this Agreement shall impose any liability on any member of the staff of the OGA or its representatives in their personal capacity.

# Intellectual Property

* 1. Subject to any pre-existing rights of third parties and of the Contractor, the Intellectual Property Rights (other than copyright) in all reports, documents and other materials which are generated or acquired by the Contractor (or any Subcontractors, Subcontractor Personnel or Contractor Personnel) (“**the Contractor Materials**”) in the performance of the Services shall belong to and be vested automatically in the OGA.
  2. The Contractor hereby assigns any copyright that it owns in the Contractor Materials to the OGA. The Contractor waives all moral rights relating to the Contractor Materials.
  3. The Contractor warrants to the OGA that all of its Contractor Personnel and any Subcontractors (including Subcontractor Personnel) are and will be engaged in relation to this Agreement on terms which do not entitle any of them to any Intellectual Property Rights in the Contractor Materials, and which require them to waive all moral rights in the Contractor Materials.
  4. If the Contractor in providing the Services uses any materials in which there are pre-existing Intellectual Property Rights owned by itself, Contractor Personnel, any Subcontractors (including Subcontractor Personnel) or third parties, it shall itself provide, or procure from such Contractor Personnel, Subcontractor (including Subcontractor Personnel) or third party a non-exclusive licence for, or, if the Contractor is itself a licensee of those Intellectual Property Rights, it shall grant a sub-licence to, the OGA to use, reproduce, modify, adapt and enhance the material as the OGA sees fit. Such licence or sub-licence shall be perpetual and irrevocable and granted at no cost to the OGA.
  5. The OGA shall have the sole right to use any information (whether or not it is Confidential Information) collected or collated pursuant to this Agreement (excluding any information which in the opinion of the OGA is confidential to the Contractor or which has been communicated to the Contractor under a condition that it shall be confidential to the Contractor), and all original documents in whatever form which contain that information, including any computer tape or disk, any voice recording and any special computer program written to give access to the information, shall on request be deposited with the OGA.
  6. The Contractor shall ensure that all royalties licence fees or similar expenses in respect of Intellectual Property Rights in materials used by it in connection with this Agreement have been paid and are included in the Charges.
  7. If the OGA reimburses the Contractor for the cost of any equipment, such equipment shall become the property of the OGA, and the Contractor shall on request deliver such equipment to the OGA within such period as the OGA may reasonably specify. The Contractor shall keep a proper inventory of such equipment and shall deliver that inventory to the OGA on request within such period as the OGA may reasonably specify and on completion of the Services.

# OGA Property

* 1. All OGA Property shall remain the property of the OGA and shall be used in the execution of this Agreement and for no other purpose whatsoever except with the prior agreement in writing of the OGA.
  2. All OGA Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the OGA to the contrary within 10 Working Days.
  3. The Contractor undertakes to return any and all OGA Property on completion of this Agreement or on any earlier request within such period as the OGA may reasonably specify.
  4. The Contractor shall repair or replace or, at the option of the OGA, pay compensation for all loss, destruction or damage occurring to any OGA Property caused or sustained by the Contractor, or by its Subcontractors, Contractor Personnel or Subcontractor Personnel, whether or not arising from its or their performance of this Agreement and wherever occurring, provided that if the loss, destruction or damage occurs at the OGA’s Premises, this Clause [14] shall not apply to the extent that the Contractor is able to show that any such loss, destruction or damage was not caused or contributed to by its negligence or default or the neglect or default of its Subcontractors, Contractor Personnel or Subcontractor Personnel.
  5. Where the OGA Property comprises data issued in electronic form to the Contractor (including personal data as defined in Clause [20]) the Contractor shall not store, copy, disclose or use such electronic data except as necessary for the performance by the Contractor of its obligations under this Agreement (including its obligation to back up electronic data as provided in Clause [20]) or as otherwise expressly authorised in writing by the OGA.
  6. The Contractor shall perform secure back-ups of all electronic data in its possession and shall ensure that an up to date back up copy is securely stored at a site other than that where any original copies of such electronic data are being stored.
  7. The Contractor shall, and shall procure that its Subcontractors, Contractor Personnel and Subcontractor Personnel, shall observe Good Industry Practice when handling or in possession of any such electronic data. By way of example if the Contractor removes any such data or information from the OGA Premises or is sent such data or information by the OGA, it shall ensure that the data and any equipment on which it is stored or is otherwise being processed is kept secure at all times. The Contractor shall impress on any of its Subcontractors, Contractor Personnel and Subcontractor Personnel who are required to handle or have possession of such electronic data that they must safeguard it all times, and shall not place it in jeopardy (for example by leaving it unattended in a vehicle or on public transport or by transmitting or posting it by insecure means).
  8. If at any time the Contractor suspects or has reason to believe that such electronic data has or may become corrupted, lost, destroyed, altered (other than to the extent that the Contractor alters it by lawful processing in accordance with its obligations under this Agreement) or so degraded as a result of the Contractor’s default so as to be unusable then the Contractor shall notify the OGA immediately and inform the OGA of the remedial action the Contractor proposes to take.

