

PART A – GENERAL CONDITIONS OF CONTRACT

- A1. Definitions
- A2. Interpretations
- A3. Warranties and Representations
- A4. Status of Contract
- A5. Amendments and Variations
- A6. Contract Prices
- A7. Recovery of Sums Due
- A8. Indemnities
- A9. Intellectual Property Rights Indemnity
- A10. Insurance
- A11. Force Majeure
- A12. Corrupt Gifts and Payments
- A13. Discrimination
- A14. Third Party Rights
- A15. Environmental Requirements
- A16. Notices
- A17. Confidentiality
- A18. Official Secrets Act
- A19. Data Protection
- A20. Production and Retention of Documentation
- A21. Freedom of Information
- A22. Right to Publish and Publicity
- A23. Termination on Change of Control and Insolvency
- A24. Termination on Default
- A25. Consequences of Termination and Expiry
- A26. Dispute Resolution
- A27. Continuation of Contract in Event of Disputes
- A28. Transfer and Sub-Contracting
- A29. Severability
- A30. Waiver
- A31. Conflicts of Interest
- A32. Additional Claims
- A33. Governing Law
- A34. Entire Contract

A1. DEFINITIONS

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

“DCLG” means the Secretary of State for the Department for Communities and Local Government;

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

“Confidential Information” means all information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (howsoever it is conveyed and stored), including commercially sensitive information, information which relates to the business, affairs,

ANNEX 1

properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the DPA, together with all information derived from the above;

"Contract" means the contract between DCLG and the Contractor consisting of these Conditions of Contract and any other terms and conditions, schedules or documents (or parts thereof) specified by DCLG;

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

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

"Contractor's Personnel" means all persons employed by the Contractor to perform the Contract together with the Contractor's servants, agents and sub-contractors used in the performance of the Contract;

"Day" means calendar day unless otherwise defined;

"DPA" means the Data Protection Act 1998 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

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

"FOIA" means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"Force Majeure" means any event or occurrence, beyond the Party's reasonable control, which is not attributable to any act or failure to take preventative action by the Party concerned including governmental regulations, fire, flood, acts of terrorism, war, pandemic or any other disaster. It does not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation;

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

"Intellectual Property Rights" means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country and the right to sue for passing off;

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

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

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

"Requests for Information" shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

A2. INTERPRETATIONS

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

A2.2 Unless the context requires otherwise, the masculine includes the feminine and the neuter and vice versa.

A2.3 Unless the context requires otherwise, the singular includes the plural and vice versa.

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

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

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

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

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

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

A3. WARRANTIES AND REPRESENTATIONS

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

ANNEX 1

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

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

A3.1.3 it shall discharge its obligations hereunder with all due skill, care and diligence and in accordance with good industry practice;

A3.1.4 it owns, has obtained or shall obtain all the consents, licences, permits and approvals necessary for the Contractor to perform its duties under the Contract and shall comply with the terms of any such consents, licences, permits and approvals at all times. The cost of such consents, licences, permits and approvals shall be borne solely by the Contractor;

A3.1.5 the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

A4. STATUS OF CONTRACT

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

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

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

A5. AMENDMENTS AND VARIATIONS

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

and reasonable adjustment to be agreed between the Parties and recorded in writing.

