

# **BEIS DPF31 - BEIS STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SERVICES**

(including Hire, Lease and Facilities Management)

<b><u>Clauses</u></b>	<b><u>Index</u></b>
1	<b>Definitions and Interpretation</b>
2	<b>Acts by the Authority</b>
3	<b>Service of Notices and Communications</b>
4	<b>Assignment and Sub-contracting</b>
5	<b>Entire Agreement</b>
6	<b>Waiver</b>
7	<b>Severability</b>
8	<b>Confidentiality</b>
9	<b>Freedom of Information</b>
10	<b>Amendments and Variations</b>
11	<b>Invoices and Payment</b>
12	<b>Accounts</b>
13	<b>Recovery of Sums Due</b>
14	<b>Value Added Tax</b>
15	<b>Provision of Services</b>
16	<b>Progress Report</b>
17	<b>Contractor's Personnel</b>
18	<b>Indemnities and Insurance</b>
19	<b>Termination for Insolvency or Change of Control</b>
20	<b>Termination of Breach of Contract</b>
21	<b>Cancellation</b>
22	<b>Dispute Resolution</b>
23	<b>Bribery and corruption</b>
24	<b>Official Secrets</b>
25	<b>Special Provisions</b>
26	<b>Conflict of Interest</b>
27	<b>Intellectual Property Rights</b>
28	<b>Rights of Third Parties</b>
29	<b>Government Property</b>
30	<b>Data Protection</b>
31	<b>Payment of taxes: income tax and NICs</b>
32	<b>Payment of taxes: Occasions of Tax Non-compliance</b>
33	<b>Equality and non-discrimination</b>
34	<b>Welsh Language Act</b>
35	<b>Sustainable Procurement</b>
36	<b>Other Legislation</b>
37	<b>Contractor Status</b>
38	<b>Transfer of Services</b>
39	<b>Law and Jurisdiction</b>
40	<b>Transparency</b>
41	<b>Monitoring and Management Information</b>
42	<b>Information confidential to the Contractor</b>

# **BEIS STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SERVICES**

(including Hire, Lease and Facilities Management)

## **1. Definitions and Interpretation**

(1) In these terms and conditions of contract for services (“Conditions”):

“Authority” means the Secretary of State for Business, Energy and Industrial Strategy, acting as part of the Crown;

“Authority’s Premises” means land or buildings owned or occupied by the Authority;

“Confidential Information”:

- a) means all information obtained by the Contractor from the Authority or any other department or office of Her Majesty's Government relating to and connected with the Contract and the Services; but
- b) does not include the Contract itself and the provisions of the Contract where, or to the extent that, the Authority publishes them by virtue of Condition 40;

the “Contract” means the agreement concluded between the Authority and the Contractor for the supply of Services, including without limitation these Conditions (to the extent that they are not expressly excluded or modified), all specifications, plans, drawings and other documents which are incorporated into the agreement;

the “Contractor” means the person who agrees to supply the Services and includes any person to whom all or part of the Contractor’s obligations are assigned pursuant to Condition 4;

“the Charges” means the price agreed in respect of the Services, excluding Value Added Tax;

“Government Property” means anything issued or otherwise furnished in connection with the Contract by or on behalf of the Authority, including but not limited to documents, papers, data issued in electronic form and other materials;

“Intellectual Property Rights” means patents, trade marks, service marks, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, trade or business names and other similar rights or obligations, whether registrable or not, in any country, including but not limited to, the United Kingdom;

“Purchase Order” means the document so described by the Authority to purchase the Services which makes reference to the Conditions;

the “Services” means the services to be supplied under the Contract.

- (2) The interpretation and construction of the Contract shall be subject to the following provisions:
- (a) a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
  - (b) the headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract;
  - (c) references to “person”, where the context allows, includes a corporation or an unincorporated association.

## **2. Acts by the Authority**

Any decision, act or thing which the Authority is required or authorised to take or do under the Contract may be taken or done by any person authorised, either expressly or impliedly, by the Authority to take or do that decision, act or thing.