# Contractor’s Personnel

* 1. The OGA reserves the right to refuse to admit to the OGA’s Premises any person employed by the Contractor (including Contractor Personnel) or its Subcontractors (including Subcontractor Personnel), whose admission would be undesirable in the opinion of the OGA.
  2. If and when requested by the OGA, the Contractor shall provide a list of the names and addresses of all persons who may at any time require admission in connection with the performance of the Services to the OGA’s Premises, specifying the role in which each such person is concerned with the Contractor and giving such other particulars as may be required within such period as the OGA may reasonably specify.
  3. If and when requested by the OGA the Contractor agrees that it will submit any Contractor Personnel or any Subcontractor Personnel to the OGA’s security vetting procedure. The Contractor further agrees that any individual who refuses to submit to such vetting procedure or does not attain the clearance it affords will not provide any Services, which the OGA considers as suitable only for people who have passed its security vetting procedure.
  4. If the Contractor fails to comply with Clauses [15.2, 15.3 and 15.4] and the OGA decides that such failure is prejudicial to its interests, the OGA may terminate this Agreement in accordance with Clause [8.2.1].

# Confidentiality and Transparency

* 1. Confidentiality
     1. The Contractor agrees to hold the Confidential Information in confidence and safeguard it accordingly with security measures and the degree of care required by Good Industry Practice, and shall not:

1. disclose any Confidential Information to any third party, save to the extent permitted under this Clause [16.1]; or
2. use or otherwise exploit the Confidential Information for any purpose other than the purposes anticipated under this Agreement.
   * 1. To the extent that it is necessary for the Contractor to disclose Confidential Information to its Contractor Personnel and Subcontractors (including Subcontractor Personnel) to enable the performance of its obligations under this Agreement, the Contractor shall ensure that such Contractor Personnel and Subcontractors (including Subcontractor Personnel) are subject to obligations no less onerous than those set out in this Clause [16] in respect of all Confidential Information.
     2. Clause [16.1.1] shall not apply to information which:
3. is or becomes public knowledge (otherwise than as a direct or indirect result of any breach of this Agreement or a breach of an obligation of confidentiality);
4. is lawfully obtained and is in the possession of the Contractor, without restriction as to its disclosure, before receiving it from the OGA, which as far as the Contractor is aware has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality;
5. is required by Law to be disclosed; or
6. was independently developed by the Contractor without access to the Confidential Information, where such independent development can be shown by written evidence. [*Confirm alignment with Intellectual Property clause (13) before finalising*]
   * 1. The Contractor may disclose the Confidential Information:
7. to the extent that it has the prior written consent of the OGA;
8. to the extent that such Confidential Information is required to be disclosed by Law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the OGA as much notice of disclosure as possible, and where notice of disclosure is not prohibited and is given in accordance with this Clause [16.1], it takes into account the reasonable requests of the OGA in relation to the content of such disclosure; or
9. on a confidential basis, no less stringent than the obligations of confidentiality to which it is bound under this Agreement, to its auditors or professional advisers.
   * 1. The obligations contained in this Clause [16.1] shall continue to apply after the expiry or termination of this Agreement.
     2. The Contractor shall not handle or examine any document or thing bearing a Government security classification of “Confidential”, “Secret” or “Top Secret” other than in a Government establishment and the Contractor shall not remove any such document or thing from such Government establishment without the prior written consent of the OGA.
     3. The Contractor shall not communicate with representatives of the general or technical press, radio, television or any other communications media (including any form of mass media), with regard to this Agreement (including provision of the Services), unless previously agreed in writing with the OGA.
     4. In the event of a breach or threated breach of this Clause [16] by the Contractor, the OGA shall be entitled to injunctive relief in any court of competent jurisdiction.
     5. The Contractor acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information and the Contractor hereby gives its consent for the OGA to publish this Agreement in its entirety to the general public (but with any information which is exempt from disclosure in accordance with FOIA redacted) including any changes to this Agreement agreed from time to time. The OGA may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
     6. The Parties acknowledge and agree that this Clause [16] is subject to Clause [17].
   1. Information confidential to the Contractor
      1. Unless otherwise agreed in writing by both Parties, the OGA has the right to disclose information, always subject to any applicable statutory obligations, obtained from the Contractor in connection with this Agreement and/or the provision of the Services:
10. on a confidential basis to any Government department or agency for any proper purpose of the OGA or of that department or agency;
11. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
12. to the extent that the OGA (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
13. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause [16.2.1(a)] (including any benchmarking organisation) for any purpose relating to or connected with this Agreement or the Services;
14. on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
15. on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement.
    * 1. For the purpose of this Clause [16], references to disclosure on a confidential basis mean disclosure subject to a confidentiality agreement.
    1. Transparency
       1. In order to comply with applicable Law and any relevant Government policy on transparency in relation to procurement and contracts, the OGA may, subject to Clauses [16.3.2 and 16.3.3], publish this Agreement and the Tender Documents issued by OGA which led to its creation on a designated web site.
       2. This Agreement and all the Tender Documents issued by OGA will be published on such designated web site save to the extent the OGA, in its absolute discretion, considers that this Agreement or any part or parts of it, would be exempt or excepted from disclosure in accordance with the provisions of the FOIA and/or the EIR.
       3. Where the OGA considers that any such exemption or exception applies, the OGA will redact this Agreement to the extent that the OGA considers the redaction is necessary to remove or obscure the relevant material, and the Agreement will be published on the designated web site subject to those redactions.
       4. Where the Parties later agree variations to this Agreement, the OGA will publish those variations, and will consider any redaction, on the same basis.

