

Contract for Consultancy Services – Cloud Consultancy

This Contract is entered into between:

- (1) Ordnance Survey Limited, a company registered in England and Wales (company registration number 09121572) whose registered address is at Explorer House, Adanac Drive, SOUTHAMPTON, UK, SO16 0AS (**OS**); and
- (2) [Company Name], a company registered in England and Wales (company registration number [insert company registration number] whose [registered office / principal place of business] is at [insert address as on Companies House] (**the Supplier**). OR
- (2) [Individual Name] trading as [insert trading name] of [insert address] (**the Supplier**). OR
- (2) [Partnership Name LLP] a limited liability partnership registered in England and Wales (registration number [insert registration number]) whose registered office is a [Address] (**the Supplier**).

1 Definitions & interpretations

1.1 In this Contract the following terms shall, unless the context otherwise requires, have the following meanings:

Expression	Meaning
Agency Worker Regulations	means the <i>Agency Worker Regulations 2010</i> .
Best Industry Practice	means the exercise of the highest degree of skill, care and foresight which would be expected from a highly skilled and experienced person at the leading edge of their field engaged in the same type of undertaking under the same or similar circumstances.
Bribery Act 2010	means the <i>Bribery Act 2010</i> .
Code	means the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part I of the <i>Freedom of Information Act 2000</i> .
Confidential Information	means any Commercially Sensitive Information and any other information that is marked or identified as confidential, or that would reasonably be considered to be confidential in nature, that relates to the affairs of a Party and is acquired by the other Party in anticipation of or as a result of this Contract.
Commercially Sensitive Information	means any information identified as such in the Schedule.
DPA	means the <i>Data Protection Act 1998</i> .
Data Protection Legislation	means the <i>Data Protection Act 1998</i> and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
Defective Deliverable	means any Deliverable provided by the Supplier which fails to comply with OS's requirements or this Contract. For the avoidance of doubt, failure to deliver in accordance with this Contract and non-delivery of a Deliverable shall be a Defective Deliverable.
Deliverable	means the outcome of the Services.

DOTAS	means the Disclosure of Tax Avoidance Scheme 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 <i>Finance Act 2004</i> and in secondary legislation made under vires contained in Part 7 of the <i>Finance Act 2004</i> and as extended to National Insurance Contributions by the <i>National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012</i> , SI 2012/1868 made under s.132A Social Security Administration Act 1992.
EIR	means the <i>Environmental Information Regulations 2004</i> .
FOIA	means the <i>Freedom of Information Act 2000</i> .
Force Majeure Event	means any event outside the reasonable control of a party affecting its ability to perform any of its obligations (other than an obligation of payment) under this Contract.
General Anti-Abuse Rule	means: a) the legislation in Part 5 of the <i>Finance Act 2013</i>; and b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.
Halifax Abuse Principle	means the principle explained in the CJEU Case C-255/02 Halifax and others.
HSWA	means the <i>Health and Safety at Work etc Act 1974</i> .
Intellectual Property Rights	means all patents, copyrights, database rights, trademarks, service marks, inventions, domain names, database rights, utility models and design rights (whether registered or not and all applications for any of the foregoing) and all rights of confidence in the know-how whensoever and howsoever arising for the full term thereof and all renewals and extensions thereof.
IR35	means the HMRC Intermediaries (IR35) legislation;
Occasion of Tax Non-Compliance	a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: i. a Relevant Tax Authority successfully challenging the Supplier 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; ii. the failure of an avoidance scheme which the Supplier 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 b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion.
Liabilities	means all liabilities, losses, sanctions, proceedings, demands, claims, damages, redundancy payments, payments in lieu of notice, amounts agreed upon in settlement, costs and expenses (including all legal and other professional fees, expenses and disbursements).
OS Network	means the computer equipment or the computer network or equipment of OS or equipment belonging to any third party but resident on OS's Premises.
Persistent Breach	means 3 or more failures by a party to comply with its obligations under this Contract in any 12 month period during the Term.

Personnel	means all individuals, employees, agents, consultants, directors, professional advisers, contractors and staff engaged by the Supplier or acting on the Supplier's behalf. For the avoidance of doubt, this includes individuals employed or engaged via a limited company, or via a managed or personal services company;
Pre-Existing IPR	means any Intellectual Property Rights vested in or licensed to (a) the Supplier prior to or independently of the performance by the Supplier of its obligations under this Contract; and (b) OS prior to or independently of the performance by OS of its obligations under this Contract.
Premises	means Explorer House, Adanac Drive, SOUTHAMPTON, UK, SO16 0AS or such other location where the Services are to be performed.
Price	means the price of the Deliverables, exclusive of VAT, as stated in the Schedule.
Relevant Tax Authority	means HM Revenue & Customs or, if applicable, a tax authority in the jurisdiction in which the Supplier is established.
Services	means the Services to be performed by the Supplier (as specified in the Schedule) pursuant to or in connection with this Contract.
Schedule	means the Schedule attached to this Contract as completed by the Parties.
Term	means the duration of this Contract as specified in the Schedule.
TUPE	means the <i>Transfer of Undertakings (Protection of Employment) Regulations 2006</i> .
VAT	means Value Added Tax at the rate applicable to the Services being performed or supplied under this Contract.
Working Day	means any day other than a Saturday, Sunday or public holiday in England and Wales.

