

## THE HEALTH AND SAFETY EXECUTIVE

### TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES

This Contract is made between:

- (1) The **HEALTH AND SAFETY EXECUTIVE** (acting as part of the Crown) of Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS (hereinafter called 'the HSE' of the one part) and
- (2) **THE UNIVERSITY OF MANCHESTER**, company registration number 4714889 and whose registered office is at Oxford Road, Manchester, M13 9PL (hereinafter 'the Contractor' of the other part), in accordance with the details, terms and conditions stated herein.

### WHEREAS

The Contractor was successful as a result of a tender exercise for the provision of the delivery of materials analysis and testing for Hydeploy2.

### 1 GENERAL CONDITIONS

- 1.1 This Contract will be subject to the HSE Standard Terms and Conditions of Contract for the Provision of Services. The Clauses in this Contract will also govern all Purchase Orders placed against it.

### 2 ENTIRE AGREEMENT

- 2.1 This contract constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supersedes all prior agreements, both oral and written, representations, statements, negotiations and undertakings.

### 3 STATEMENT OF SERVICE REQUIREMENTS

- 3.1 The Contractor will carry out on behalf of the HSE a Statement of Services (hereinafter called the "Services").
- 3.2 The Contractor shall organise and conduct the entire Services in consultation with the HSE where appropriate, and provide all necessary resources of personnel, materials, services and equipment, except for such resources that may be provided by the HSE at its discretion.
- 3.3 No undertaking shall be deemed to have been made by the HSE in respect of the total quantities or values of the services to be ordered pursuant to this contract and the Contractor acknowledges and agrees that it has not entered into this contract on the basis of any such undertaking.

### 4 MANAGEMENT OF THE CONTRACT

- 4.1 The HSE Contract Manager who will be responsible for liaison and certifying completion of the provision and overall management of the Services is identified at Annex 1.
- 4.2 The Services will be monitored by the Contract Manager who will also evaluate the provision on completion.

- 4.3 In all cases, both parties will work within agreed timescale/constraints and costs outlined at the beginning of the commission.

## **5 DURATION**

- 5.1 The Services shall commence on 1<sup>st</sup> June 2019 and shall be completed by 1<sup>st</sup> June 2021, with an option to extend by a further 12 months, subject to the written agreement of both parties in line with the Variation to Contract clause at item 11.

## **6 COSTS**

- 6.1 The total cost for providing the service will be £439,000 exclusive of VAT.
- 6.2 Any additional costs will be agreed in advance with the HSE Contract Manager and subject to clause 11 Variation to Contract.

## **7 INVOICING AND PAYMENTS**

- 7.1 All invoices raised must include the relevant Purchase Order number which will be issued by HSE Commercial Services. Failure to include the Purchase Order Number may delay payment. Invoices should be submitted to the following address:

[APinvoices-HAS-U@sscl.gse.gov.uk](mailto:APinvoices-HAS-U@sscl.gse.gov.uk)

- 7.2 Invoices should also include details of work satisfactorily carried out and any VAT properly chargeable.
- 7.3 Shared Services shall make payment of agreed costs, in arrears, within 30 days of the acceptance of the invoice.
- 7.4 The Contractor shall send a copy invoice along with details of any work satisfactory carried out to the HSE Contract Manager identified at Annex 1.

## **8 DELIVERABLES**

- 8.1 The Contractor shall provide all deliverables identified in accordance with the agreed timetables in the Test Plan to be agreed during the first stage of the project.

## **9 INTELLECTUAL PROPERTY**

- 9.1 Your attention is drawn to clause E8.

## **10 ACCESS TO HSE PREMISES**

- 10.1 It shall be the Contractor's responsibility to ensure that, where access to HSE Premises or HSE confidential information is necessary, personnel engaged in the performance of this Contract shall have undergone pre-employment checks covering identity, the last three years employment history, nationality and immigration status and criminal record for unspent convictions. Such checks shall meet the requirements of HMG Baseline Security Standard.
- 10.2 HSE reserves the right, at its sole discretion, to carry out audits and spot checks at any time during the Contract Period to satisfy itself that the checks have been carried out. Guidance on pre-employment checks may be found at

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/hmg-personnel-security-controls.pdf>

**11 VARIATION TO CONTRACT**

- 11.1 Except where expressly stated in this contract, no change, amendment or modification shall be effective unless in writing and signed by the duly authorised representatives of both parties.
- 11.2 Any agreed changes to the Contract or Schedule A (Statement of Service Requirement) will be in the form of a Contract Change Note (CCN), which will be raised and issued by the HSE Commercial Services.

As Witnessed at the Hands of the Parties  
**SIGNATORIES**

IN WITNESS WHEREOF THIS CONTRACT HAS BEEN AGREED :

Signature \_\_\_\_\_

Name in Capitals \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_

Duly authorised to sign on behalf of

**THE UNIVERSITY OF MANCHESTER**  
Oxford Road, Manchester, M13 9PL

Signature \_\_\_\_\_

Name in Capitals \_\_\_\_\_

Position \_\_\_\_\_

Date \_\_\_\_\_

Duly authorised to sign on behalf of the

**HEALTH AND SAFETY EXECUTIVE**  
Redgrave Court, Merton Road, Bootle, Merseyside L20 7HS

## STATEMENT OF SERVICE REQUIREMENT

The Contractor shall undertake the following Statement of Service titled Contract for the Delivery of Materials Analysis and Testing for HyDeploy 2 and referenced **Schedule A**:



Schedule A -  
HyDeploy 2 Materials

Annex 1

**CONTACT LIST**

<b>HSE Contacts</b>	<b>Contractor Contacts</b>
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THE HEALTH AND SAFETY EXECUTIVE (HSE)

TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES

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**A GENERAL PROVISIONS**

**A1 Definitions**

A1.1 In these Terms and Conditions of Contract the following definitions shall apply:

“Condition” means a condition of this contract;

“Confidential Information” means any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed or on what media it is stored, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;

“Contract” means the agreement between HSE and the Contractor consisting of the Specification, the HSE Form of Agreement or Purchase Order, these Conditions and any other documents or parts of documents relating to the Contract;

“Contract Manager” means the person for the time being appointed by HSE as being authorised to administer the Contract on behalf of HSE or such person as may be nominated by the Contract Manager to act on its behalf.