# Freedom of Information

* 1. The Contractor acknowledges that the OGA is subject to the requirements of the FOIA and the EIR.
  2. The Contractor shall (and shall procure that its Subcontractors shall):
     1. assist and cooperate with the OGA, at the Contractor’s expense, to enable the OGA to comply with its obligations under the FOIA and the EIR;
     2. transfer to the OGA all Requests for Information relating to this Agreement and/or the Services that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
     3. provide the OGA with a copy of all Information in its possession or control in the form that the OGA requires within five (5) Working Days (or such other period as the OGA may reasonably specify) of the OGA’s request for such information;
     4. provide all necessary assistance as reasonably requested by the OGA to enable it 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 EIR; and
     5. not respond directly to a Request for Information unless authorised in writing to do so by the OGA.
  3. The Contractor acknowledges that the OGA may under either or both the FOIA or the EIR be obliged to disclose Information unless an exemption or exception applies. The OGA may at its discretion consult with the Contractor with regard to whether the FOIA and/or the EIR applies to the Information and whether an exemption or exception applies.
  4. The Contractor acknowledges that the OGA may be required under the FOIA and the EIR to disclose Information concerning the Contractor or the Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In those circumstances, the OGA shall take reasonable steps to notify the Contractor in advance, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure, to the extent that it is permissible and reasonably practicable to do so.
  5. Notwithstanding any other provision in this Agreement, the OGA shall be responsible for determining in its absolute discretion whether any Information is:
     1. exempt or excepted from disclosure in accordance with the FOIA and/or the EIR; or
     2. is to be disclosed in response to a Request for Information.
  6. The Contractor shall ensure and shall procure that its Subcontractors ensure, that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure pursuant to the FOIA and the EIR and shall permit the OGA to inspect such records from time to time.
  7. For the purpose of this Clause [17]:
     1. “**Information**” has the meaning ascribed to it in section 84 of the FOIA; and
     2. “**Request for Information**” has the meaning ascribed to it in section 8 of the FOIA, or any apparent request for information under the FOIA or the EIR.

# Anti-Bribery

* 1. The Contractor shall not, and shall ensure that its Contractor Personnel, any Subcontractors and Subcontractor Personnel do not:
     1. offer or promise, to any person employed by or on behalf of the OGA any financial or other advantage as an inducement or reward for the improper performance of a function or activity, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the OGA;
     2. agree to receive or accept any financial or other advantage as an inducement or reward for any improper performance of a function or activity in relation to this Agreement or any other contract with the OGA; or
     3. enter into this Agreement or any other contract with the OGA in connection with which commission has been paid, or agreed to be paid by him or on his behalf, or to his knowledge, unless, before the Execution Date, particulars of any such commission and the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to any person duly authorised by the OGA to act as its representative for the purpose of this Clause [18].