- 1.2 A reference to any statute or statutory provision includes a reference to that statute or statutory provision as amended, extended or re-enacted from time to time.
- 1.3 Where the context so permits, references to the Supplier shall include its Personnel.
- 1.4 Reference to the Parties shall be deemed to refer to both OS and the Supplier. Reference to a Party shall be deemed to refer to either OS or the Supplier as the context so permits.
- 1.5 In the event and to the extent only of any conflict or inconsistency in the provisions of the terms of this Contract and the provisions of the Schedule or any other documents that are referred to herein, the following order of precedence shall prevail:
- 1.5.1 the terms of this Contract;
 - 1.5.2 the completed Schedule;
 - 1.5.3 any other document referred to in the Clauses of this Contract.

2 The Deliverables and / or Services

- 2.1 The Deliverables shall be to the satisfaction of OS and shall;
- 2.1.1 be of satisfactory quality;
 - 2.1.2 be fit and sufficient for the purpose for which they are ordinarily used;
 - 2.1.3 be free from defects in design, materials and workmanship; and
 - 2.1.4 conform in all respects to this Contract (and any variations thereto) including without limitation any specification supplied or advised by OS to the Supplier.
- 2.2 The Supplier shall perform the Services as follows:
- 2.2.1 with the degree of skill, care and diligence required to comply with Best Industry Practice;

- 2.2.2 in accordance with this Contract including without limitation any service description supplied or advised by OS to the Supplier.
- 2.3 OS relies on the skill and judgement of the Supplier in the supply of the Services and the execution of this Contract.
- 2.4 The Supplier shall ensure that the Services and Deliverables:
 - 2.4.1 conform in all respects to the requirements of any law, regulation or code of practice (to the extent non-compliance with such codes of practice is deemed breach of the associated laws by the relevant regulatory authority) applicable to the Supplier from time to time and that generally affect its provision of services to its customers; and
 - 2.4.2 are sourced and supplied in accordance with all applicable laws and in an ethical and sustainable manner.
- 2.5 Where the Supplier requires access to the OS Network then the Supplier shall:
 - 2.5.1 observe such procedures as required by OS (including any relating to the use of equipment and software provided by OS to carry out the services and / or making available any equipment or software for virus checking by OS prior to installation and / or connection to the OS Network); and
 - 2.5.2 provide such information as OS shall require for access to the OS Network; and
 - 2.5.3 ensure that no equipment or software used by the Supplier, causes any loss, damage, corruption or other adverse effect upon the OS Network.

3 The Price

- 3.1 The Price is deemed to include all taxes (other than VAT), levies and duties and, where applicable, all packaging, carriage, insurance and delivery.
- 3.2 The Supplier shall only invoice OS once the Services have been delivered and accepted by OS.
- 3.3 The Supplier acknowledges that IR35 may apply to individuals providing services under this Contract. The Supplier shall promptly provide all information reasonably required by OS to determine whether the off-payroll working rules under IR35 should apply to any individual providing services under this Contract. The Supplier consents to this Contract being passed through the HMRC Contract Review Service, if OS considers this appropriate. In the event that OS determines that the IR35 off-payroll working legislation does apply to this Contract and any individual providing services under it, the Supplier shall provide such information as shall be reasonably required by OS to allow OS to deduct the appropriate level of tax and NICs from the payments it makes to the Supplier. OS shall deduct the appropriate level of tax and NICs from the Supplier's invoice and shall account for this to HMRC.
- 3.4 Invoices shall be addressed to the Accounts Department at OS. Only original hardcopy invoices will be accepted by OS for payment: photocopies, faxes, scans or similar are not acceptable, unless otherwise agreed. In each invoice, the Supplier shall quote the relevant purchase order number along with the information required on the advice note and the Supplier's VAT registration number (if applicable). OS is entitled to reject any invoice which does not conform to these requirements.
- 3.5 Payment of undisputed sums will be paid in sterling and shall be due within 30 calendar days of receipt by OS of a correctly presented invoice, unless OS has otherwise agreed in writing in the Schedule. OS shall notify the Supplier of any disputed sums within 10 Working Days, giving full reasons for the dispute.
- 3.6 In the event that Supplier, at any time during the Term of this Contract;
 - 3.6.1 provides Services (or similar goods or services as those contemplated under this Contract) to any of its customers at rates which are below those stated herein; or
 - 3.6.2 implements any measures that result in cost savings to the Supplierthen the Supplier shall immediately reduce the rates under this Contract to reflect the foregoing.

4 Time of performance

- 4.1 Time for delivery of the Deliverables and performance of the Services shall be of the essence. Failure by the Supplier to adhere to the timeframes set out in this Contract shall be deemed a material breach.

5 Title and risk

- 5.1 Title and risk in the Deliverables shall pass to OS on delivery unless payment is made prior to delivery in which case title shall pass to OS once payment has been made and risk shall pass to OS on delivery.