## **3. Service of Notices and Communications**

Any notice or other communication that either party gives under the Contract shall be made in writing and given either by hand, first class recorded postal delivery or facsimile transmission. Notice given by hand shall be effective immediately, notice given by recorded postal delivery shall be effective two working days after the date of posting, notice given by facsimile transmission shall be effective the working day after receipt by the notifying party of a transmission slip showing that the transmission has succeeded.

## **4. Assignment and Sub-contracting**

- (1) The Contractor shall not give, bargain, sell, assign, sub-contract or otherwise dispose of the Contract or any part thereof without the previous agreement in writing of the Authority.
- (2) The Contractor shall not use the services of self-employed individuals in connection with the Contract without the previous agreement in writing of the Authority.
- (3) If the Contractor uses a sub-contractor for the purpose of performing the Services or any part of it, the Contractor shall include in the relevant contract a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a correct invoice from the sub-contractor.
- (4) The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.
- (5) The Authority shall be entitled to assign any or all of its rights under the Contract to any contracting authority as defined in Regulation 2(1) of the Public Services Contracts Regulations 2006, provided that such assignment shall not materially increase the burden of the Contractor’s obligations under the Contract.

## **5. Entire Agreement**

The Contract constitutes the entire agreement and understanding between the parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Contract provided that neither party excludes liability for fraudulent misrepresentations upon which the other party has relied.

## **6. Waiver**

- (1) The failure by either party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- (2) No waiver shall be effective unless it is communicated to the other party in writing.
- (3) A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

## **7. Severability**

If any Condition, clause or provision of the Contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court or tribunal in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected. If the court finds invalid a provision 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.

## **8. Confidentiality**

- (1) The Contractor agrees not to disclose any Confidential Information to any third party without the prior written consent of the Authority. To the extent that it is necessary for the Contractor to disclose Confidential Information to its staff, agents and sub-contractors, the Contractor shall ensure that such staff, agents and sub-contractors are subject to the same obligations as the Contractor in respect of all Confidential Information.
- (2) Condition 8(1) shall not apply to information which:
  - (a) is or becomes public knowledge (otherwise than by breach of these Conditions or a breach of an obligation of confidentiality);
  - (b) is in the possession of the Contractor, without restriction as to its disclosure, before receiving it from the Authority or any other department or office of Her Majesty's Government;
  - (c) is required by law to be disclosed;
  - (d) was independently developed by the Contractor without access to the Confidential Information.
- (3) The obligations contained in this Condition shall continue to apply after the expiry or termination of the Contract.
- (4) The Contractor shall not handle or examine any document or thing bearing a Government security classification of "Confidential", "Secret" or "Top Secret" other than

in a Government establishment and the Contractor shall not remove any such document or thing from such Government establishment without the prior written consent of the Authority.

(5) The Contractor shall not communicate with representatives of the general or technical press, radio, television or other communications media, with regard to the Contract, unless previously agreed in writing with the Authority.

(6) Except with the prior consent in writing of the Authority, the Contractor shall not make use of the Contract or any Confidential Information otherwise than for the purposes of carrying out the Services.

### **9 Freedom of Information**

(1) The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 (“FOIA”) and the Environmental Information Regulations SI 2004 No. 3391 (“EIR”) and shall assist and cooperate with the Authority, at the Contractor’s expense, to enable the Authority to comply with these information disclosure requirements.

(2) In this Condition:-

“Information” has the meaning ascribed to it in section 84 of the FOIA;

“Request for Information” has the meaning ascribed to it in section 8 of the FOIA, or any apparent request for information under the FOIA or EIR.

(3) The Contractor shall (and shall procure that its subcontractors shall):-

(a) Transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within two working days;

(b) Provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five working days (or such other period as the Authority may specify) of the Authority requesting that Information;

(c) Provide all necessary assistance as reasonably requested by the Authority to enable it to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.

(4) The Authority shall be responsible for determining, at its absolute discretion, whether any Information:-

(a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;

(b) is to be disclosed in response to a Request for Information.

In no event shall the Contractor respond directly to a Request of Information unless expressly authorised to do so in writing by the Authority.