* 1. Nothing contained in this Clause [18] shall prevent the Contractor paying such commission or bonuses to its own Contractor Personnel in accordance with their agreed contracts of employment.
  2. Any breach of this Clause [18] by the Contractor, or by any person employed or engaged by him or acting on his behalf (whether with or without his knowledge), or any act or omission by the Contractor, or by such other person, in contravention of the Bribery Act 2010 or any other anti-corruption Law, in relation to this Agreement or any other contract with the OGA, shall entitle the OGA to terminate this Agreement in accordance with Clause [8.2.1] and to recover from the Contractor the value of any such gift, consideration or commission as the OGA shall think fit.
  3. In any dispute, difference or question arising in respect of:
     1. the interpretation of this Clause [18]; or

* + 1. the right of the OGA to determine this Agreement; or

* + 1. the amount or value of any gift, consideration or commission,

the decision of OGA shall be final and conclusive.

# Compliance

* 1. Health and Safety
     1. The Contractor shall notify the OGA within two (2) Working Days of any health and safety hazards which may arise in connection with the performance of its obligations under this Agreement.
     2. The OGA shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the OGA’s Premises and which may affect the Contractor in the performance of its obligations under this Agreement.
     3. The Contractor shall:

1. comply with all of the OGA’s health and safety measures while on the OGA Premises; and
2. notify the OGA immediately of any incident occurring in the performance of its obligations under this Agreement on the OGA’s Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
   1. Equality and non-discrimination
      1. The Contractor shall:
3. provide the Services and perform its obligations under this Agreement in accordance with all applicable equality and anti-discrimination laws (including the Equality Act 2010) and, where applicable, the OGA’s equality and diversity policy as may be provided to the Contractor from time to time; and
4. take all reasonable steps to procure that Contractor Personnel, any Subcontractors and Subcontractor Personnel comply with Clause [19.2.1(a)].
   * 1. The OGA may (without prejudice to its other rights under this Agreement) terminate this Agreement in accordance with Clause [8.2.1] where the Contractor fails (or its Contractor Personnel, any Subcontractor or Subcontractor Personnel fail) to comply with Clauses [19.2.1 and 19.2.2] of this Agreement.
   1. Official Secrets
      1. The Parties acknowledge and agree that in relation to the provision of the Services to the OGA and the information given to or otherwise obtained by the Contractor from the OGA in connection with this Agreement, the Contractor, its Contractor Personnel, any Subcontractors and Subcontractor Personnel are subject to the provisions of the Official Secrets Act 1989 and to certain other statutes which prohibit unauthorised disclosure of various categories of information.
      2. The Contractor and any Subcontractors shall take all reasonable steps by display of notices or by other appropriate means to ensure that all Contractor Personnel and Subcontractor Personnel have notice that these statutory provisions apply to them and will continue so to apply after the expiry or earlier termination of this Agreement.
      3. If requested by the OGA and within such period as the OGA may reasonably specify, the Contractor shall procure from each person identified by the request, a signed statement that he/she understands that the Official Secrets Act 1989 applies to him/her, both during the Term and after expiry or termination of this Agreement and that he/she will comply with the provisions of the Official Secrets Act 1989 in so far as they apply to the Services he/she is providing under this Agreement.
   2. Sustainable Procurement
      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 Services. Without prejudice to the generality of the foregoing, the Contractor shall provide all such information regarding the environmental impact of the Services as may be requested by the OGA within such period as the OGA may reasonably specify.
      2. The Contractor shall meet all reasonable requests by the OGA for information evidencing compliance with the provisions of this Clause [19.4] by the Contractor.
      3. Where applicable, the Contractor shall provide the Services in accordance with the OGA’s environmental policy as may be provided to the Contractor from time to time.
      4. All written outputs, including reports, produced in connection with this Agreement shall (unless otherwise specified) be produced on recycled paper containing at least 80% post-consumer waste and used on both sides where appropriate.