6 Supplier's status

- 6.1 In carrying out the Services, the Supplier shall be acting as principal and not as the agent of OS. Accordingly:
- a) the Supplier shall not say or do anything that might lead any other person to believe that the Supplier is acting as the agent of OS or is representing OS; and
 - b) nothing in this Contract shall impose any liability on OS in respect of any liability incurred by the Supplier.
- 6.2 The Supplier shall, and will procure that its Personnel shall, comply with all applicable employment, tax, social security and immigration laws (including but not limited to holding appropriate working and resident visa or permits and ensuring all relevant and reasonable reference checks have been carried out).
- 6.3 The Supplier warrants that at all times during the Term its Personnel are sufficiently and appropriately trained, skilled and qualified to carry out the Services and do not have any convictions, cautions, reprimands or final warnings that are not 'protected' as defined by the *Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975* (as amended in 2013).
- 6.4 The Supplier shall, prior to supplying any Personnel to OS under this Contract and/or within 5 Working Days of OS's written request, provide evidence of its compliance with Clauses 6.2 and 6.3.
- 6.5 The Supplier agrees that OS may terminate this Contract if:
- a) the Supplier fails to provide adequate information in response to any request made under this Contract within the requested period; or
 - b) OS receives information which demonstrates that the Supplier has provided untrue information in relation to a request made under Clause 3.3 or is not complying with its obligations under Clause 6.2.
- 6.6 The Supplier will indemnify OS for any costs, losses, claims or damages in the event of claims brought against OS by any tax, social security, employment or foreign worker or other appropriate government authority for any breach of Clauses 3.3 or 6.2.
- 6.7 This Contract is made between the Parties on the basis that the Supplier is an independent contractor and nothing in this Contract shall have the effect of making the Supplier or any of its Personnel an employee of OS. Nothing in this Contract shall be deemed or construed as a contract of employment between OS and the Supplier or OS and the Personnel. The Supplier shall fully and effectively indemnify OS from and against any claims by its Personnel or arising from any alleged or deemed employment relationship between its Personnel and OS.

7 Freedom of Information

- 7.1 For the purpose of this Clause, 'Information' has the meaning as set out in section 84 of FOIA and 'Request for Information' or an apparent request under the Code of Practice on Access to Government Information, FOIA or EIR.
- 7.2 The Supplier acknowledges that OS is subject to the requirements of FOIA and EIR and shall assist and cooperate with OS (at the Supplier's expense) to enable OS to comply with its Information disclosure obligations.
- 7.3 The Supplier shall and shall procure that its Subcontractors shall:
- 7.3.1 transfer any Request for Information to OS within 2 Working Days of receiving the Request for Information;
 - 7.3.2 provide OS with a copy of all Information in its possession or power in the form that OS requires within 5 Working Days (or such other period as OS may specify) of OS requesting that Information; and
 - 7.3.3 provide all necessary assistance as reasonably requested by OS to enable OS to respond to the Request for Information within the time for compliance set out in FOIA or EIR (as appropriate).

- 7.4 OS shall be responsible for determining in its absolute discretion whether Commercially Sensitive Information and / or any other Information:
- a) is exempt from disclosure in accordance with the provisions of FOIA or EIR ; or
 - b) is to be disclosed in response to a Request for Information.
- 7.5 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so in writing by OS.
- 7.6 The Supplier acknowledges that OS may, acting in accordance with the Code, be obliged under the FOIA or EIR to disclose Information:
- 7.6.1 without consulting with the Supplier; or
 - 7.6.2 following consultation with the Supplier and having taken its views into account;
- provided always that where this Clause 7.6 applies, OS shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that to draw the disclosure to the Supplier's attention after any such disclosure.
- 7.7 The Parties acknowledge that, except for any Commercially Sensitive Information and any Information which is exempt from disclosure in accordance with the provisions of FOIA and EIR, the content of this Contract is not Confidential Information. The Supplier hereby gives consent for OS to publish this Contract in its entirety (but with any Information which is exempt from disclosure in accordance with this Clause 7 duly redacted) including from time to time agreed changes to this Contract, to the general public.
- 7.8 The provisions of this Clause 7 shall survive the expiration or termination of this Contract.

8 Environmental Information

- 8.1 Without prejudice to the Supplier's obligations pursuant to Clause 7, the Supplier shall both during and following the expiry or termination of this Contract use all reasonable endeavours to assist OS with its obligations under EIR.
- 8.2 Subject to Clause 15, the Supplier shall indemnify OS against all Liabilities incurred by OS as a result of any breach of this Clause 8 and Clause 7 by the Supplier.
- 8.3 Insofar as EIR applies to the Supplier or its Subcontractors, the Supplier shall comply with, and shall procure that its Subcontractors comply with, EIR and any associated legislation and codes of practice.
- 8.4 The provisions of this Clause 8 shall survive the expiration or termination of this Contract.

9 Confidentiality

- 9.1 The Parties agree:
- 9.1.1 to use Confidential information of the other only for the purposes of discussions between us relating to our business relationship, and for performing obligations and exercising rights granted under this Contract;
 - 9.1.2 to keep all Confidential Information secure, and to disclose it only to those employees, consultants, directors and professional advisers, who need to know such Confidential Information and who are subject to at least the same obligations of confidentiality as those set out in this Clause 9;
 - 9.1.3 to notify the other without delay of any unauthorised use, copying or disclosure of the other's Confidential Information of which it becomes aware and provide all reasonable assistance to the other to stop such unauthorised use, copying and/or disclosure; and
 - 9.1.4 except as required by law or by governmental or regulatory requirements (which, for the avoidance of doubt, shall include any requirements for disclosure under the *Freedom of Information Act 2000* and/or the *Environmental Information Regulations 2004*), not to disclose Confidential Information to any third parties unless expressly permitted under this Clause 9 or with the other's prior written consent;
 - 9.1.5 not to copy or otherwise record the Confidential Information except as strictly necessary for the delivery of the Services and any such copies and records shall be the property of the originating party;
 - 9.1.6 when the Services have been completed, or at any time on the written request of the originating party:

- a) The recipient shall, subject to clause b) below, destroy (or at the originating party's option, return) all Confidential Information and all materials embodying any Confidential Information;
- b) Where the Confidential Information is in an electronic form and has been placed in an archive or back up system and it is difficult or impossible reliably to destroy or return it, the recipient may keep such Confidential Information for as long as such archive or back up is required, provided that the Confidential Information is not used for any purpose whatsoever and the recipient continues to comply with the obligations set out in this Clause 9.