A6. CONTRACT PRICES

- A6.1 In consideration of and subject to the full and proper performance by the Contractor of its obligations under the Contract DCLG shall pay to the Contractor the rates, prices and any expenses specified in the Contract.
- A6.2 All rates and prices are exclusive of Value Added Tax (VAT). If appropriate, VAT will be added at the relevant rate and will be shown as a separate net item on each invoice submitted.
- A6.3 Except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the Contract shall be inclusive of all costs, including but not limited to staff, facilities, equipment, materials and all other expenses incurred by the Contractor in discharging its obligations under the Contract.
- A6.4 Invoices shall be submitted to the invoice address specified in the Contract.
- A6.5 All pricing on all documentation including but not limited to any invoices shall be quoted in Sterling.
- A6.6 DCLG will make payment by BACS within 30 Days of receipt of a valid invoice or the date the invoice was due whichever is the later save where the invoice is disputed or where the Contractor fails to submit information in accordance with Clause A6.7 below. Payments arising under the Contract shall be made in Sterling. Late payment shall not constitute a fundamental breach of the Contract.
- A6.7 The Contractor will submit to DCLG such records as DCLG may reasonably require to enable DCLG to verify the information and the amounts referred to in that invoice.
- A6.8 Where the Contractor enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall cause a term to be included in such sub-contract which requires payment to be made by the Contractor to the sub-contractor within a specified period not exceeding 30 Days from receipt of a valid invoice as defined by the sub-contract.
- A6.9 In the event that the United Kingdom joins the Economic and Monetary Union (and provided always that the exchange rate for conversion between Sterling and the Euro has been fixed), DCLG shall at any time thereafter upon one month's notice to the Contractor, be entitled to require the Contractor at no additional charge to convert the rates, prices and expenses from Sterling into Euros (in accordance with EC Regulation number 1103/97). The Contractor shall thereafter submit valid invoices denominated in Euros.
- A6.10 Any statute, enactment, order, regulation or other similar instrument not existing or any statute, enactment, order, regulation or other similar instrument modified which the Contractor would not have the opportunity to consider at the time of

formulating its rates and prices and which is not reasonably foreseeable, may, at the discretion of DCLG cause the rates and price(s) to change.

A6.11 In performing its obligations under the Contract, the Contractor is prohibited from taking or seeking to take advantage of any particular taxation regime (including the use of any offshore tax haven) which will or may enable the Contractor to avoid liability for any taxation in the United Kingdom. In the event that the Contractor or the Contractor's Personnel or anyone acting on the Contractor's behalf (with or without its knowledge) breaches this Clause DCLG reserves the right to terminate the Contract by notice in writing with immediate effect and recover from the Contractor any loss resulting from such termination including the administrative costs of re-tendering the requirement and any difference in the rates or prices which DCLG may have to pay to a new contractor where such rates or prices are higher than the rates or prices payable under the Contract.

A7. RECOVERY OF SUMS DUE

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

A8. INDEMNITIES

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

A8.2 If:

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

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

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

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

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

A9. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

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

A9.2 The Contractor shall immediately notify DCLG if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Rights which may affect the performance of the Contract.

A9.3 DCLG shall immediately notify the Contractor if any claim or demand is made or action brought against DCLG for infringement or alleged infringement of any Intellectual Property Rights in connection to the Contract.

A9.4 Subject to the limitation on the indemnity in Clause A9.1 in respect of material furnished or made available to the Contractor by DCLG the Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and DCLG hereby agrees to grant to the Contractor exclusive control of any such litigation and negotiations.

A9.5 DCLG shall at the request and cost of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against DCLG or the Contractor for infringement or alleged infringement of any Intellectual Property Rights in connection with the performance of the Contract.

A9.6 DCLG shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by DCLG or the Contractor in connection with the performance of the Contract.

A10. INSURANCE

ANNEX 1

- A10.1 The Contractor shall effect and maintain with an insurance company or companies acceptable to DCLG a policy or policies of insurance to provide a level of cover sufficient for all the matters which are the subject of the indemnities and undertakings on the part of the Contractor contained in the Contract and in accordance with any legal requirements for the time being in force.
- A10.2 Where the Contractor sub-contracts part of this Contract, the Contractor shall procure that any sub-contractor effects and maintains insurance to cover its liabilities under that sub-contract, but this shall not relieve the Contractor of any of his obligation and liabilities under the Contract.
- A10.3 Where, in compliance with Clause A10.1, the Contractor effects professional indemnity insurance, the insurance policy and any renewal shall cover liabilities under this Contract during the term of the Contract and for 6 years after the expiry or earlier termination of the Contract.
- A10.4 If requested, the Contractor shall provide a certificate evidencing the existence of such policies to DCLG, together with receipts or other evidence of payment of the latest premiums due under such policies.
- A10.5 If the Contractor fails to comply with this Condition A10 DCLG may make alternative arrangements necessary to protect its interest and may recover the costs of such arrangements from the Contractor.
- A10.6 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract.