“Contractor” means the person, firm or company to whom the Contract is issued;

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

“Equipment” means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“HSE” means the Health and Safety Executive acting as part of the Crown;

“Information” has the meaning given under section 84 of the FOIA;

“Parties” means HSE and the Contractor;

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA, the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply);

“Schedule” means a schedule attached to, and forming part of, the Contract.

“Services” means the services to be provided as specified in the specification and shall include any materials, articles and/or goods necessary to provide the Services;

“Specification” means the description of the Services to be supplied under the Contract as set out in Schedule A.

“Staff” 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.

“GDPR Clause Definitions”:

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Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

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

DPA 2018: Data Protection Act 2018.

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679).

Intellectual Property Rights or IPRs:

a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;

applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

all other rights having equivalent or similar effect in any country or jurisdiction.

Background IPR: any information, techniques, know-how, software and materials and other Intellectual Property (regardless of the form or medium in which they are disclosed or stored) that are provided by one Party to another for use in the Project (whether before, on or after the date of this Agreement) and which are: (i) in existence at the Effective Date, or (ii) created after the Effective Date other than in the course of performing the Project;”

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing.

LED: Law Enforcement Directive (Directive (EU) 2016/680).

Network Licensees – The holder of a Gas Transporter Licence who is regulated through the RIIO (Revenue Incentives and Innovation and Outputs) price control framework

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement.

## **A2 Interpretation**

- A2.1 The interpretation and construction of this Contract shall be subject to the following provisions:

The terms and expressions set out in A1.1 shall have the meanings ascribed therein;  
Words importing the singular meaning include where the context so admits the plural meaning and vice versa;

Words importing the masculine include the feminine and the neuter;

Reference to a Condition is a reference to the whole of that Condition unless stated otherwise;

Reference to a Condition is a reference to a paragraph within a Condition unless stated otherwise;

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 enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and

Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

## **A3 Contract Period**

- A3.1 This Agreement and the Project shall be deemed to commence on the Effective Date and shall remain in full force and effect (i) until 1<sup>st</sup> June 2021; or (ii) if the Parties unanimously agree to extend the term for an additional 12 months, unless terminated earlier in accordance with the terms of this Agreement (the "Term"). The provisions of this clause 2.1 do not prevent a Party from withdrawing from the Project pursuant to clause H2.

- A3.2 If completion of the Services is delayed by reason of any act or default of HSE or any other circumstance which is beyond the control of the Contractor, the time for completion shall be extended by such period as may be reasonable, provided that:

- (a) on being aware of the nature and extent of the delay the Contractor shall forthwith notify HSE of such nature and extent;
- (b) the delay was unforeseeable when the Contract commenced; the Contractor takes all reasonable steps to minimise the delay.

- A3.3 The Contractor shall not be entitled to an extension of time where such delay is attributable to any negligence, default, acts or omissions on his part.

## **A4 Contractor's Status**

- A4.1 At all times during the contract period the Contractor shall be an independent contractor. Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between HSE and the Contractor. Neither Party shall be authorised to act in the name of, or on behalf of, or

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otherwise bind the other Party save as expressly permitted by the terms of the Contract.

**A5 Entire Agreement**

A5.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations, understandings and undertakings, whether written or oral, except

that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

A5.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the clauses of the Contract;
- (b) The Schedules; and
- (c) any other document referred to in the clauses of the Contract.

**A6 Notices**

A6.1 Any notice given in connection with the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or facsimile transmission, or other agreed telecommunication or electronic means. When it is sent or transmitted to the address of the party shown in the Contract, or to any other address agreed between the parties, it shall be deemed to have been received:

- (a) if delivered by hand, on the day of delivery if it is the recipient's business day and otherwise on the first business day of the recipient immediately following the day of delivery;
- (b) if sent by first class prepaid post (or airmail if appropriate) on the third business day (or on the tenth business day in the case of airmail) after the day of posting;
- (c) if sent by facsimile or other agreed telecommunication or electronic means:
- (d) if transmitted between 09.00 and 17.00 on a business day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument;
- (e) if transmitted at any other time, at 09.00 on the first business day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

**A7 Conflicts of Interest**

A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the HSE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the HSE under the provisions of the Contract. The Contractor will disclose to the HSE full particulars of any such conflict of interest which may arise.

A7.2 The HSE reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the HSE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the HSE under the provisions of the Contract. The actions of the HSE

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pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the HSE.

**A8 Fraud**

A8.1 The Contractor shall safeguard HSE's funding of the Contract against fraud generally and, in particular, fraud on the part of the staff, or the Contractor's directors and suppliers. The Contractor shall notify HSE immediately if it has any reason to suspect that any fraud has occurred or is occurring or is likely to occur.

A8.2 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the HSE) the HSE may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the HSE resulting from the termination, including the cost reasonably incurred by the HSE of making other arrangements for the supply of the Services and any additional expenditure incurred by the HSE throughout the remainder of the Contract Period; or
- (b) recover in full from the Contractor any other loss sustained by the HSE in consequence of any breach of this clause.

**B PROVISION OF THE SERVICES**

**B1 The Services**

B1.1 The Services shall be in accordance with the Contract specification and shall be performed with reasonable skill, care and diligence and to the reasonable satisfaction of HSE or its authorised representative. During the course of the Contract HSE or its authorised representative shall have the power to inspect and examine any work being performed under the Contract at any reasonable time. The Contractor shall give all such facilities as HSE or its authorised representative may reasonably require for such inspection and examination and supervision of the work.

B1.2 Where the Services are to be carried out on HSE premises, on completion of the Services the Contractor shall remove his plant, equipment, unused materials and waste and leave the premises in the condition as found.

**B2 Contractor's Personnel**

B2.1 If the Contract relates to the engagement of personnel provided by an agency, the Contractor should provide the relevant details as described in Clauses B2.4.

B2.2 The Contractor shall provide and maintain an organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the tasks identified in the specification.

B2.3 All persons employed on work relating to the Contract must have appropriate qualifications and competencies and be acceptable to HSE in all respects. Where requested full particulars of all personnel to be used shall be forwarded by the Contractor in advance to HSE for confirmation of their acceptability.

B2.4 Where requested the Contractor shall provide HSE with a list of names and official addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are to be employed and giving such other particulars and evidence of identity and any other supporting information which HSE may reasonably require.

B2.5 The Contractor shall take all reasonable steps to avoid changes of original personnel assigned to and accepted for the work under the Contract except where changes are unavoidable or of a temporary nature caused by sickness, holidays or any other reasonable absence. The Contractor shall give at least two months' notice to HSE of proposals to change key personnel and Conditions B2.2 to B2.3 and E11.1 shall apply to the replacement personnel.