9.2 The obligations in this Clause 9 do not apply to any information which is in the public domain (other than through the breach of any obligation of confidentiality) or which a Party can demonstrate was previously known to it (unless acquired directly from the other Party or in breach of any obligation of confidentiality) or was independently developed by it without the use of any Confidential Information.

9.3 The provisions of this Clause 9 shall survive the expiration or termination of this Contract.

10 Data Protection

10.1 In this Clause 10 the following terms have the meanings set out in the DPA: 'Data', 'Data Controller', 'Data Processor', 'Data Subject', 'Personal Data' which include 'Sensitive Data', 'Process', 'Processed', 'Processing'.

10.2 The Parties acknowledge and agree that:

- 10.2.1 each Party may carry out Processing of Personal Data and Sensitive Personal Data to the extent necessary in the performance under this Contract or as is required by law or any regulatory body;
- 10.2.2 each Party shall use its best endeavours to carry out Processing in compliance with any applicable data protection legislation in force from time to time, and shall, without limitation to the foregoing:
 - a) take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
 - b) only Process Personal Data within the EEA unless the other Party expressly consents in writing;
- 10.2.3 neither Party may disclose Personal Data or information extracted from such data to third parties without the other Party's prior written approval or subject to the non-disclosure exemptions set out within the DPA;
- 10.2.4 each Party shall notify the other Party (within 5 Working Days), if one Party receives:
 - a) a request from a Data Subject to have access to Personal Data held by the other Party; or
 - b) a complaint or request relating to the other Party's obligations under the Data Protection Legislation.
- 10.2.5 the Supplier shall provide OS with full co-operation and assistance in relation to any complaint or request made, including by:
 - a) providing OS with full details of the complaint or request;
 - b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with OS's instructions;
 - c) providing OS with any Personal Data it holds in relation to a Data Subject (within the timescales required by OS); and
 - d) providing OS with any information requested by OS;
- 10.2.6 each Party shall notify the other promptly upon discovery of any actual or potential losses of any Personal Data held or Processed or any security breaches or attempted breaches of systems, equipment or premises and will fully cooperate with the other Party to provide any further details that the other Party may require;

- 10.2.7 each Party shall, on termination of this Contract at the request of the other Party either return or destroy the Personal Data (including all copies of it) immediately and, in the case of destruction of Personal Data, promptly provide a certificate signed by a senior officer of that Party confirming that such destruction has taken place.

11 Audit

- 11.1 The Supplier shall keep and maintain until 6 years, or such other period as may be specified in the Schedule, after the delivery of any Goods or the provision of any Services, full and accurate records to the satisfaction of OS including:
- a) the Deliverables and / or Services provided under this Contract; and
 - b) all payments made by OS to the Supplier under this Contract; and
 - c) evidence of compliance with Clause 6.
- 11.2 The Supplier shall, and shall procure that the Subcontractors shall, on request afford OS or its representatives such access to those records as may be required by OS in connection with the Services.

12 Intellectual Property Rights

- 12.1 Subject to Clause 12.4, neither the Supplier nor OS shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- 12.2 It shall be a condition of this Contract that the Deliverables will not infringe any Intellectual Property Rights of any third party and the Supplier shall indemnify OS against all actions, claims, demands, costs and expenses which OS may suffer or incur as a result of or in connection with any breach of this Clause 12.2 (**Claim**) save to the extent that such Claim is based on (i) modifications to Deliverables made by OS or a third party (other than the Supplier or its Subcontractors) acting on OS's instructions; and/or (ii) any software or hardware or other materials provided to the Supplier by OS or a third party acting on OS's instructions; and/or (iii) any use of the Deliverables in a manner not reasonably inferred from OS's requirements.
- 12.3 The Supplier hereby assigns and vests, and shall procure that its Personnel hereby assigns and vests, in OS absolutely, all Intellectual Property Rights in any Deliverable (excluding the Supplier's and its Personnel's Pre-Existing IPR) prepared by or for the Supplier (or by any subcontractor of the Supplier) or its Personnel in the course of or in connection with this Contract.
- 12.4 The Supplier shall, and shall procure that its Personnel shall, execute all necessary documents and shall undertake to carry out all acts as required by OS to enable the rights identified in Clause 12.3 to vest in OS.
- 12.5 The Supplier hereby grants, and shall procure that its Personnel hereby grants, to OS a perpetual, irrevocable, royalty free non-exclusive licence to use, copy or amend (including the right to grant sub-licences) the Supplier's and its Personnel's Pre-Existing Intellectual Property Rights for OS's business purposes to the extent the same are embedded or incorporated in any Deliverables.
- 12.6 The Supplier and its Personnel may use any documentation or materials (including systems, methodologies, tools, software, reports, correspondence and advice) supplied or made available by or on behalf of OS to the extent necessary for the performance of this Contract
- 12.7 The Supplier retains the right to use all know-how and residual knowledge obtained in connection with the Services and nothing in this Contract shall prevent it from using any know-how, methodologies, ideas or concepts acquired before or during the performance of the Services, for any purpose, subject always to its obligation not to disclose OS's Confidential Information.
- 12.8 If a Claim (as defined in Clause 12.2) is made against OS or the Supplier anticipates that such a claim may be made, the Supplier may at its own expense and option either:
- 12.8.1 procure for OS the right to continue using the part of the Deliverables which is the subject of or likely to be subject of a Claim; or