A11. FORCE MAJEURE

- A11.1 If either Party becomes aware of circumstances of Force Majeure which give rise or which are likely to give rise to any delay in or failure to perform its obligations under the Contract it shall immediately notify the other Party by the most expeditious method available and shall inform the Party of the period which it is estimated that such delay or failure shall continue.
- A11.2 Neither Party shall be liable to the other Party if such delay or failure is due to Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, its obligations under the Contract for the duration of the Force Majeure. However, if any such event prevents the Contractor from performing all of its obligations under the Contract for a period in excess of 3 months, DCLG may terminate the Contract in writing with immediate effect.
- A11.3 The Contractor shall not be entitled to any payment for that part of the Contract which the Contractor was unable to perform as a result of Force Majeure.
- A11.4 The Contractor shall and shall procure that its sub-contractors maintain at all times a disaster recovery and business continuity plan, in accordance with good industry practice, in respect of a Force Majeure event or any other event which may affect the Contractor's ability to meet its obligations under the Contract (including loss of computer and business systems, loss or failure of

equipment, loss of utilities or premises, industrial relations problems, failures in the supply chain and loss of Contractor's Personnel). Such plans shall be delivered to DCLG on request. DCLG shall be entitled to make suggested changes to the plans which the Contractor, acting reasonably, shall consider and, after consultation and agreement with DCLG, put in place.

A12. CORRUPT GIFTS AND PAYMENTS

A12.1 The Contractor shall not receive or agree to receive from any person, or offer or give, or agree to give, to any employee, agent, servant or representative of DCLG any gift or consideration of any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other contract with DCLG or for showing or refraining from showing favour or disfavour to any person in relation to this or any such contract.

A12.2 The Contractor shall not conspire with any person to do any of the acts mentioned in Clauses A12.1.

A12.3 The Contractor shall not enter into the Contract if in connection with it commission has been paid or is agreed to be paid to any employee, agent, servant or representative of DCLG by the Contractor or on the Contractor's behalf, unless before the Contract is made particulars of any such commission and the terms of any agreement for the payment thereof have been disclosed in writing to DCLG's Commercial Representative.

A12.4 In the event that the Contractor or the Contractor's Personnel or anyone acting on the Contractor's behalf (with or without its knowledge) breaches Clauses A12.1-A12.3 or commits an offence under the Prevention of Corruption Acts 1889 to 1916 DCLG reserves the right to terminate the Contract by notice in writing with immediate effect and recover from the Contractor any loss resulting from such termination including the administrative costs of re-tendering the requirement and any difference in the rates or prices which DCLG may have to pay to a new contractor where such rates or prices are higher than the rates or prices payable under the Contract and/or the amount or value of the gift, consideration or commission.

A12.5 Any decision of DCLG in relation to this Condition A12 shall be final and conclusive.

A13. DISCRIMINATION

A13.1 The Contractor shall not unlawfully discriminate directly or indirectly or by way of victimisation or harassment within the meaning and scope of any applicable law, enactment, order or regulation or other similar instrument relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment including, but not limited to, the Race Relations Act 1976, the Sex Discrimination Acts 1975 and 1986, the Disability Discrimination Acts 1995 and 2005, the Employment Equality Regulations and the Equal Pay Act 1970.

ANNEX 1

A13.2 The Contractor shall take all reasonable steps to ensure the observance of Clause A13.1 by the Contractor's Personnel.

A13.3 Where the Contractor's Personnel are required to carry out activity alongside DCLG's employees or servants the Contractor shall ensure that the Contractor's Personnel comply with DCLG's employment policies and codes of practice relating to discrimination and equal opportunities.

A13.4 The Contractor shall notify DCLG's Contract Manager in writing as soon as it becomes aware of any investigation or proceedings brought against the Contractor in relation to unlawful discrimination in connection with the Contractor's performance of the Contract. The Contractor shall promptly provide DCLG access to any documents or information relevant to the investigation or proceedings and shall permit a representative from DCLG to attend any associated meetings. The Contractor shall impose on its sub-contractors obligations in substantially similar terms to those set out in this Clause A13.4.