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- B2.6 The Contractor shall take the steps reasonably required by HSE to prevent unauthorised persons being admitted to HSE premises. Where HSE gives the Contractor notice that any person is not to be admitted to or is to be removed from HSE premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if requested by HSE the Contractor shall replace any person removed under this Condition with another suitably qualified person and ensure that any pass issued to the person removed is surrendered.
- B2.7 The decision of HSE as to whether any person is to be admitted to or is to be removed from HSE premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required in Conditions B2.3 to B2.6 shall be final and conclusive.
- B2.8 The Contractor shall bear the cost of any notice, instruction or decision of HSE under Conditions B2.3 to B2.7 and E11.1.

**B3 Legitimacy of the Workforce**

- B3.1 The Contractor shall take all reasonable steps to ensure that any servants, employees or agents of the Contractor and any sub-contractors, their servants or agents, employed in the execution of the Contract are entitled to obtain employment in the United Kingdom and are not claiming Unemployment Benefit or any other benefit payable to persons registered as unemployed.

**B4 Inspection of Premises and Nature of Services**

- B4.1 Where Services are to be carried out on HSE premises the Contractor is deemed to have inspected the premises before tendering so as to have understood the precise nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and premises. HSE shall grant such access as may be reasonable for this purpose.

**B5 HSE Property**

- B5.1 Where the Contract requires HSE to issue materials free of charge to the Contractor such materials shall be and shall remain the property of HSE. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify HSE of any surplus materials remaining after completion of the Services and shall dispose of them as HSE may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of his servants, agents or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other rights and remedies of HSE the Contractor shall deliver up such materials to HSE on demand, whether processed or not.

**B6 Purchasing on behalf of HSE**

- B6.1 In the event that the Contractor procures Goods or Services including equipment from third parties on behalf of HSE then they shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2015 as though the Contractor were a Contracting Authority within the meaning of the said Regulations.

**B7 Equipment**

- B7.1 All equipment, including information technology equipment, used by the Contractor during the performance of the Contract shall be risk assessed, free from defect, and shall be fit for purpose.

**C PAYMENT AND CONTRACT PRICE**

**C1 Contract Price**

C1.1 The price of the Services and Equipment shall be as stated in the Contract and shall be exclusive of VAT.

**C2 Invoicing and Payment**

C2.1 Invoices for the provision of Services shall be submitted at agreed intervals during the Contract period in a format agreed between the parties.

C2.2 Payment shall be made within 30 days of receipt and agreement of invoices for Services provided to the satisfaction of HSE. HSE's usual method of payment is through the Banks Automated Clearing System (BACS). All payments made by HSE to the Contractor shall be through BACS unless the Contractor provides advance written notice to HSE that this method of payment is not possible or shall cause undue inconvenience.

C2.3 Any complaints which may arise concerning late payment of invoices should be addressed in the first instance to the Contract Manager. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract in accordance with Clause H2.6 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by HSE on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

**C3 Value Added Tax (VAT)**

C3.1 Where applicable the prevailing rate and total of Value Added Tax (VAT) shall be shown separately on all invoices.

**C4 Tax Status**

C4.1 Where the Contractor, or its staff, is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.

C4.2. Where the Contractor, or its staff, is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

C4.3 HSE may, at any time, request that the Contractor provides information which demonstrates how it, or its staff, has complied with Clauses C4.1 and C4.2 above or why those Clauses do not apply to it.

C4.4 A request under Clause C4.3 above may specify the information which the Contractor, or its staff, must provide and the period within which that information must be provided.

C4.5 HSE may terminate this contract if-

(a) in the case of a request mentioned in Clause C4.3 above-

(i) The Contractor, or its staff, fails to provide information in response to the request within a reasonable time, or

(ii) The Contractor, or its staff, provides information which is inadequate to demonstrate either how it complies with Clauses C4.1 and C4.2 above or why those Clauses do not apply to it;

(b) in the case of a request mentioned in Clause C4.4 above, The Contractor, or its staff, fails to provide the specified information within the specified period, or

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- (c) it receives information which demonstrates that, at any time when Clauses C4.1 and C4.2 apply the Contractor, or its staff, is not complying with those Clauses.

C4.6 HSE may supply any information which it receives under Clause C4.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

**C5 Prompt Payment to Sub-Contractors**

C5.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice.

**C6 Recovery of Sums Due**

C6.1 Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to HSE in respect of any breach of this Contract) HSE may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under this Contract or under any other contract with HSE.

C6.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C6.3 The Contractor shall make all payments due to HSE without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by HSE to the Contractor.

C6.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

**D STATUTORY OBLIGATIONS AND REGULATIONS**

**D1 Prevention of Corruption**

D1.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of HSE any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any other contract with HSE, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under The Bribery Act 2010.

D1.2 The Contractor shall not enter into this Contract if in connection with it commission has been paid or is agreed to be paid to any employee or representative of HSE by the Contractor or on the Contractor's behalf, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to HSE.

D1.3 Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by Conditions D1.1 or D1.2 in relation to this or any other contract with HSE, HSE has the right to:

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- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by HSE resulting from the termination; or
- (b) recover in full from the Contractor any other loss sustained by HSE in consequence of any breach of this Condition, whether or not the Contract has been terminated.

D1.4 In exercising its rights or remedies under this Condition, HSE shall:

- (a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;
- (b) give all due consideration, where appropriate, to action other than termination of the Contract.

**D2 Equality and Diversity**

D2.1 The Supplier shall:

- (a) perform its obligations under this Framework Agreement (including those in relation to the provision of the Goods and/or Services) in accordance with:
  - (i) all applicable equality Law (whether in relation to race, sex, gender re assignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
  - (ii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

**D3 The Contracts (Rights of Third Parties) Act 1999**

D3.1 No person who is not a Party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either HSE or the Contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of HSE. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

D3.2 The Contractor shall not make any disposition of its rights that would prevent compliance with the conditions of this Contract, nor shall it accept any financial contribution from any third party for any part of the Work without the prior agreement in writing of HSE.

**D4 Environmental Requirements**

D4.1 The Contractor shall perform the Services in accordance with the government's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, Volatile Organic Compounds and other substances damaging to health and the environment.

D4.2 Throughout the term of the Contract the Contractor shall provide information on new or improved environmentally preferable products when they become available and, where reasonably required, promote their use. Samples of such products shall be

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provided to the Contract Manager for evaluation and for written agreement before wider use within HSE.