- 12.8.2 replace, modify, or procure the replacement or modification of such Deliverables so that the infringing item becomes non-infringing, provided that the performance and functionality of the replaced or modified item is at least materially equivalent to the performance and functionality of the original item and there is no additional cost to OS.

- 12.9 If a third party makes a Claim (as defined in Clause 12.2), or notifies an intention to make a Claim, against OS, OS shall: (a) as soon as practicable give notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail; (b) allow the Supplier (if the Supplier so requests) to conduct and control the defence and any related settlement of the Claim; and (c) provide all reasonable assistance to the Supplier (at the Supplier's sole expense) and not make any admission prejudicial to the defence of the Claim other than pursuant to legal advice in respect of the same.
- 12.10 The provisions of this Clause 12 (excluding Clause 12.6) shall survive the expiration or termination of this Contract.

13 Health and Safety and Access to Premises

- 13.1 The Parties shall ensure that its Health and Safety policy statements and procedures (as required by the HSWA) are made available to the other Party on request.
- 13.2 The Supplier shall promptly notify OS of any health and safety hazards which may arise in connection with the performance of the Services.
- 13.3 The Supplier shall inform its Personnel working at the Premises of all known health and safety hazards and shall instruct advise them of any necessary safety measures.
- 13.4 On entering the OS Premises, the Supplier shall report to security and (where required) undergo any necessary site familiarisation and induction training prior to commencing the Services. The Supplier shall comply with all policies and procedures applicable at the Premises and shall follow the reasonable instructions of staff at the Premises.
- 13.5 Whilst on the Premises, the Supplier shall comply with any health and safety measures implemented by OS or any third party including without limitation any measures in respect of OS personnel and other persons working on the Premises.
- 13.6 The Supplier shall notify OS immediately in the event of any incident occurring on the Premises where that incident causes any personal injury or any damage to property which could give rise to personal injury.
- 13.7 The Supplier shall, and will procure that its Personnel and Subcontractors shall, take all measures necessary to comply with the requirements of the HSWA and any other Acts, orders, regulations and Codes of Practice relating to health and safety, which may apply in the performance of the Services.
- 13.8 If OS gives the Suppliers notice that any Personnel is not to be admitted to or is to be removed from the Premises, the Supplier shall, and shall procure that its Personnel shall, comply with such notice without delay. The decision of OS shall be final and conclusive in respect of such matter.

14 Agency Worker Regulations

- 14.1 The Supplier warrants that it and its Personnel are either outside the scope of the Agency Worker Regulations or that the Supplier has fulfilled obligations under the Agency Worker Regulations in such a manner so that OS will suffer no liability or extra cost or expense as a result of the application of the Agency Worker Regulations in relation to the Services provided by the Supplier and its Personnel, either during or after the Term.

15 Liability and insurance

- 15.1 Nothing in this Contract shall exclude or limit either Party's liability for:
- a) death or personal injury to the extent it results from its negligence, or that of its Personnel; or
 - b) fraud or fraudulent misrepresentation; or
 - c) breach of the DPA; or
 - d) breach of TUPE; or
 - e) breach of the *Bribery Act 2010*; or
 - f) breach of its Confidentiality obligations as identified in Clause 9; or

- g) infringement of third party Intellectual Property Rights as identified in Clause 12; or
- h) damage or loss to property to the extent it results from its negligence, or that of its Personnel; or
- i) breach of Clause 6 or Clause 3.3.

- 15.2 Subject to Clause 15.1, the total liability for all claims made (whether in contract, tort (including negligence) or otherwise) under or in connection with this Contract will not at any time exceed 125% of the Price.
- 15.3 Neither Party will be liable to the other in contract, tort (including negligence) or otherwise for any loss of profits, loss of business or loss of contracts (in each case whether direct or indirect) or for any special, indirect or consequential losses or damages.
- 15.4 During the Term and for a period of 6 years following expiry or termination (howsoever arising) of this Contract, the Supplier shall take out and maintain insurance or procure the maintenance of insurance to at least the minimum insurance levels as set out in the Schedule.
- 15.5 The Supplier shall produce to OS within 5 Working Days of request, brokers letters of all insurance policies referred to in Clause 15.4 or such other evidence as agreed between the Supplier and OS that will confirm the extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 15.6 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities subject to the limit of liability set out in the Schedule under or in relation to this Contract.
- 15.7 The Supplier represents and warrants that as at the Effective Date, it has notified OS in writing of any Occasion of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasion of Tax Non-Compliance.
- 15.8 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:
- a) notify OS in writing of such fact within 5 Working Days of its occurrence and;
 - b) promptly provide to OS:
 - i) details of the steps which the Supplier 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
 - ii) such other information in relation to the Occasion of Tax Non-Compliance as OS may reasonably require.