A14. THIRD PARTY RIGHTS

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

A15. ENVIRONMENTAL REQUIREMENTS

A15.1 The Contractor shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Contract. In addition the Contractor shall comply with DCLG's environmental policies made available to the Contractor from time to time.

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

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

A15.2.2 reduce waste;

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

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

ANNEX 1

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

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

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

A16. NOTICES

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

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

A17. CONFIDENTIALITY

A17.1 Each Party:

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

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

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

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

ANNEX 1

- A17.2.2 is treated as confidential and not disclosed (without prior approval) or used by the Contractor or any of the Contractor's Personnel otherwise than for the purposes of the Contract.
- A17.3 Where it is considered necessary in the opinion of DCLG, the Contractor shall ensure that the Contractor's Personnel sign a confidentiality undertaking prior to any involvement in the Contract.
- A17.4 The provisions of Clauses A17.1 to A17.3 shall not apply to any Confidential Information received by one Party from the other:
- A17.4.1 which is or becomes public knowledge (otherwise than by a breach of this Condition A17);
 - A17.4.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - A17.4.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - A17.4.4 which has been independently developed by the receiving Party without access to the Confidential Information;
 - A17.4.5 which must be disclosed pursuant to a legal obligation placed upon the Party making the disclosure including, but not limited to, obligations under FOIA and Environmental Information Regulations.
- A17.5 Nothing in this Condition 17 shall prevent DCLG:
- A17.5.1 disclosing any Confidential Information for the purposes of the examination and certification of DCLG's accounts or any examination pursuant to the National Audit Act 1983;
 - A17.5.2 disclosing any Confidential Information to any government department, office or agency or to any person engaged in providing any services to DCLG for any purpose relating to or ancillary to the Contract providing that in disclosing the Confidential Information DCLG discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate;
 - A17.5.3 disclosing any Confidential Information relating to the Contract, including payments made under the Contract, to the Office of Government Commerce or in accordance with the provisions of Condition A20.1.
- A17.6 Nothing in this Condition A17 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in the a

disclosure of Confidential Information or an infringement of Intellectual Property Rights.

A17.7 In the event that the Contractor fails to comply with this Condition A17, DCLG reserves the right to terminate the Contract by notice in writing with immediate effect and recover from the Contractor any loss resulting from such termination.

A17.8 The provisions of this Condition A17 are without prejudice to the provisions of the Official Secrets Act 1911 to 1989 and Section 182 of the Finance Act 1989.

A17.9 Upon termination (for whatever reason) or expiry of the Contract, the Parties shall each return to the other any Confidential Information that it possesses at the time of termination or expiry, and dispose of any such Confidential Information as the other Party may reasonably direct.

A18. OFFICIAL SECRETS ACT

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

A19. DATA PROTECTION

A19.1 For the purposes of this Condition A19, the terms "Personal Data", "Data Processor", "Data Subject" and "Data Controller" shall have the meaning prescribed under the DPA.

A19.2 The Contractor undertakes to abide and procure that the Contractor's Personnel abide by the provisions of the DPA and the Contractor shall co-operate with DCLG to enable DCLG to discharge its obligations under the DPA and shall not perform its obligations under the Contract in such a way as to cause DCLG to breach any of its applicable obligations under the DPA.

A19.3 The Contractor shall:

A19.3.1 process the Personal Data only in accordance with instructions from DCLG (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by DCLG to the Contractor during the term);

A19.3.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body and under no circumstances may such data be processed by the Contractor for any other purpose;

A19.3.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal

ANNEX 1

Data and having regard to the nature of the Personal Data which is to be protected;