(5) The Contractor acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the discharge of

public authorities' functions under Part 1 of the FOIA (issued under section 45 of the FOIA in November 2004), be obliged under the FOIA or the EIR to disclose Information unless an exemption applies. The Authority may at its discretion consult the Contractor with regard to whether the FOIA applies to the Information and whether an exemption applies.

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

(7) The Contractor acknowledges that any lists or schedules provided by it outlining information it deems confidential or commercially sensitive are of indicative value only and that the Authority may nevertheless be obliged to disclose information which the Contractor considers confidential in accordance with Conditions 9(4) and (5).

### **10. Amendments and Variations**

Subject to Condition 18(7) no amendment or variation to the terms of the Contract shall be valid unless previously agreed in writing between the Authority and the Contractor.

### **11. Invoices and Payment**

(1) The Contractor shall submit invoices at times or intervals agreed by the Authority in the Contract or otherwise. The Contractor shall ensure that any invoice it submits sets out the Authority's Purchase Order or contract number, the Charges and, where not all of the Services have been completed, the relevant part of the Charges with an appropriate breakdown of time worked, the part of the Services (if all the Services have not been completed) and period to which the invoice relates, and its confirmation that the Services (or relevant part of the Services referred to on the invoice) have been fully performed.

(2) In consideration of the provision of the Services by the Contractor, the Authority shall pay the Charges after receiving a correctly submitted invoice as set out in Condition 11(1). Such payment shall normally be made within 30 days of receipt of the correctly submitted invoice.

(3) The Contractor shall not be entitled to charge for the provision of any services that are not part of the Services agreed within the Contract, unless the Contract has been properly varied in advance in accordance with Condition 10.

(4) The Authority may reduce payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.

(5) If the Contractor believes that payment for a correctly submitted invoice is overdue, he should, in the first instance, speak to the named contact on the face of the Contract. In the event that the problem is not resolved to his satisfaction, he should write to the Head of Procurement at the Department for Business, Energy and Industrial Strategy setting out his case. The Head of Procurement shall ensure that the complaint is

dealt with by an official who is independent of the main contact and that the Contractor is not treated adversely in future for having made a complaint.

(6) For the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last day of a period of 30 days commencing on the day when the Authority received the invoice, or, if the Contractor had not completed the Services (or the part of the Services to which the invoice relates) before submitting the invoice, the last day of a period of 30 days commencing on the day when the Contractor completed the Services, (or the part of the Services to which the invoice relates).

## **12. Accounts**

(1) The Contractor shall keep full and proper accounts, records and vouchers relating to all expenditure reimbursed by the Authority and all payments made by the Authority in respect of the Services.

(2) The Contractor shall permit the Authority acting by its officers, servants and agents or independent auditor on request and at all reasonable times to examine all accounts, records and vouchers at the offices of the Contractor or at such other places as the Authority shall direct, and to take copies of such accounts, records and vouchers and the Contractor shall provide the Authority or its independent auditor with such explanations relating to that expenditure as the Authority may request.

(3) The Contractor shall ensure that the said accounts, records and vouchers are available for a period of six years after termination or expiry of the Contract.

## **13. Recovery of Sums Due**

(1) Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any amount then due, or which at any time thereafter may become due, to the Contractor under this Contract or any other agreement or arrangement with the Authority or with any other department or office of Her Majesty's Government.

(2) Any over-payment by the Authority to the Contractor whether in respect of the Charges or Value Added Tax shall be a sum of money recoverable from the Contractor pursuant to Condition 13(1) above or otherwise.

## **14. Value Added Tax**

(1) The Authority shall pay to the Contractor, in addition to the Charges, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Contract.

(2) Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Value Added Tax Act 1994.

(3) The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority relating to the amount of Value Added Tax chargeable on the Services.

### **15. Provision of Services**

(1) The Contractor shall provide the Services in accordance with and as specified in the Contract to the satisfaction of the Authority whose decision shall be final and conclusive. The Authority shall have the power to inspect and examine the performance of the Services at the Authority's Premises at any reasonable time or, provided that the Authority gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

(2) If the Authority informs the Contractor that the Authority considers any part of the Services to be inadequate or in any way differing from the Contract, and this is other than as a result of default or negligence on the part of the Authority, the Contractor shall at his own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the Authority.