# Data and Data Protection

* 1. Both Parties will comply with all applicable requirements of the Data Protection Legislation and the Contract Specification. This Clause [20] is in addition to, and does not relieve, remove or replace, a Party’s obligations under the Data Protection Legislation.
  2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the OGA is the data controller and the Contractor is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). The [Contract Specification] sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation) and categories of Data Subject.
  3. Without prejudice to the generality of Clause [20.1], the OGA will ensure that it has all the necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to the Contractor for the duration and purposes of this Agreement.
  4. Without prejudice to the generality of Clause [20.1], the Contractor shall:
     1. process that Personal Data only on the written instructions of the OGA unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process Personal Data. Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the OGA of this before performing the processing required by the applicable law unless that applicable law prohibits the Contractor from so notifying the OGA;
     2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the OGA, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
     3. not transfer any Personal Data outside the European Economic Area unless prior written consent of the OGA has been obtained and the following conditions are fulfilled:

1. the OGA or the Contractor has provided appropriate safeguards in relation to the transfer;
2. the data subject has enforceable rights and effective legal remedies;
3. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
4. the Contractor complies with all reasonable instructions notified to it in advance by the OGA with respect to the processing of the Personal Data;
   * 1. assist the OGA, at the OGA’s cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators and take every step to enable the OGA to comply promptly with its security breach notification procedures by:
5. notifying the OGA without undue delay, and in any event within twenty-four (24) hours, on becoming aware of a Personal Data breach;
6. ensuring the reliability of Contractor Personnel that have access to the Personal Data;
7. ensuring that all Contractor Personnel involved in processing the Personal Data have undergone adequate training in the care and handling of Personal Data and the Contractor shall communicate the applicable security policies and standards to such Contractor Personnel on a regular basis;
8. ensuring that persons authorised to process the Personal Data are bound by a written contractual duty of confidentiality;
9. at the written direction of the OGA, deleting or returning Personal Data and copies thereof to the OGA on termination of this Agreement unless required by Applicable Law to store the Personal Data; and
10. maintaining complete and accurate records and information to demonstrate its compliance with this Clause [20].
    1. The Contractor acknowledges that any costs in maintaining compliance with Data Protection Legislation throughout the duration of this Agreement are to the account of the Contractor and shall not be chargeable to the OGA.
    2. The Contractor shall provide (and shall use reasonable endeavours to procure that its Subcontractors provide) all necessary assistance to the OGA and/or its representatives to enable OGA and/or its representatives to conduct a data protection audit on reasonable notice, such audit to be conducted at the discretion of the OGA and where applicable, the Contract Specification.
    3. The Contractor shall, at its own cost, and shall procure that any Subcontractor shall, within such period as the OGA may specify, comply with all with all requirements identified by an audit referred to in Clause [20.6] which are required for the Contractor and/or its Subcontractors to comply with all applicable laws and regulations (including the Cybersecurity Requirements) and/or with the requirements of this Agreement, in each case insofar as relating to data protection.

# Security and Integrity

* 1. The Contractor shall in respect of the Data Collection:

1. take reasonable precautions to preserve the integrity of the Data Collection, the Personal Data or other data which it processes pursuant to this Agreement and to prevent any corruption or loss of such data;
2. where applicable, follow its back-up procedures for such data as described in the Contract Specification;
3. make a backup copy of such data and record the copy on media from which the data can be reloaded if there is any corruption or loss of data;
4. in such event and if attributable to any default by the Contractor, restore the data from its back-up copy at its own expense as soon as practicable or, at the OGA’s option, promptly reimburse the OGA for any reasonable expenses it incurs in having the data restored by a third party; and
5. return to the OGA without delay a copy of all such data in accordance with Clause [9].
   1. Where applicable, the Contractor shall, in providing the Services, comply with the terms of the privacy and security policy relating to the Data Collection and the Personal Data as provided by the OGA, as such document may be amended from time to time by the OGA in its sole discretion.
   2. The Contractor shall provide (and shall use reasonable endeavours to procure that any Subcontractors provide) all necessary assistance to the OGA and/or its representatives to enable the OGA and/or its representatives to conduct any information and security audit (where applicable, in accordance with the Contract Specification).
   3. At the Contractor’s cost, the Contractor shall (and shall procure that any Subcontractors shall) comply with all requirements identified by the audits referred to in Clause [21.3] which are required for the Contractor and its Subcontractors to comply with all applicable Laws and regulations (including the Data Protection Legislation) and/or with the requirements of this Agreement, in each case insofar as relating to information security. In the event that the OGA wishes the Contractor to implement any other requirements identified by an audit, the Parties shall agree the terms in writing in accordance with Clause [23].