- A19.3.4 take reasonable steps to ensure the reliability of any Contractor's Personnel who have access to the Personal Data;
- A19.3.5 obtain prior written consent from DCLG in order to transfer the Personal Data to any sub-contractors for the provision of the Services;
- A19.3.6 ensure that all Contractor's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition A19;
- A19.3.7 ensure that none of Contractor's Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by DCLG;
- A19.3.8 notify DCLG (within seven Days) if it receives:
 - A19.3.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - A19.3.8.2 a complaint or request relating to DCLG's obligations under the DPA.
- A19.3.9 provide DCLG with full cooperation and assistance in relation to any complaint or request made, including by:
 - A19.3.9.1 providing DCLG with full details of the complaint or request;
 - A19.3.9.2 complying with a data access request within the relevant timescales set out in the DPA and in accordance with DCLG's instructions;
 - A19.3.9.3 providing DCLG with any Personal Data it holds in relation to a Data Subject (within the timescales required by DCLG); and
 - A19.3.9.4 providing any information requested by DCLG.
- A19.3.10 permit DCLG (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by DCLG to enable it to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;

ANNEX 1

- A19.3.11 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by DCLG); and
- A19.3.12 not process Personal Data outside the European Economic Area without the prior written consent of DCLG and, where DCLG consents to a transfer, to comply with:
 - A19.3.12.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
 - A19.3.12.2 any reasonable instructions notified to it by DCLG.
- A19.3.13 notify DCLG, as soon as the Contractor becomes aware, of any accidental disclosure of Personal Data in breach of this Condition 19.
- A19.4 Without prejudice to Clauses A19.1, A19.2 and A19.3, the Contractor shall:
 - A19.4.1 only accept instructions in respect of data processing from DCLG;
 - A19.4.2 adopt all technical and organisational measures necessary to protect all Personal Data processed by the Contractor on behalf of DCLG against unauthorised or unlawful processing, accidental loss, damage or destruction;
 - A19.4.3 ensure that all Contractor Personnel involved in data processing are suitable for the task and are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition A19.
- A19.5 With respect to the Parties' rights and obligations under the Contract, the Parties agree that the Secretary of State is the Data Controller and that the Contractor is the Data Processor. The Data Controller's nominated representative for the purposes of the DPA is DCLG's Data Protection Officer.
- A19.6 Where Personal Data is held or acquired by DCLG in relation to this Contract DCLG shall use such Personal Data only for purposes relating directly to:
 - A19.6.1 the management and performance of this Contract by the Contractor;
 - A19.6.2 the provision by DCLG of references within DCLG and to other government departments, offices or agencies; and
 - A19.6.3 any other purpose required by law.
- A19.7 The Contractor hereby agrees and shall procure from any Contractor Personnel agreement to the publication by DCLG in any format of the

following Personal Data: name and contact details. The Contractor shall provide a copy of any relevant consent to DCLG on request.

A19.8 If, having regard to the circumstances in which DCLG processes such Personal Data, DCLG requires the Contractor or any Contractor Personnel to provide additional information to enable DCLG to process that Personal Data fairly it shall notify the Contractor in writing and the Contractor shall provide or procure the additional information within 7 days of receipt of the request.

A20. PRODUCTION AND RETENTION OF DOCUMENTATION

A20.1 The Contractor shall produce such accounts, documents (including working documents), records and management information relating to this Contract as DCLG may reasonably request at any time during this Contract. Where requested by DCLG, the Contractor shall provide management information to the Office of Government Commerce and the Contractor hereby consents to the Office of Government Commerce:

A20.1.1 storing and analysing such management information and producing statistics; and

A20.1.2 sharing the management information or any statistics produced with any government department, office or agency.

A20.2 The Contractor shall be responsible for the accuracy of all such accounts, documents (including working documents) and records supplied to DCLG by the Contractor and shall pay DCLG any extra costs occasioned by any discrepancies, errors or omissions therein.

A20.3 The Contractor shall keep and maintain until six years after the Contract has been completed and/or terminated, or as long a period as may be agreed between the Parties, accounts, documents and records to the satisfaction of DCLG of the Contract and all expenditures which are reimbursable by DCLG.

A20.4 The Contractor shall on request by DCLG and at no extra cost afford DCLG or any representative of DCLG such access to those accounts, documents and records as may be required by DCLG and shall provide reasonable assistance during the term of the Contract for the purpose of carrying out any audit of the Contractor's compliance with the Contract.

A20.5 If any audit reveals an error or incorrect charge in any invoice relating to the Contract, an appropriate correcting payment or credit shall be promptly made either by DCLG or the Contractor respectively.