- D4.3 The Contractor shall co-operate with HSE, without charge, in Supplier Environmental Audits or Product Audits which the Contractor or his representative may undertake, such audits to be restricted to claims made by the Contractor for products made by the Contractor, for products supplied by the Contractor, or by the Contractor's environmental policy.
- D4.4 The Contractor shall maintain, and provide proof, at reasonable notice by HSE, of carrying out an environmental management system conforming to ISO 14001 or any subsequent or equivalent standards.

**D5 Health and Safety**

- D5.1 The Contractor shall promptly notify HSE of any health and safety hazards which may arise in connection with the performance of the Contract.
- D5.2 HSE shall promptly notify the Contractor of any health and safety hazards which may exist or arise at HSE's premises and which may affect the Contractor in the performance of the Contract.
- D5.3 Where the Services are to be performed on HSE premises the Contractor and the HSE Contract Manager shall undertake a joint risk assessment and take action to minimise the risk, and such actions shall be recorded in the premises' Health and Safety Manual.
- D5.4 While on HSE premises, the Contractor shall comply with any health and safety measures implemented by HSE in respect of personnel and other persons working on those premises.
- D5.5 The Contractor shall notify HSE immediately in the event of any incident or "near miss" occurring in the performance of the Contract on HSE premises where that incident or "near miss" causes, or may cause, any personal injury or damage to property which could give rise to personal injury.
- D5.6 The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to Health and Safety which may apply to staff in the performance of the Contract.
- D5.7 The Contractor shall ensure that his health and safety policy statement and health and safety management arrangements (as required by the Health and Safety at Work etc Act 1974) are kept up to date and made available to HSE on request.

**D6 TUPE**

- D6.1 Both HSE and the Contractor recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the award of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of the Contract.
- D6.2 During the period of six months preceding the expiry of the Contract or after HSE has given notice to terminate the Contract or the Contractor stops trading, and within 20 working days of being so requested by HSE, the Contractor shall fully and accurately disclose to HSE for the purposes of TUPE all information relating to its employees engaged in providing the Services under the Contract, in particular, but not necessarily restricted to, the following:
- (a) the total number of staff whose employment with the Contractor is liable to be terminated at the expiry of this Contract but for any operation of law; and

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- (b) for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed staff do not have to be given); and
  - (c) full information about the other terms and conditions on which the affected staff are employed (including but not limited to their working arrangements), or about where that information can be found; and
  - (d) details of pension entitlements, if any; and
  - (e) job titles of the members of staff affected and the qualifications required for each position.
- D6.3 The Contractor shall permit HSE to use the information for the purposes of TUPE and re-tendering. The Contractor shall co-operate with the re-tendering of the Contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
- D6.4 The Contractor agrees to indemnify HSE fully and hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Condition D6.2.
- D6.5 The Contractor agrees to indemnify HSE from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party (“Relevant Transfer Date”) arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
- D6.6 In the event that such information provided by the Contractor in accordance with Condition 6.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify HSE of the inaccuracies and provide the amended information.
- D6.7 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

**D7 Welsh Language Scheme**

- D7.1 Where the Services are to be provided to Wales, the service provider shall adhere to HSE’s Welsh Language Scheme and the Welsh and English Languages shall be treated on a basis of equality in accordance with the Welsh Language Act 1993.

**D8 MODERN SLAVERY ACT 2015**

- D8.1 With respect to any of the matters which are the subject of this Agreement or in connection with this Agreement and any matters resulting from them, The Contractor undertakes that it and its personnel either in private business dealings or in dealings with the public or government sector, directly or indirectly:
- D8.2 have not to the best of its knowledge and belief been involved in any activity (or agreed to be involved in any activities); and
- D8.3 will not become involved in any activities (nor agree to become involved in any activities), which (i) would violate any part of the Modern Slavery Act or any similar Applicable Law; or (ii) was intended to, or did, involve the use of modern slavery or human trafficking.

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**D8.4 Indemnification for Alleged or Actual Violation**

The Contractor undertakes that, to the best of its knowledge and belief, and save as disclosed to the other Parties, neither it nor any of its personnel has been investigated (or is being investigated or is subject to a pending or threatened investigation) or is involved in an investigation (as a witness or suspect) in relation to any offence under the Applicable Anti-corruption Laws, the Modern Slavery Act or any Applicable Law by any law enforcement, regulatory or other governmental agency (save, for the avoidance of doubt, HSE undertaking any investigation under the Health and Safety at Work, etc. Act 1974, or otherwise acting in its statutory role of being a regulatory government agency). The Contractor agrees that if, at any time, it becomes aware that any of the representations set out in Clauses D8.2 or D8.3 are no longer correct, it will notify HSE of this immediately in writing.

**D8.5** The Contractor undertakes to be fully and effectively liable to HSE from and against all actions and all loss, cost, charge, expense or Liability which any of them may suffer or incur or which may be brought against any of them in any jurisdiction arising, directly or indirectly, out of, in respect of, or in connection with any alleged or actual violations of any Applicable Anti-corruption Laws, the Modern Slavery Act or any Applicable Law or otherwise in connection with a breach of Clauses D8.2 or D8.3.

**D8.6** HSE is entitled to terminate this contract if the Contractor breaches its obligations under Clause D8 (Modern Slavery Act 2015).

**D8.7** If HSE terminates this contract in accordance with Clause D8 the Contractor in breach will not be entitled to claim compensation or any further remuneration from HSE, regardless of any activities carried out or agreements with Third Parties entered into before Termination.

**E PROTECTION OF INFORMATION**

**E1 Data Protection Act**

**E1.1** For the purposes of this Clause E1, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing shall have the meaning prescribed under the DPA.

**E1.2** The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

**E1.3** Notwithstanding the general obligation in Clause E1.2, where the Contractor is processing Personal Data (as defined by the DPA) as a Data Processor for HSE the Contractor shall:

- (a) process the Personnel Data only in accordance with instructions from HSE (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by HSE;
- (b) comply with all applicable laws;
- (c) process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider’s obligations under this Contract or as is required by Law or any Regulatory Body;
- (d) 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, damage,

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

- (e) take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
- (f) obtain prior written consent from HSE in order to transfer the Personal Data to any third party for the provision of the Services;
- (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of HSE;
- (h) ensure that all staff and agents 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 Clause E1;
- (i) ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by HSE.

not disclose Personnel Data to any third parties in any circumstances other than with the written consent of HSE or in compliance with a legal obligation imposed upon HSE.