16 Equality

- 16.1 The Supplier shall:
- 16.1.1 comply with all current relevant equality legislation; and
 - 16.1.2 provide, at OS's request, a written statement of its equality and diversity policy (or its equivalent) and an adequate explanation of how the policy will be effected over time; and
 - 16.1.3 use all reasonable endeavours to adhere to the relevant codes of practice published by the Equality and Human Rights Commission, the Equality Commission for Northern Ireland, or their successors.

17 Term and Termination

- 17.1 Subject to the provisions for earlier termination, this Contract shall continue for the Term.
- 17.2 Without prejudice any of its rights or remedies under this Contract, either Party may at any time terminate this Contract with immediate effect by giving written notice to the other Party if:
- a) the other Party commits a material breach (which shall include non-payment of undisputed sums) of any material Clause of this Contract (other than failure to pay any amounts due under this Contract) and fails to remedy that breach within a period of 20 Working Days after being notified in writing to do so; or

- b) the other Party has committed a Persistent Breach in relation to this Contract or any part; or
- c) the other Party 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the *Insolvency Act 1986* OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the *Insolvency Act 1986* OR (being a partnership) has any partner to whom any of the foregoing apply; or
- d) the other Party 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 (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; or
- e) 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 that other Party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; or
- f) 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 other Party (being a company); or
- g) the holder of a qualifying floating charge over the assets of that other Party (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- h) a person becomes entitled to appoint a receiver over the assets of the other Party or a receiver is appointed over the assets of the other Party; or
- i) the other Party (being an individual) is the subject of a bankruptcy petition or order; or
- j) a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against the whole or any part of the other Party's assets and such attachment or process is not discharged within 10 Working Days; or
- k) any event occurs, or proceedings are taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 17.2(d) to Clause 17.2 (k) (inclusive); or
- l) the other Party suspends or ceases or threatens to suspend or cease carrying on all or a substantial part of its business; or
- m) the other Party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- n) there is a change of control of the other Party (within the meaning of section 1124 of the *Corporation Tax Act 2010*); or
- o) any warranty given in respect of this Contract is found to be untrue or misleading.

17.3 Termination or expiry of this Contract howsoever arising shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to OS and shall not affect the continued operation of any provisions of this Contract which expressly or impliedly continue in effect following termination or expiry of this Contract.

17.4 OS may terminate this Contract forthwith on notice to the Supplier in the event that:

- a) the warranty given by the Supplier pursuant to Clause 15.7 is materially untrue; or
- b) the Supplier commits a material breach of its obligation to notify OS of any Occasion of Tax Non-Compliance as required by Clause 15.8; or
- c) following the occurrence of any Occasion of Tax Non-Compliance, the supplier fails to provide details of proposed mitigating factors which, in the reasonable opinion of OS, are acceptable.

OS shall be entitled to terminate this Contract by giving immediate notice to the Supplier.

18 Break

18.1 In addition to its rights of termination under this Contract, OS shall be entitled to terminate this Contract by giving to the Supplier not less than 20 Working Days' notice (or such notice period as may be specified in the Schedule) to that effect in which event OS's sole liability shall be to pay to the Supplier a fair and reasonable price for all Services performed and Goods delivered at the date when such notice expires but in no event shall such payment exceed the price of this Contract.

19 Recovery of sums due

19.1 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier (including any sum that the Supplier is liable to pay to OS in respect of any breach of this Contract), OS may unilaterally deduct that sum from any sum then due or which at any later time may become due to the Supplier under this Contract or under any other agreement or contract with OS.

19.2 The Supplier shall make any payments due to OS without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by OS to the Supplier.

20 Assignment and subcontracting

20.1 The Supplier shall not assign or subcontract any part of this Contract without the prior written consent of OS. Subcontracting any part of this Contract shall not relieve the Supplier of any obligation or duty attributable to it under this Contract.

20.2 Where OS has consented to the placing of subcontracts, and the Supplier enters into a subcontract for the purpose of performing its obligations under this Contract the Supplier shall ensure that:

20.2.1 provisions are included in the subcontract which

- a) requires payment to be made of all sums due by the Supplier to the Subcontractor within a specified period not exceeding 30 calendar days from the receipt of a valid invoice; and
- b) impose obligations to comply with the terms of this Contract as if they were the Supplier; and

20.2.2 copies of each subcontract shall be sent by the Supplier to OS immediately it is issued.

20.3 OS shall be entitled to assign or transfer (either in whole or in part) the benefits of any or all of the Supplier's obligations or any benefit arising under or out of this Contract to any third party or to change its constitution or any other aspect of its presentation or construction without adversely affecting its rights and benefits under this Contract.

21 TUPE

21.1 All Liabilities relating to the Supplier's Personnel during the Term are to be borne by the Supplier.

21.2 The Supplier will indemnify and keep OS and any new provider of services to OS similar to the Services or any part of the Service (a **New Service Provider**) indemnified against any Liabilities transferred to, imposed upon or incurred by OS and / or any New Service Provider, in each case to the extent arising out of or in connection with the employment of any Personnel during the Term.

21.3 If any of the Personnel makes any claim (whether successful or not) at any time prior to termination of this Contract that they have become an employee of, or have rights against, OS and / or a New Service Provider by virtue of TUPE or otherwise, the Supplier will indemnify and keep OS and any New Service Provider indemnified against any Liabilities transferred to, imposed upon or incurred by OS and / or a New Service Provider in each case to the extent arising out of or in connection with any such claim.