A20.6 The right to these accounts, documents and records shall not apply to the extent that an examination would cause the Contractor to breach confidentiality obligations to other clients.

A20.7 For the purpose of the examination and certification of DCLG's accounts, or any examination pursuant to the National Audit Act 1983, of the economy, efficiency and effectiveness with which DCLG has used its resources, the Contractor shall allow the Comptroller and Auditor General to examine such documents as he may reasonably require which are owned, held or otherwise within the control of

the Contractor and may require the Contractor to provide such oral and/or written explanations as the Comptroller or Auditor General considers necessary. This Clause A20.7 does not constitute a requirement or contract for the examination, certification or inspection of the accounts of the Contractor under the National Audit Act 1983.

A21. FREEDOM OF INFORMATION

A21.1 The Contractor acknowledges that DCLG is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with DCLG (at the Contractor's expense) to enable DCLG to comply with its Information disclosure requirements.

A21.2 The Contractor shall and shall procure that its sub-contractors shall:

A21.2.1 transfer to DCLG any Request for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information;

A21.2.2 provide DCLG with a copy of all Information in its possession or power in the form that DCLG requires within five working days (or such other period as DCLG may specify) of DCLG requesting the Information; and

A21.2.3 provide all necessary assistance as reasonably requested by DCLG to enable DCLG to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

A21.3 DCLG shall be responsible for determining at its absolute discretion whether any Information is exempt from disclosure under the FOIA or the Environmental Information Regulations.

A21.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by DCLG.

A21.5 The Contractor acknowledges that DCLG may under the FOIA or the Environmental Information Regulations be obliged to disclose Information:

A21.5.1 without consulting with the Contractor; or

A21.5.2 following consultation with the Contractor and having taken its views into account.

A21.5 The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit DCLG to inspect such records as requested from time to time.

A22. RIGHT TO PUBLISH AND PUBLICITY

A22.1 The Parties agree that, except for any information in the Contract which would be exempt from disclosure under the provisions of the Freedom of Information Act 2005 (FOIA) or under the Environmental Information Regulations 2004 (EIR), the content of the Contract is not Confidential Information. DCLG shall, in its absolute discretion, determine whether any of the content of the

ANNEX 1

Contract would be exempt from disclosure in accordance with the provisions of the FOIA or the EIR. The Contractor hereby agrees that, notwithstanding any other term of the Contract, DCLG may publish the Contract in its entirety to the general public including any agreed changes to the Contract, having first redacted any information which would be exempt from disclosure under the provisions of the FOIA or EIR, before such publication.

- A22.2 DCLG may discuss with the Contractor its proposed decision with regard to whether any information should be redacted in accordance with these provisions before publication of the Contract and will consider any representations made by the Contractor with regard to the extent of the redaction, if any, but the final decision as to both redaction and publication will be for DCLG alone to make.
- A22.3 The Contractor shall assist and cooperate with DCLG (at the Contractor's expense) to enable DCLG to publish this Contract in a timely manner.
- A22.4 Neither the Contractor nor the Contractor's Personnel shall make any press announcements or publicise the Contract or any part thereof in any way, without the prior consent in writing of DCLG upon such terms as may be agreed.

A23. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

- A23.1 DCLG may terminate the Contract with immediate effect by notice in writing to the Contractor (or the Contractor's representative in the event of A23.1.7) where:
 - A23.1.1 the Contractor or its parent company or ultimate parent company undergoes a change of control, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988; or
 - A23.1.2 the Contractor is an individual and a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor, or the Contractor makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if a trustee in bankruptcy or a supervisor under an individual voluntary arrangement is appointed to manage the Contractor's affairs; or
 - A23.1.3 the Contractor is a company and the company passes a resolution for winding up or dissolution (otherwise than exclusively for the purposes of and followed by an amalgamation or reconstruction) or an application is made for an administration order in relation to it, or any party gives or files notice of an intention to appoint an administrator of it or such an administrator is appointed, or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager or supervisor or provisional liquidator is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or