E1.4 The Contractor shall notify HSE (within five Working Days) if it receives:

- (a) a request from a Data Subject to have access to that person's Personal Data; or
- (b) a complaint or request relating to HSE's obligations under the DPA.

E1.5 The provision of this Clause E1 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

## **E2 Official Secrets Acts 1911, 1989, Section 182 of the Finance Act 1989**

E2.1 The Contractor undertakes to abide by, and ensure that its Staff abide by the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

E2.2 In the event that the Contractor and its Staff fail to comply with this Condition, HSE reserves the right to terminate the Contract by giving notice in writing to the Contractor.

E2.3 The provisions of Condition E2.1 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

## **E3 Confidentiality**

E3.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party:

- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly during the term or for seven years after the term; and
- (b) shall not disclose any Confidential Information belonging to the other Party to any other person 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.

E3.2 Notwithstanding the provisions of clause E3.1 above, HSE may disclose the Confidential Information of the Contractor:

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- (a) on a confidential basis to any Central Government Body for any proper purpose of HSE or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that HSE (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause E 3.2(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on HSE under this Clause E3.

- E3.3 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from HSE under or in connection with the Contract:
- (a) is given only to such of the Staff and professional advisors or consultants 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 the performance of the Contract;
  - (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants' otherwise than for the purposes of the Contract.
- E3.4 Where it is considered necessary in the opinion of HSE, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.
- E3.5 The Contractor shall not use any Confidential Information received otherwise than for the purposes of the Contract.
- E3.6 The provisions of Conditions E3.1 to E3.5 shall not apply to any Confidential Information received by one Party from the other:
- (a) which is or becomes public knowledge (otherwise than by breach of this Condition);
  - (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  - (d) is independently developed without access to the Confidential Information; or
  - (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations pursuant to Clause E5 (Freedom of Information).
- E3.7 Nothing in this Condition shall prevent HSE:
- (a) disclosing any Confidential Information for the purpose of:

- (i) the examination and certification of HSE's accounts; or
- (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which HSE has used its resources; or
- (b) disclosing any Confidential Information obtained from the Contractor:
  - (i) to any other department, office or agency of the Crown; or
  - (ii) to any person engaged in providing any services to HSE for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under Condition E3.7 HSE 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.

- E3.8 Nothing in this Condition 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 a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- E3.9 In the event that the Contractor fails to comply with this Condition E3, HSE reserves the right to terminate the Contract by notice in writing with immediate effect.
- E3.10 The provisions under this Condition E3 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

#### **E4 Publication of the Contract**

- E4.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. HSE shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- E4.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for HSE to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- E4.3 HSE may consult with the Contractor to inform its decision regarding any redactions but HSE shall have the final decision in its absolute discretion.
- E4.4 The Contractor shall assist and co-operate with HSE to enable HSE to publish this Contract.

#### **E5 Freedom of Information**

- E5.1 The Contractor acknowledges that HSE is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate HSE's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses E5.2-6 (inclusive) below.
- E5.2 Where HSE receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the HSE does not hold itself HSE shall refer such Request for Information to the Contractor as soon as practicable and in any event within 5 Working Days of receiving a Request for Information and the Contractor shall:
  - (a) provide HSE with a copy of all such Information in the form that HSE requires as soon as practicable and in any event within 10 Working Days (or such other period as HSE acting reasonably may specify) of HSE's request; and

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- (b) provide all necessary assistance as reasonably requested by HSE in connection with any such Information, to enable HSE 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.

E5.3 Following notification under Clause E5.2, and up until such time as the Contractor has provided HSE with all the Information specified in Clause E5.2(a), the Contractor may make representations to HSE as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that HSE shall be responsible for determining at its absolute discretion:

- (a) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- (b) whether Information is to be disclosed in response to a Request for Information, and

in no event shall the Contractor respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by HSE.

E5.4 In the event of a request from HSE pursuant to Clause E5.2, the Contractor shall as soon as practicable, and in any event within 5 Working Days of receipt of such request, inform HSE of the Contractor's estimated costs of complying with the request to the extent these would be recoverable if incurred by HSE under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with HSE's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") HSE shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the 10 Working Days period for compliance shall be extended by such number of additional days for compliance as HSE is entitled to under Section 10 of the FOIA. In such case, HSE shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

E5.5 The Contractor shall ensure that all Information held on behalf of HSE is retained for disclosure for at least six years (from the date it is acquired) and shall permit HSE to inspect such Information as requested from time to time.

E5.6 The Contractor shall transfer to HSE any Request for Information received by the Contractor as soon as practicable and in any event within 2 Working Days of receiving it.

E5.7 The Contractor acknowledges that (notwithstanding the provisions of Clause E4) HSE may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the "Code"), be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Contractor or the Contract:

- (a) in certain circumstances without consulting the Contractor, or
- (b) following consultation with the Contractor and having taken its views into account,

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provided always that where E5.7(a) above applies HSE shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

- E5.8 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that HSE may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

**E6 Publicity, Media and Official Enquiries**

- E6.1 The Contractor shall not make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of HSE.

- E6.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Condition E6.1 by all its servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Condition E6.1 by its sub-contractors.

- E6.3 HSE reserves the right to publish the results of the Services carried out under the Contract with appropriate acknowledgement of the work contributed by the staff of the Contractor.

- E6.4 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

- E6.5 Subject to ensuring that any such publishing complies with the publishing policy which shall be agreed by the Programme Governance Board, the HSE recognises that the Contractor shall have freedom in accordance with normal academic practice to publish results and agrees that the Contractor shall be permitted to present at meetings and to publish the methods and results of the Study provided however that the HSE shall have been furnished with copies of any proposed publication or presentation at least four weeks in advance of the submission of such proposed publication or presentation to a journal editor or other third party. The HSE shall have the power to delay proposed publication or presentation if in its reasonable opinion such delay is necessary to protect its business interests, those of The Hydeploy 2 Consortuim (Cadent Gas Ltd, Northern Gas Networks Ltd, Progressive Energy Ltd, Health & Safety Executive, ITM Power (Trading) Ltd and The University of Keele) or the commercial uses to the HSE of the information. A written reply indicating approval of or delay to, disclosure shall be sent by the HSE within 28 days of receipt of the request providing that the delay to disclosure of the results shall in no case exceed six months from the date of receipt by the HSE.