(3) The Authority may at any time demand that the Contractor suspend the provision of the Services. If the Authority exercises such right to suspend the provision of the Services or any part of them, or if the Contractor is delayed in proceeding with the provision of the Services by the Authority (otherwise than as a consequence of a breach of the Contract, or a breach of duty or fault or negligence on the part of the Contractor), the Authority shall be responsible for loss incurred by the Contractor as a result of such suspension or delay. Subject to the Contractor taking reasonable steps to mitigate its loss, the Contractor will be able to recover from the Authority under this Condition only for those losses which:

(a) were reasonably foreseeable by the Authority as arising as a direct result of the suspension or delay; and

(b) relate to the cost of any commitments entered into by the Contractor which cannot be met as a result of the suspension or delay and in respect of which the Contractor cannot obtain a refund (where the Contractor has already paid in relation to the commitment) or is obliged to pay (where the Contractor has not already paid in relation to the commitment).

The provisions of this Condition shall not apply where the reason for the suspension of the Services arises from circumstances beyond the control of the Authority.

(4) If the performance of the Contract by the Contractor is delayed by reason of any act on the part of the Authority or by industrial dispute (other than by an industrial dispute occurring within the Contractor's or its sub-contractor's organisation) or any other cause which the Contractor could not have prevented then the Contractor shall be allowed a reasonable extension of time for completion. For the purposes of this Condition, the Contractor shall be deemed to have been able to prevent causes of delay that are within the reasonable control of the Contractor's staff, agents and sub-contractors.

(5) Timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services within the time agreed or on a specified date.

(6) The Contractor warrants that it shall provide the Services with all due skill, care and diligence, and in accordance with good industry practice and legal requirements.

(7) Without prejudice to the provision of Condition 13(1), the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a direct consequence of the Contractor's delay in the performance of the Contract which the Contractor had failed to remedy after being given reasonable notice by the Authority.

## **16. Progress Report**

(1) Where formal progress reports are required by the Contract, the Contractor shall render such reports at such time and in such form as may be specified by the Authority, or as otherwise agreed between the Contractor and the Authority.

(2) The submission and acceptance of progress reports shall not prejudice any rights of the Authority under the Contract.

## **17. Contractor's Personnel**

(1) The Authority reserves the right to refuse to admit to the Authority's Premises any person employed by the Contractor or its sub-contractors, whose admission would be undesirable in the opinion of the Authority.

(2) If and when requested by the Authority, the Contractor shall provide a list of the names and addresses of all persons who may at any time require admission in connection with the performance of the Services to the Authority's Premises, specifying the role in which each such person is concerned with the Contractor and giving such other particulars as the Authority may require.

(3) If and when requested by the Authority, the Contractor shall procure from each person identified by the request, a signed statement that he understands that the Official Secrets Acts 1911 to 1989 applies to him both during the carrying out and after expiry or termination of the Contract and that he will comply with the provisions of those Acts in so far as they apply to the work he is performing under the Contract.

(4) If and when requested by the Authority the Contractor agrees that it will submit any person employed by the Contractor or its sub contractors to the Authority's security vetting procedure. The Contractor further agrees that any individual who refuses to submit to such vetting procedure or does not attain the clearance it affords will not carry out any work on the Contract which the Authority certifies as suitable only for people who have passed its security vetting procedure.

(5) If the Contractor fails to comply with paragraph (2) (3) or (4) of this Condition and the Authority decides that such failure is prejudicial to its interests, the Authority may immediately terminate the Contract by notice in writing to the Contractor, provided that such termination shall be without prejudice to any accrued rights of, or to any rights that shall accrue thereafter to, the Authority.

## **18. Indemnities and Insurance**

(1) The Contractor shall hold harmless and indemnify the Authority on demand from and against all claims, demands, proceedings, actions, damages, costs (including legal costs), expenses and any other liabilities arising from claims made by the Authority's staff or agents, or by third parties, in respect of any death or personal injury, or loss or destruction of or damage to property, or any other loss, destruction or damage, including but not limited to financial losses which are caused, whether directly or indirectly, by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Contractor, its employees, agents or sub-contractors.