ANNEX 1

- A23.1.4 the Contractor is a firm, or a number of persons acting together in any capacity and any event in Sub-Clauses A23.1.2 or A23.1.3 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or
 - A23.1.5 the Contractor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
 - A23.1.6 any similar event occurs within the United Kingdom under the law of any other jurisdiction; or
 - A23.1.7 the Contractor is an individual and he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
 - A23.1.8 the Contractor is an individual and he suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of his business.
- A23.2 The Contractor (or the Contractor's representative in the event of A23.1.7) shall notify DCLG in writing immediately upon the occurrence of any of the events mentioned in Clause A23.1.
- A23.3 In relation to Sub-Clause A23.1.1 DCLG may only exercise its right to terminate under Clause A23.1 where there are reasonable grounds for DCLG to do so within six months of a change of control and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs.

A24. TERMINATION ON DEFAULT

- A24.1 DCLG may at any time by notice in writing terminate the Contract with immediate effect if the Contractor or the Contractor's Personnel is deemed to have committed a Material Breach of the Contract and:
- A24.1.1 the Material Breach is capable of remedy and the Contractor or the Contractor's Personnel shall have failed to remedy the Material Breach within 30 Days of being required by DCLG in writing to do so; or
 - A24.1.2 the Material Breach is not capable of remedy.
- A24.2 Without prejudice to the provisions of Clause A24.1, where DCLG considers that the Contractor or the Contractor's Personnel has committed a Persistent Breach, DCLG shall be entitled to serve a notice on the Contractor:
- A24.2.1 specifying that it is a notice of Persistent Breach;
 - A24.2.2 giving sufficient details of the Persistent Breach to enable the Contractor to identify the same; and
 - A24.2.3 stating that such breach is a breach which, if it recurs or continues, may result in a termination of the Contract.

A24.3 If 30 Days after service of a notice of Persistent Breach as described in Clause A24.2, the Contractor or the Contractor's Personnel has failed to demonstrate to the satisfaction of DCLG that the breach specified has not recurred or continued and that the Contractor or the Contractor's Personnel has put in place measures to ensure that such breach does not recur, then DCLG may deem such failure to be a Material Breach not capable of remedy for the purposes of Clause A24.1 and may terminate this Contract under the provisions of that Clause.

A25. CONSEQUENCES OF TERMINATION AND EXPIRY

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

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

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

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

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

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

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

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

A26. DISPUTE RESOLUTION

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

Mediation

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

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

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

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

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

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

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

Arbitration

A26.9 A sole arbitrator shall be agreed between the Parties or in the event of a failure to agree within 5 Days of the referral to arbitration or if the agreed arbitrator is

ANNEX 1

unable or unwilling to act, the arbitrator shall be appointed by the London Court of International Arbitration ("LCIA").

A26.10 Any arbitration shall be governed by the provisions of the Arbitration Act 1996 and the LCIA procedural rules in force at the date the dispute was referred to arbitration.

A26.11 The arbitration proceedings shall take place in London, in the English language and shall be governed by and interpretations made in accordance with English law.

A26.12 The fees of the mediator or arbitrator shall be borne by the Parties in the proportion as shall be determined by the mediator or arbitrator respectively having regard to all pertinent matters, including the conduct of the parties.

A26.13 Nothing in this Condition A26 shall prevent either Party from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

A27. CONTINUATION OF CONTRACT IN EVENT OF DISPUTES

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

A28. TRANSFER AND SUB-CONTRACTING

A28.1 The Contractor shall not assign, novate, sub-contract, charge or otherwise dispose of the Contract or any part of the Contract without the prior written consent of DCLG which shall not be unreasonably withheld.

A28.2 The Contractor shall ensure that any sub-contractor complies with the Conditions of this Contract, so far as they are applicable. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.

A28.3 Where DCLG has consented to the placing of sub-contracts, the Contractor shall, on request by DCLG and within a reasonable time, send copies of the sub-contracts to DCLG.

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

A29. SEVERABILITY

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

A30. WAIVER

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

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

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

A31. CONFLICTS OF INTEREST

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

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

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

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

recover from the Contractor the amount of any loss resulting from such termination.

A32. ADDITIONAL CLAIMS

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

A33. GOVERNING LAW

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

A34. ENTIRE CONTRACT

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

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

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