- E6.6 Where in the opinion of the Parties a proposed publication contains patentable or commercially sensitive subject matter which needs protection then the Party proposing to publish may be requested to refrain from doing so for a maximum of six months in order to allow for application for patent protection in the name and at the cost of the relevant owner of the Resulting IP.

- E6.7 Nothing contained in this Agreement shall prevent the submission of a thesis to examiners in accordance with the normal regulations of any academic Parties subject where appropriate to such examiners being bound by conditions of confidentiality in no less terms than those outlined in Clause E10, nor to the placing of such thesis in the library of the University provided that access to such thesis shall only be available on conditions of confidentiality no less onerous than those contained in Clause E10 hereof.

E6.8 In publishing and publicising the work undertaken within this contract unless a Party requests in writing that its name be withheld, both Parties undertake to use the logos of the HSE and the Hydeploy2 Consortium. In publishing academic journals, both HSE and the Hydeploy2 Consortium will be acknowledged in a suitable way, using wording agreed by the Governance Board.

## **E7 Security**

E7.1 Where the services are to be carried out on HSE premises the Contractor shall comply with the security requirements of HSE and the premises manager, and shall ensure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

## **E8 Intellectual Property Rights**

E8.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):

(a) furnished to or made available to the Contractor by or on behalf of the HSE shall remain the property of the HSE; and

(b) prepared by or for the Contractor on behalf of the HSE for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the HSE;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

E8.2 The Contractor hereby assigns to the HSE, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E8.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

E8.3 The Contractor shall to the fullest extent that it is possible to do so procure a waiver of any moral rights subsisting in the IP Materials produced by the Contract or the performance of the Contract. However in instances where it is unable to procure such a waiver, the Contractor hereby agrees that HSE shall be able to use any such IP Materials in an unfettered and unencumbered manner and agrees that it shall not enforce such moral rights against HSE unless it is able to demonstrate that HSE's use of said IP Materials undermines the integrity of the work. The Contractor confirms that such moral rights shall not be used in any manner that conflicts with this Contract or the intention of the Contract or in any way that will embarrass or bring HSE or its partners into disrepute. In all instances the Contractor is required to seek HSE's written agreement prior to invoking their moral rights to use the IP Materials.

E8.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the HSE a non-exclusive licence or, if itself a licensee of those rights, shall grant to the HSE an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the HSE to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor, any other third party supplying services to the HSE or cooperating with HSE to deliver services.

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- E8.5 The Contractor shall not knowingly infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the HSE and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the HSE or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the HSE; or
  - (b) the use of data supplied by the HSE which is not required to be verified by the Contractor under any provision of the Contract.
- E8.6 The HSE shall notify the Contractor in writing of any claim or demand brought against the HSE for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- (a) shall consult the HSE on all substantive issues which arise during the conduct of such litigation and negotiations;
  - (b) shall take due and proper account of the interests of the HSE; and
  - (c) shall not settle or compromise any claim without the HSE's prior written consent (not to be unreasonably withheld or delayed).
- E8.8 The HSE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the HSE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the HSE for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the HSE in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause E8.5(a) or E8.5(b).
- E8.9 The HSE 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 the HSE or the Contractor in connection with the performance of its obligations under the Contract.
- E8.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the HSE and, at its own expense and subject to the consent of the HSE (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
  - (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the HSE,

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and in the event that the Contractor is unable to comply with clauses E8.7(a) or E8.7(b) within [20] Working Days of receipt of the Contractor's notification the HSE may terminate the Contract with immediate effect by notice in writing.

E8.11 the Contractor grants to the HSE a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the HSE reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided to the extent required for using and exploiting the results.

E8.12 Clause E8.11 shall survive the completion or early termination of this Agreement and shall continue in force indefinitely.

E8.13 Should Cadent and/or NGN enter into a process of conducting UK competitive procurement tenders (including holding supplier days prior to any formal procurement process) for the development, manufacture and supply to Cadent and/or NGN of any product, report, materials incorporating the Results in whole or in part, to the extent that the Results (or relevant part of the Results) are wholly dependent upon the Contractor's Background IP, then the Contractor grants to Cadent and/or NGN (as applicable) a royalty free, perpetual and irrevocable, non-exclusive licence to be used in the UK (including the right to sub-licence to third parties and Group Companies of National Grid) to use its Background IP for the purpose of conducting such competitive procurement tenders and only to the extent required to enable use of the Results in such tenders.

E8.14 Third parties, including other Network Licensees shall have the automatic right to request a limited licence of the Contractor's Background IP where the Relevant Results can only be used in accordance with the terms of this Agreement with The Contractor's Background IP. The Network Licensees requesting a licence of such Background IP may be required by The Contractor owning such Background IP to enter into a confidentiality agreement or a licence agreement upon agreed terms prior to being given access to such Background IP.

**E9 Retention of Documentation and Right of Audit**

E9.1 The Contractor shall keep secure and maintain until seven years after the final payment of all sums due under the Contract, or such shorter period as may be agreed between HSE and the Contractor, full and accurate records of the Services, all expenditure reimbursed by the Contractor and all payments made by HSE.

E9.2 The Contractor shall:

- (a) Throughout the Term and for twelve (12) months after its termination or expiry The Contractor should be able to produce such records retained pursuant to Condition E9.1 as HSE may reasonably require;
- (b) afford such facilities as HSE may reasonably require for its representatives to inspect the records retained pursuant to Condition E9.2 (a) Provided that the Contractor takes all reasonable steps to prevent this exception from applying, the right granted by this Condition E9.2 (b) shall not apply to the extent that the confidentiality of information relating to the Contractor's other clients would be jeopardised by such inspection; and
- (c) provide such explanations of records produced pursuant to Condition E9.2 (a) or inspected pursuant to Condition E9.2 (b) as HSE may reasonably require.

E9.3 For the purpose of:

- (a) the examination and certification of HSE's accounts; or
- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which HSE has used its resources,

the Comptroller and Auditor General may examine such records 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 he considers necessary. This Condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

## **E10 Security of Confidential Information**

E10.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract, the Contractor undertakes to maintain appropriate security systems and procedures approved by HSE.

E10.2 The Contractor will immediately notify HSE of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with HSE in any investigation that HSE considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

## **E11 Baseline Personnel Security Standard**

E11.1 It shall be the Contractor's responsibility to ensure that all personnel engaged in the performance of this Contract shall have undergone pre-employment checks covering identity, the last three years employment history, nationality and immigration status and criminal record for unspent convictions. Such checks shall meet the requirements of HMG Baseline Personnel Security Standard.