(2) The Contractor shall be liable to the Authority for any loss, damage, destruction, injury or expense, whether direct or indirect, (and including but not limited to loss or destruction of or damage to the Authority's property, which includes data) arising from the Contractor's breach of contract or duty (whether arising in negligence, tort, statute or otherwise).

(3) The Contractor shall effect 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 in respect of the indemnities provided under the Contract, which in any event shall not be less than £1,000,000, and shall at the request of the Authority produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due there under.

(4) Nothing in these Conditions nor in any part of the Contract shall impose any liability on any member of the staff of the Authority or its representatives in their personal capacity.

(5) The Contractor shall indemnify the Authority against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used by or on behalf of the Contractor for the purpose of the Contract, providing that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of the Authority.

(6) The Authority shall indemnify the Contractor against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used at the request of the Authority by the Contractor in the course of providing the Services, providing that any such infringement

or alleged infringement is not knowingly caused by, or contributed to by, any act of the Contractor.

(7) Except in relation to death or personal injury as referred to in Condition 18(1), and subject to Conditions 18(5) and 30(6) the amount of liability under this clause shall be limited to a sum of £4,000,000 or twice the contract value, whichever is the greater, or such other sum as may be agreed in writing between the Head of Procurement on behalf of the Authority and the Contractor.

### **19 Termination for Insolvency or Change of Control**

(1) The Contractor shall notify the Authority in writing immediately upon the occurrence of any of the following events:

- a) where the Contractor is an individual, if a petition is presented for his bankruptcy, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or
- b) where the Contractor is not an individual but is a firm or a number of persons acting together, if any event in Condition 19(1)(a) or (c) occurs in respect of any partner in the firm or any of those persons, or if a petition is presented for the Contractor to be wound up as an unregistered company; or
- c) where the Contractor is a company or limited liability partnership, if the company or limited liability partnership enters administration or passes a resolution to wind up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or
- d) the Contractor undergoes a change of control, where “control” is interpreted in accordance with Section 1124 of the Corporation Tax Act 2010.

(2) After receipt of the notice under paragraph (1) above or earlier discovery by the Authority of the occurrence of any of the events described in that paragraph, the Authority may, by notice in writing to the Contractor, terminate the Contract with immediate effect without compensation to the Contractor and without prejudice to any right or action or remedy which may accrue to the Authority thereafter. The Authority’s right to terminate the Contract under Condition 19(1)(d) will exist until the end of a period of three months starting from receipt of the notice provided by the Contractor pursuant to Condition 19(1), or such other period as is agreed by the parties.

### **20. Termination for Breach of Contract**

If either party commits a material breach of the Contract which is either not capable of remedy, or, if it is capable of remedy, he fails to remedy such breach within 28 days of being notified by the other party in writing to do so, that other party shall be entitled to terminate the Contract with immediate effect by notice in writing to the party that committed the material breach and without prejudice to any other rights or remedies of either party in respect of the breach concerned or any other breach of the Contract.

## **21. Cancellation**

The Authority shall be entitled to terminate the Contract, or to terminate the provision of any part of the Services, by giving to the Contractor not less than 28 days' notice in writing to that effect. Once it has given such notice, the Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

## **22. Dispute Resolution**

- (1) The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- (2) If the parties cannot resolve the dispute pursuant to paragraph (1) of this Condition, the dispute may, by agreement between the parties, be referred to mediation pursuant to paragraph (4) of this Condition.
- (3) The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to paragraph (2) of this Condition.
- (4) If the parties agree to refer the dispute to mediation:
  - (a) in order to determine the person who shall mediate the dispute (the "Mediator") the parties shall by agreement choose a neutral adviser or mediator from one of the dispute resolution providers listed by the Government Procurement Service on its website or in its printed guidance on dispute resolution within 30 days after agreeing to refer the dispute to mediation;
  - (b) the parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from the Government Procurement Service to provide guidance on a suitable procedure;
  - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;
  - (d) if the parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the Authority and the Contractor;
  - (e) failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be

used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.