# Force Majeure

* 1. Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event. In such circumstances, the affected Party shall be entitled to a reasonable extension of the time for performing such obligations, provided that:
     1. as soon as reasonably practicable after the start of the Force Majeure Event, it notifies the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement;
     2. uses all reasonable endeavours to overcome and mitigate the effect of the Force Majeure Event on the performance of its obligations as soon as reasonably practicable, including actively managing any problems caused or contributed to by any third party
     3. it carries out its duties to the best level reasonably achievable in the circumstances of the Force Majeure Event; and
     4. if the period of delay or non-performance continues for more than 90 days, the Party not affected may terminate this Agreement in accordance with Clause [8.2.1].
  2. Any Party affected by a Force Majeure Event must inform the other Party when the Force Majeure Event has stopped and must do so within a reasonable timeframe.

# Variation

No amendment or variation of this Agreement shall be effective unless it is in writing and signed by a duly authorised representative of each Party using the Contract Variation Form.

# Conflicts of Interest

* 1. The Contractor shall ensure that there is no conflict of interest likely to prejudice its independence and objectivity in performing this Agreement and undertakes that upon becoming aware of any such conflict of interest during the performance of this Agreement (whether the conflict existed before the award of this Agreement or arises during its performance) it shall immediately notify the OGA in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the OGA may reasonably require.
  2. Where the OGA is of the opinion that a conflict of interest exists, as notified to it under Clause [24.1], or where the OGA becomes aware of such a conflict of interest through any other means, the OGA may require the Contractor to take such steps as will, in its opinion, avoid or remove the conflict and:

* + 1. if the Contractor fails to comply with the OGA’s requirements in this respect; or
    2. if, in the opinion of the OGA, it is not possible to remove the conflict,

the OGA may terminate this Agreement pursuant to Clause [8.2.1].

* 1. Notwithstanding Clause [24.2], where the OGA is of the opinion that a conflict of interest which existed at the time of the award of this Agreement could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the Tender Documents pertaining to it, the OGA may terminate this Agreement for material breach pursuant to Clause [8.2.1].

# Waiver

* 1. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by Law shall constitute a waiver of that or any other right or remedy, not shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
  2. A waiver of any right under this Agreement is only effective if it is in writing and expressly stated to be a waiver, and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given.

# Rights and Remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law. Except as provided in this Agreement, such rights and remedies may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

# Severance

* 1. If any provision or part-provision of this Agreement is or becomes invalid, illegal, void or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
  2. If any provision or part-provision of this Agreement is deemed deleted under Clause [27.1] the Parties shall use all reasonable endeavours to negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

# Entire Agreement

* 1. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  2. Each Party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
  3. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
  4. Nothing in this Clause [28] shall limit or exclude any liability for fraud.

# Assignment and Subcontracting

* 1. The Contractor shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this Agreement or any part thereof without the prior written consent of the OGA (which may be granted or withheld in the OGA’s absolute discretion).
  2. Notwithstanding Clause [29.1], the Contractor may, after having given at least 28 days’ prior written notice to the OGA and having obtained the OGA’s prior written consent, subcontract any or all of its rights and obligations under this Agreement, provided that:
     1. the Contractor shall remain liable for the acts, omissions and/or breaches of this Agreement by the Subcontractor and those Subcontractor Personnel employed or engaged by the Subcontractor in connection with this Agreement;
     2. the Contractor shall procure that the Subcontractor complies with the terms and conditions of this Agreement and any additional terms and conditions imposed pursuant to Clause [29.2.5];
     3. the Subcontractor shall not have the right to subcontract its rights and obligations;
     4. the Contractor shall include a provision in the sub-contract which requires payment to be made of all sums due by the Contractor to the Subcontractor within a specified period not exceeding 30 days from the receipt of a valid invoice from the Subcontractor;
     5. the OGA may, in the granting of such consent, provide for additional terms and conditions in respect of such subcontract; and
     6. there shall be no interruption to the provision of the Services.
  3. Where the Contractor requests consent to subcontract pursuant to Clause [29.2], then, to help the OGA reach a decision on the proposed subcontract, the Contractor shall provide the OGA with a copy of any proposed subcontract, together with any information that the OGA may reasonable require about the proposed subcontractor within such period as the OGA may reasonably specify. If the OGA gives its consent to the subcontract, the Contractor shall send copies of the subcontract to the OGA as soon as is reasonably practicable and implement an appropriate system of due diligence, audit and training for its subcontractor designed to ensure its compliance with this Agreement.
  4. The OGA shall be entitled to assign any or all of its rights under this Agreement to any “contracting authority” as defined in Regulation 2(1) of the Public Services Contracts Regulations 2006, provided that such assignment shall not materially increase the burden of the Contractor’s obligations under this Agreement.