21.4 Information regarding Personnel

The Supplier agrees, subject to compliance with the Data Protection Legislation that within 20 Working Days of the earliest of the following dates:

- a) 12 months before the end of the Term; or

- b) the date of receipt of OS's intended transfer of the Services or part of the Service to a New Service Provider (**Service Transfer Date**); or
- c) the date of receipt of OS's intended early contract termination; or
- d) the date of receipt of OS's written request at any time

the Supplier will provide OS with a list (to be regularly updated) of its current Personnel engaged in providing the Services (**Relevant Personnel**), along with relevant anonymised information about those Personnel (including but not limited to their age, contractual relationship with the Supplier, remuneration, terms and conditions of employment (including notice periods and redundancy terms), outstanding or potential liabilities such as personal injury claims and any other Employee Liability Information as defined by Regulation 11 of TUPE).

- 21.5 Without prejudice to the Supplier's obligations in Clause 21.4, at least 14 Working Days prior to the Service Transfer Date, the Supplier shall provide OS with the list of its Relevant Personnel at the date of the Service Transfer (the **Final List**).
- 21.6 OS shall be permitted to use and disclose the information relating to the Relevant Personnel (which the Supplier warrants to be true and accurate in all material respects), for informing any tenderer or other prospective New Service Provider, provided that OS imposes on such third party obligations of confidence that are no less onerous than OS's obligations to the Supplier in relation to that information.
- 21.7 From the date of the earliest event referred to in Clause 21.4 above, the Supplier agrees that it will not, save with the prior written consent of OS:
- 21.7.1 withdraw or permit the withdrawal of any of the Supplier's Relevant Personnel engaged wholly or mainly at that time in the provision of the Services from the provision of Services;
 - 21.7.2 alter in any material respect the terms and conditions of employment of any of the Relevant Personnel (including without limitation any increase in salary, wages or other emoluments (whether pursuant to a general review or otherwise) where the effect of such increase would be to increase the annual salary, wages or other emoluments of any Relevant Personnel to an annual level above the market rate paid to such personnel across the relevant industry);
 - 21.7.3 assign any member of the Relevant Personnel (not already engaged in the provision of the Services) to the provision of the Services; or
 - 21.7.4 engage new Personnel who would become Relevant Personnel except to replace Relevant Personnel who have left the Supplier's employment. Any engagement of new Personnel will be on substantially and materially similar terms to the outgoing personnel.
- 21.8 Following the termination or expiry of this Contract for whatever reason, the Supplier will indemnify and keep OS and any New Service Provider indemnified in full against all Liabilities arising directly or indirectly in connection with any act or omission of the Supplier prior to the termination or expiry of this Contract in respect of any member of the Personnel for which OS and / or any New Service Provider is liable by reason of TUPE.
- 21.9 If, as a result of the application of TUPE, the contract of employment of any Personnel of the Supplier shall have effect, following the termination or expiry of this Contract, as if originally made between OS and / or any New Service Provider (**Outgoing Personnel**), OS and / or any New Service Provider may terminate the contract of employment with such Outgoing Personnel and the Supplier shall indemnify and keep OS and any New Service Provider indemnified against all Liabilities in respect of such Outgoing Personnel. The Supplier shall also indemnify and keep OS indemnified against all Liabilities incurred by OS and / or any New Service Provider arising out of or in connection with any claim (whether successful or not) made by an Outgoing Personnel (whether or not such person is dismissed by OS).
- 21.10 A New Service Provider may enforce the term of this Clause 21 subject to and in accordance with the term of this Contract and the provisions of this *Contracts (Rights of Third Parties) Act 1999*.
- 21.11 The provisions of this Clause 21 shall survive the expiration or termination of this Contract.

22 Notices

- 22.1 A notice given to a Party under or in connection with this Contract shall be in writing and sent to the Party at the address given in this Contract or as otherwise notified in writing to the other Party.

- 22.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand.	On signature of a delivery receipt.
Pre-paid first class or recorded delivery post or other next Working Day delivery service providing proof of delivery.	9:00am on the second Working Day after posting or at the time recorded by the delivery service.
Pre-paid airmail providing proof of delivery.	9:00am on the fifth Working Day after posting or at the time recorded by the delivery service.

- 22.3 For the purpose of Clause 22.2:

- a) all references to time are to local time in the place of deemed receipt; and
- b) if deemed receipt would occur in the place of deemed receipt on a day that is not a Working Day then receipt is deemed to take place at 9.00 am on the next Working Day.

- 22.4 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 22.5 A notice given under this Contract is not valid if sent by e-mail.

23 Bribery, corrupt gifts or payments

- 23.1 The Parties each warrant that in preparation for and the entering into of this Contract they have not, and they have applied best endeavours to ensure that the Personnel and subcontractors have not offered, given, or agreed to give, to any person or sought or received any gift or dishonest consideration of any kind as an inducement or reward

- 23.1.1 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract; or
- 23.1.2 for showing or not showing favour or disfavour to any person in relation to this Contract.