(5) If the parties do not agree to refer the dispute to mediation, or if the parties fail to reach agreement as to who shall mediate the dispute pursuant to Condition 22(4)(a) or if they fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

### **23. Bribery and corruption**

(1) The Contractor shall not, and shall ensure that its staff, sub-contractors and agents do not:

- a) offer or promise, to any person employed by or on behalf of the Authority any financial or other advantage as an inducement or reward for the improper performance of a function or activity, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority;
- b) agree to receive or accept any financial or other advantage as an inducement or reward for any improper performance of a function or activity in relation to this Contract or any other contract with the Authority; or
- c) enter into the Contract or any other contract with the Authority or any other department or office of Her Majesty's Government in connection with which commission has been paid, or agreed to be paid by him or on his behalf, or to his knowledge, unless, before the Contract is made, particulars of any such commission and the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to any person duly authorised by the Authority to act as its representative for the purpose of this Condition.

Nothing contained in this Condition shall prevent the Contractor paying such commission or bonuses to his own staff in accordance with their agreed contracts of employment.

(2) Any breach of this Condition by the Contractor, or by any person employed or engaged by him or acting on his behalf (whether with or without his knowledge), or any act or omission by the Contractor, or by such other person, in contravention of the Bribery Act 2010 or any other anti-corruption law, in relation to this Contract or any other contract with the Authority, shall entitle the Authority to terminate the Contract with immediate effect by notice in writing and to recover from the Contractor the amount of any loss resulting from such termination and the amount of the value of any such gift, consideration or commission as the Authority shall think fit.

(3) Where the Contract has been terminated under paragraph (2) of this Condition, there shall be deemed to be a failure to commence the provision of the Services, enabling the Authority to terminate the Contract with immediate effect and the Authority will not be obliged to pay the Charges.

- (4) In any dispute, difference or question arising in respect of:
- a) the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under paragraph (2) of this Condition in respect of any loss resulting from such determination of the Contract); or
  - b) the right of the Authority to determine the Contract; or
  - c) the amount or value of any gift, consideration or commission,

the decision of the Authority shall be final and conclusive.

#### **24. Official Secrets**

The Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911 to 1989. The Contractor shall take all reasonable steps by display of notices or by other appropriate means to ensure that all persons employed in connection with the Contract have notice that these statutory provisions apply to them and will continue so to apply after the expiry or earlier termination of the Contract.

#### **25. Special Provisions**

In the case of any conflict or inconsistency between these general Conditions and any specific terms of the Contract, the latter shall prevail.

#### **26. Conflict of Interest**

(1) The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) he shall immediately notify the Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Authority may reasonably require.

(2) Where the Authority is of the opinion that the conflict of interest notified to it under paragraph (1) above is capable of being avoided or removed, the Authority may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

- a) if the Contractor fails to comply with the Authority's requirements in this respect; or
- b) if, in the opinion of the Authority, it is not possible to remove the conflict,

the Authority may terminate the Contract immediately and recover from the Contractor the amount of any loss resulting from such termination.

(3) Notwithstanding Condition 26(2), where the Authority is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Authority may terminate the Contract immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

## **27. Intellectual Property Rights**

(1) All Intellectual Property Rights in any materials provided by the Authority to the Contractor for the purposes of the Contract shall remain the property of the Authority but the Authority hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Contractor to perform its obligations under the Contract.

(2) Subject to pre-existing Intellectual Property Rights, all Intellectual Property Rights in any materials created or developed by the Contractor pursuant to the Contract or arising as a result of the provision of the Services shall vest in the Contractor. If, and to the extent, that any intellectual property rights in such materials vest in the Authority by operation of law, the Authority hereby assigns to the Contractor by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights all its Intellectual Property Rights in such materials (with full title guarantee and free from all third party rights).

(3) The Contractor hereby grants the Authority:

a) a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all Intellectual Property Rights in the materials created or developed pursuant to the Contract and any Intellectual Property Rights arising as a result of the provision of the Services; and

b) a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use: (i) any Intellectual Property Rights vested in or licensed to the Contractor on the date of the Contract; and (ii) any Intellectual Property Rights created during the term of the Contract but which are neither created or developed pursuant to the Contract nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such Intellectual Property Rights, which the Authority reasonably requires in order to exercise its rights and take the benefit of the Contract including the Services provided.