# No Exclusivity

* 1. The Parties hereby agree and acknowledge that the Contractor is not appointed as an exclusive provider of any of the Services and that the OGA is entitled at any time to perform itself, or procure from a third party, services that are equivalent to the Services.

# Further Assurances

* 1. At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third-party shall, execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

# Third Party Rights

* 1. This Agreement does not confer any rights on any person or party (other than the Parties and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.
  2. The rights of the Parties to rescind or vary this Agreement are not subject to the consent of any other person.

# Notices

[*Notice details TBC*]

* 1. Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by first-class recorded delivery or, subject to Clause [33.4], email to the other Party as specified in Clause [33.3] below or as otherwise notified in writing.
  2. A notice delivered by hand shall be deemed to have been received on the day it was delivered (or if delivery is outside Normal Business Hours, at 9am on the first Working Day following delivery). Any notice sent by first-class recorded delivery shall be deemed received on the second Working Day after it was sent. A notice sent by email shall be deemed to have been received at the time of transmission unless an error message is received.
  3. The addresses for service of a notice or other communication are as follows:
     1. OGA:

For the attention of: […]

Address: […]

Email: […]

* + 1. Contractor:

For the attention of: […]

Address: […]

Email: […]

* 1. Notices under Clause [8] and [21] may be served by email only if the original notice is then sent to the recipient by hand or first-class recorded delivery in the manner set out in Clause [33.1].

# Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one single agreement between the Parties.

# Dispute Resolution

* 1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement.
  2. If the Parties cannot resolve the dispute pursuant to Clause [35.1] the dispute may, by agreement between the Parties, be referred to mediation pursuant to Clause [35.4].
  3. The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Clause [35.4].
  4. If the Parties agree to refer the dispute to mediation:
     1. in order to determine the person who shall mediate the dispute (the “**Mediator**”) the Parties shall by agreement choose a neutral adviser or mediator from one of the dispute resolution providers listed by the Government Procurement Service on its website or in its printed guidance on dispute resolution within 20 Working Days after agreeing to refer the dispute to mediation;
     2. the Parties shall within 10 Working Days of the appointment of the Mediator meet with the Mediator to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Government Procurement Service to provide guidance on a suitable procedure;
     3. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
     4. if the Parties reach agreement on the resolution of the dispute within 30 Working Days of the Mediator being appointed, or such longer period as may be agreed in writing between the Parties, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by both the OGA and the Contractor; and
     5. failing agreement within 30 Working Days of the Mediator being appointed, or such longer period as may be agreed in writing between the Parties, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties.
  5. If the Parties do not agree to refer the dispute to mediation, or if the Parties fail to reach agreement as to who shall mediate the dispute pursuant to Clause [35.4.1], or if they fail to reach agreement in the structured negotiations within 30 Working Days of the Mediator being appointed or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts of England and Wales.

# Governing Law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

# Jurisdiction

Subject to Clauses [35.1 and 35.5], each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

IN WITNESS WHEREOF the Parties have executed this Agreement the day and year first above written as follows:

|  |  |
| --- | --- |
| Signed for and on behalf of OGA  Signature………………………………..  Name……………………………………  Title……………………………………  Date…………………………………… | Signed for and on behalf of the Contractor  Signature………………………………………...  Name……………………………………………..  Title……………………………………………….  Date……………………………………………… |

# Schedule 1: Tender Documents

[***Final Tender Documents to be inserted in this Schedule (split into Part A and Part B)***]

Part A

[***Contract Specification to be inserted here***]

Part B

[***Remaining Tender Documents (i.e. all except the Contract Specification)***]

# Schedule 2: Contract Offer Letter

[***Signed Contract Offer Letter to be inserted here***]

# Schedule 3: Contract Variation Form

[***Template Contract Variation Form to be inserted here***]