- 23.2 The Parties each warrant that in fulfilling their respective obligations under this Contract they will not, and they will apply best endeavours to ensure that their Personnel and subcontractors do not offer, give, or agree to give, to any person or seek or receive any gift or dishonest consideration of any kind as an inducement or reward

- 23.2.1 for doing or not doing (or for having done or not having done) any act in relation to the performance of this Contract; or
- 23.2.2 for showing or not showing favour or disfavour to any person in relation to this Contract.

- 23.3 The Parties each warrant and undertake (and the Supplier shall procure that its subcontractors and Personnel shall undertake) in connection with this Contract to comply at all times with anti-bribery and corruption legislation, laws and regulations in all jurisdictions, and not to perform their respective obligations or otherwise do anything or omit to do anything under or in connection with this Contract in such a way as to cause either of them to be in breach of any such legislation, laws or regulations and in particular they have not in connection with this Contract committed and will not commit any offence:

- 23.3.1 under the *Bribery Act 2010* or other legislation, laws or regulations in force in England creating offences in respect of bribery and corruption;
- 23.3.2 under legislation or other laws or regulations in force in any jurisdiction creating offences in respect of bribery and corruption
- 23.3.3 under legislation, laws or regulations creating offences in respect of fraudulent acts.

- 23.4 Any breach of this Contract related to this Clause 23 by the Supplier or by any Personnel (whether with or without the knowledge of the Supplier) or the commission of any offence by the Supplier or by any Personnel or Subcontractor under the *Bribery Act 2010* or other legislation, laws or regulations in force in England or any jurisdiction where this Contract is performed that creates offences in respect of bribery and corruption shall entitle OS, with no liability whatsoever to the Supplier, to terminate this Contract with immediate effect by notice in writing and to recover from the Supplier the amount of any loss resulting from such termination.

24 Waiver

No waiver by OS of any breach of this Contract by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provision.

25 Force Majeure

- 25.1 Neither party shall be liable for delay or failure to perform its obligations to the extent that such delay or failure results from a Force Majeure Event. The party affected by a Force Majeure Event shall give the other party written notice as soon as reasonably possible containing details of the circumstances giving rise to the Force Majeure Event.
- 25.2 The affected party shall be allowed a reasonable extension of time to carry out its obligations in these circumstances. In the event that such circumstances materially impact the affected party's performance of its obligations under this Contract for a continuous period in excess of 30 Working Days, the non-affected party shall be entitled to terminate this Contract by giving notice in writing to the other.

26 Contracts (Rights of Third Parties) Act 1999

A person who is not a Party to this Contract has no right under this *Contracts (Rights of Third Parties) Act 1999* to enforce or enjoy the benefit of any terms of this Contract.

27 Governing law and dispute resolution

- 27.1 Subject to Clause 27.2, the Parties agree that any disputes or disagreements will be resolved in the following way:
- 27.1.1 by discussion between the buyer named on the Purchase Order or equivalent at OS and a representative of the Supplier;
 - 27.1.2 if no agreement is reached within 10 Working Days of the first request of either Party for the meeting or discussion referred to in Clause 27.1.1, the dispute shall be escalated to the Head of Procurement at OS and a representative of the Supplier of comparable position;
 - 27.1.3 if no agreement is reached within 10 Working Days of the first request of either Party for the meeting or discussion referred to in Clause 27.1.2, the dispute shall be escalated to an appropriate Director of OS and a Director or equivalent of the Supplier; or
 - 27.1.4 if no agreement is reached within a reasonable period pursuant to Clause 27.1.3, the dispute may be referred to the English courts.
- 27.2 Either Party may refer disputes involving Confidential Information, intellectual property matters (including but not limited to matters in respect of Intellectual Property Rights) and debt to the English courts immediately.
- 27.3 This Contract will be governed by and construed in accordance with English law and the exclusive jurisdiction of the English Courts.

28 Variation

- 28.1 No Conditions appearing in any quotation, correspondence, acknowledgement of order or other document issued by or put forward at any time by the Supplier shall form any part of this Contract.
- 28.2 The Clauses and Term may only be varied by a written agreement signed by the authorised representatives of OS and the Supplier.

29 **Signing**

Signed for and on behalf of **Ordnance Survey Limited**

Having read and understood this Contract signed for and on behalf of **[Name of other party]**

Signature
Name
Title
Date

Signature
Name
Title
Date

DRAFT

Schedule

Except as otherwise expressly stated in this Schedule, the defined terms in this Schedule shall have the same meanings as the defined terms in this Contract. In the event of conflict or ambiguity between this Contract and this Schedule, this Contract shall prevail.

Term

This Contract shall commence on [insert date] (the **Commencement Date**) and without prejudice to the early termination rights set out in the Conditions, shall continue for an initial period of [insert duration] (the **Term**). The Parties may, by written mutual agreement, extend this Contract for a further [insert duration].

Detailed Services to be provided (specifically, the Deliverables and, if appropriate, specification)

[Insert details]

Delivery Timescale:

[Insert details]

Premises (where the Services and Project are to be provided)

[This section, including the heading above, will be deleted if no description is given]

Price

[Insert details of prices, including milestones and KPIs]

Commercially Sensitive Information

[This section, including the heading above, will be deleted if no description is given]

Insurance

Class	Minimum Sum Insured
Public Liability	[£xxx million]
Employers Liability	in accordance with any legal requirement for the time being in force.
Professional Indemnity	[£xxx million]
[Product Liability]	[£xxx million]
[Others]	[£xxx million]
[*** specify any other insurances (including business continuity ***)]	[***£xxx million***]