E11.2 The Contractor shall retain accurate and complete records of all checks undertaken in accordance with the Data Protection Act 1998 for the UK and any equivalent legislation or regulation as applicable to the country of origin of The Contractor. These records shall be held in such a manner that they can be readily audited. All such records shall be held until twelve (12) months after termination of this Agreement. The Contractor agrees to permit Cadent or its representatives to examine or audit these records upon receipt of reasonable notice from Cadent (which shall be no less than forty eight (48) hours). Cadent may also perform audits of The Contractor's background check program. The Parties shall bear their own costs unless such audit reveals a material breach of this Agreement when they shall be borne by The Contractor.

E11.3 HSE reserves the right, at its sole discretion, to carry out audits and spot checks at any time during the Contract Period to satisfy itself that the checks have been carried out.

**E12 GDPR Data Protection**

E12.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, HSE is the Controller and the Contractor is the Processor unless otherwise specified in Schedule C. The only processing that the Processor is authorised to do is listed in Schedule A by the Controller and may not be determined by the Processor.

E12.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

E12.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E12.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- a) process that Personal Data only in accordance with Schedule A, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

c) ensure that :

- (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule A);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
  - (iii) are aware of and comply with the Processor's duties under this clause;
  - (iv) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

- (v) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
- (vi) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

E12.5 Subject to clause E12.6, the Processor shall notify the Controller immediately if it:

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

E12.6 The Processor's obligation to notify under clause E12.5 shall include the provision of further information to the Controller in phases, as details become available.

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E12.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause E12.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- a) the Controller with full details and copies of the complaint, communication or request;
- b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c) the Controller, at its request with any Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Controller following any Data Loss Event;
- e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

E12.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- a) the Controller determines that the processing is not occasional;
- b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

E12.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

E12.10 Each Party shall designate its own data protection office if required by the Data Protection Legislation.

E12.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- a) notify the Controller in writing of the intended Sub-processor and processing;
- b) obtain the written consent of the Controller;
- c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause E12 such that they apply to the Sub-processor; and
- d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonable require.

- E12.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- E12.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- E12.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- E12.15 Where the Parties include two or more Joint Controllers as identified in Schedule C in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule B in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

## **F CONTROL OF THE CONTRACT**

### **F1 Assignment and Sub-contracting**

- F1.1 Except where F1.4 and 5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without the prior written approval of HSE. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- F1.3 Where HSE has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of HSE, be sent by the Contractor to HSE as soon as reasonably practicable.
- F1.4 Notwithstanding Clause F1.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which HSE incurs under Clause C2.3). Any assignment under this clause F1.4 shall be subject to:
- (a) reduction of any sums in respect of which HSE exercises its right of recovery under Clause C6 (Recovery of Sums Due);
  - (b) all related rights of HSE under the contract in relation to the recovery of sums due but unpaid; and
  - (c) HSE receiving notification under both Clauses F1.5 and F1.6.
- F1.5 In the event that the Contractor assigns the right to receive the Contract price under Clause F1.4, the Contractor or the Assignee shall notify HSE in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Contractor shall ensure that the Assignee notifies HSE of the Assignee's contact information and bank account details to which HSE shall make payment.
- F1.7 The provisions of Clauses C2 and 3 (Invoicing and Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of HSE.
- F1.8 Subject to Clause F1.10, HSE may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or

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- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by HSE; or
  - (c) any private sector body which substantially performs the functions of HSE, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F1.9 Any change in the legal status of HSE such that it ceases to be a Contracting Authority shall not, subject to Clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to HSE.
- F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause F1.8 to a body which is not a Contracting Authority or if there is a change in the legal status of HSE such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):
- (a) the rights of termination of HSE in Clauses H1 (Termination on change of control and insolvency) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- F1.11 HSE may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances HSE shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

**F2 Waiver**

- F2.1 The failure of either party to enforce any provision of the Contract at any time shall not affect any future right to require complete performance by the other party, nor shall the waiver of any individual breach of any provision be taken or held to be a waiver of any subsequent breach of that or any other provision.

**F3 Variation by HSE**

- F3.1 HSE reserves the right to alter the requirements of the Contract, as detailed in the specification, should this at any time become necessary. In any alteration of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between HSE and the Contractor in writing. Failing agreement the matter shall be determined by dispute resolution in accordance with Condition I.1 or by arbitration in accordance with the provisions of Condition I.2.

**F4 Variation by the Contractor**

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F4.1 The Contractor may request to alter the requirements of the contract, as detailed in the specification, provided that reasonable prior written notice is given and, should an adjustment be required, it is accompanied by detailed proposals.

**F5 Severability**

F5.1 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 of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

**F6 Remedies Cumulative**

F6.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**G LIABILITIES**

**G1 Indemnity and Insurance**

G1.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or
- (b) fraud; or
- (c) fraudulent misrepresentation; or
- (d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- (e) any breach of its obligations under the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) and the Data Protection Act (DPA) 2018.

G1.2 Subject to Clause G1.3, the Contractor shall indemnify HSE and keep HSE indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of HSE or by breach by HSE of its obligations under the Contract.

G1.4 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

G1.5 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance

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of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

- G1.6 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- G1.7 The Contractor shall give HSE, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract HSE may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.9 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause G1.2.

**G2 Professional Indemnity**

- G2.1 The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants involved in the provision of the Services hold and maintain appropriate cover. Such Insurance to be held by the Contractor or by any agent, sub-contractor or consultant involved in the provision of Services with a limit of indemnity of not less than £1,000,000 for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of this Contract.

**G3 Warranties and Representations**

- G3.1 The Contractor warrants and represents that:
- (a) it has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
  - (b) it shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;
  - (c) all of its obligations pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
  - (d) in entering the Contract it has not committed any Fraud;
  - (e) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the HSE prior to execution of the Contract;
  - (f) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a

material adverse effect on its ability to perform its obligations under the Contract;

- (g) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (h) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (i) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (j) in the three 3 years prior to the date of the Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

## **H DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on Insolvency and Change of Control**

H1.1 The HSE may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

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- (g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.
- H1.2 The HSE may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:
- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors; or
  - (b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy; or
  - (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
  - (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
  - (e) a creditor or encumbrancer 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 Contractor’s assets and such attachment or process is not discharged within 14 days; or
  - (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
  - (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- H1.3 The Contractor shall notify the HSE immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“**change of control**”). The HSE may terminate the Contract by notice in writing with immediate effect within six months of:
- (a) being notified that a change of control has occurred; or
  - (b) where no notification has been made, the date that the HSE becomes aware of the change of control, but shall not be permitted to terminate where an Approval was granted prior to the change of control.
- H2 Termination on Default**
- H2.1 Where the Services, or any portion of the Services, are not carried out within the time or times specified within the Contract, HSE shall have the option, without prejudice to any of its other rights or remedies, to terminate the Contract by written notice having immediate effect.
- H2.2 Where the Services, or any portion of the Services, are not carried out satisfactorily HSE shall have the option, without prejudice to any of its other rights or remedies, to:
- (a) require the Contractor, at his own expense, to re-perform the services to HSE’s reasonable satisfaction;
  - (b) arrange for the Services to be performed by alternative means;
  - (c) terminate the Contract by written notice having immediate effect;

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- (d) require the Contractor, notwithstanding such termination, to co-operate in the transfer of the Services to which the termination relates to any alternative organisation under Condition H2.2 (b) of these Conditions in accordance with arrangements notified to the Contractor by HSE.
- H2.3 Where HSE obtains all or any of the Services by alternative means they shall be able to recover from the Contractor the amount by which the aggregate of the cost of obtaining Services in this way exceeds the amount which would have been payable to the Contractor in respect of all the Services replaced if they had been carried out in accordance with the Contract.
- H2.4 Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the HSE to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the HSE), until the HSE has established the final cost of making the other arrangements envisaged under this clause.
- H2.5 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse HSE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- H2.6 If HSE fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify HSE in writing of such failure to pay. If HSE fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to HSE exercising its rights under Clauses C6 (Recovery of Sums Due).

**H3 Break**

- H3.1 In addition to its rights of termination under Condition H1, HSE shall be entitled to terminate the Contract by giving to the Contractor not less than thirty days' notice in writing to that effect. Upon expiry of the notice the Contract shall be terminated without prejudice to the rights of the parties accrued to the date of termination.
- H3.2 Upon such termination the Contractor shall have the right to claim from HSE reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Services, including any commitments, liabilities or expenditure which are reasonably incurred, and would represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Such costs shall be agreed in writing between HSE and the Contractor prior to any commitment by HSE to reimburse the Contractor. For the avoidance of doubt HSE shall not indemnify the Contractor against loss of profit or any indirect or consequential loss. HSE shall not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total contract price.
- H3.3 Where the Contract is terminated under Condition H3.1 HSE may, during the notice period:
- (a) require the Contractor, where the Services have not been commenced, to refrain from commencing such Services or where the Services have been commenced, to cease work immediately;
- (b) require the Contractor to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid at the agreed contract price or, where no agreement exists, at a fair and reasonable price.

**Recovery upon Termination**

- H4.1 On the termination of the Contract for any reason, the Contractor shall:
- (a) immediately return to the HSE all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;
  - (b) immediately deliver to the HSE all Property (including materials, documents, information and access keys) provided to the Contractor under clause B5. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - (c) assist and co-operate with the HSE to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress. The transfer shall be arranged so as to reduce to a minimum any interruption in the Services.
  - (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the HSE for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the HSE or the Replacement Contractor to conduct due diligence.
- H4.2 If the Contractor fails to comply with clause H4.1 (a) and (b), the HSE may recover possession thereof and the Contractor grants a licence to the HSE or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- H4.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H4(c) and (d) free of charge. Otherwise, the HSE shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

**H5 Force Majeure**

- H5.1 Neither HSE nor the Contractor, shall be liable to the other by reason of any failure or delay in performing its obligation under the Contract which is due to Force Majeure, where there is no practical means available to the party concerned to avoid such failure or delay.
- H5.2 If the performance by the Contractor of any of its obligations under this Agreement,(except a payment obligation) is delayed or prevented by circumstances beyond its reasonable control (a "Force Majeure Event"), the Contractor shall not be in breach of this Agreement because of that delay in performance. However, if the delay in performance is more than three (3) months, the HSE may terminate the Contract immediately.
- H5.3 For the purposes of this Condition, "Force Majeure" means any event or occurrence which is outside the control of the party concerned and which is not attributable to any act or failure to take preventative action by the party concerned, but shall not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.
- H5.4 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with its obligations to the Contractor by Force Majeure.
- H5.5 Where Force Majeure occurs, the party concerned shall take all reasonable steps to minimise the failure or delay.

## **I DISPUTES AND RESOLUTION**

### **I1 Dispute Resolution**

- I1.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with the Contract.
- I1.2 If the dispute cannot be resolved by the Parties pursuant to Condition I1.1 the dispute may, by agreement between the Parties, be referred to mediation.
- I1.3 The performance of the services shall not be suspended, cease or be delayed by the reference of a dispute to mediation or adjudication and the Contractor shall fully comply with the requirements of the Contract at all times.
- I1.4 The Parties shall endeavour to choose by agreement a neutral advisor or mediator ("the Mediator") or if they are unable to agree upon a Mediator within 14 days after a request by one party to the other, or if the Mediator is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that the Mediator is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.
- I1.5 The Parties shall meet the Mediator within 14 days of their appointment to agree procedures concerning the mediation negotiations and exchange of relevant information.
- I1.6 Unless otherwise agreed, all negotiations connected with the dispute and any settlement shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- I1.7 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced in writing and be binding on the parties once it is signed by their duly authorised representatives.
- I1.8 If the parties fail to reach agreement on the resolution of the dispute, either party may request the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.
- I1.9 If the parties fail to reach agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference may be referred to the courts.

### **I2 Arbitration**

- I2.1 Any dispute as to the interpretation or application of the Contract other than a matter as to which the decision of HSE shall be final and conclusive and except as may be otherwise provided in the Contract shall be referred to the arbitration of two persons, one to be appointed by HSE and one by the Contractor, or their Umpire, in accordance with the provisions of the Arbitration Act 1950, 1975, 1979 and 1996 or any statutory modification or re-enactment thereof.
- I2.2 Any costs incurred as a result of enforcing Condition I2.1 above shall be decided at the sole discretion of the agreed arbitrator. Such costs shall be in full and final settlement of all disputes, howsoever arising, whether current or in the future, between HSE and the Contractor.
- I2.3 Where it is considered appropriate, subject to the agreement of both parties, alternative methods of dispute resolution shall be considered including adjudication and mediation.

**I3 Governing Law**

- I3.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.