(4) The Contractor shall indemnify, and keep indemnified, the Authority in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or

incurred or paid by the Authority as a result of or in connection with any claim made against the Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or any staff.

## **28. Rights of Third Parties**

It is not intended that the Contract, either expressly or by implication, shall confer any benefit on any person who is not a party to the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

## **29. Government Property**

(1) All Government Property shall remain the property of the Authority and shall be used in the execution of the Contract and for no other purpose whatsoever except with the prior agreement in writing of the Authority.

(2) All Government Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he notifies the Authority to the contrary within 14 days or such other time as is specified in the Contract.

(3) The Contractor undertakes to return any and all Government Property on completion of the Contract or on any earlier request by the Authority.

(4) The Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of the Authority, pay compensation for all loss, destruction or damage occurring to any Government Property caused or sustained by the Contractor, or by his servants, agents or sub-contractors, whether or not arising from his or their performance of the Contract and wherever occurring, provided that if the loss, destruction or damage occurs at the Authority's Premises or any other Government premises, this Condition shall not apply to the extent that the Contractor is able to show that any such loss, destruction or damage was not caused or contributed to by his negligence or default or the neglect or default of his servants, agents, or sub-contractors.

(5) Where the Government Property comprises data issued in electronic form to the Contractor (including personal data as defined in Condition 30(1) below) the Contractor shall not store, copy, disclose or use such electronic data except as necessary for the performance by the Contractor of its obligations under the Contract (including its obligation to back up electronic data as provided in Condition 29(6) below) or as otherwise expressly authorised in writing by the Authority.

(6) The Contractor shall perform secure back ups of all such electronic data in its possession and shall ensure that an up to date back up copy is securely stored at a site other than that where any original copies of such electronic data are being stored.

(7) The Contractor shall, and shall procure that its sub-contractors, agents and personnel, shall observe best practice when handling or in possession of any such electronic data. By way of example if the Contractor removes any such data or

information from a Government establishment, or is sent such data or information by the Authority it shall ensure that the data and any equipment on which it is stored or is otherwise being processed is kept secure at all times. The Contractor shall impress on any of its sub-contractors, agents and personnel who are required to handle or have possession of such electronic data that they must safeguard it all times, and shall not place it in jeopardy for example by leaving it unattended in a vehicle or on public transport or by transmitting or posting it by insecure means.

(8) If at any time the Contractor suspects or has reason to believe that such electronic data has or may become corrupted, lost, destroyed, altered (other than to the extent that the Contractor alters it by lawful processing in accordance with its obligations under this contract) or so degraded as a result of the Contractor's default so as to be unusable then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

(9) The Contractor shall indemnify the Authority against all claims and proceedings, and all costs and expenses incurred in connection therewith arising from the corruption, loss, destruction, alteration (other than by lawful processing permitted by this Contract) or degradation of electronic data which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor or sub-contractors, agents and personnel and hold it harmless against all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Contract which results in such corruption, loss or degradation.

### **30. Data Protection**

(1) In this condition references to "personal data", "data subjects" and "data processor" are to be interpreted as defined in the Data Protection Act 1998 ("the Act"). The Contractor shall comply with all relevant provisions of the Act and do nothing which causes, or may cause, the Authority to be in breach of its obligations under the Act. In particular, to the extent that the Contractor acts as a data processor in respect of any personal data pursuant to the Contract, the Contractor shall only process such personal data as is necessary to enable it to fulfil its obligations under this Contract.

(2) The Contractor warrants that it has appropriate technical and organisational measures in place to protect any personal data it is processing on the Authority's behalf against any unauthorised or unlawful processing and against any accidental loss, destruction or damage and undertakes to maintain such measures during the course of this Contract. The Contractor shall also take all reasonable steps to ensure the reliability of its staff having access to any such personal data.

(3) Upon reasonable notice the Contractor shall allow the Authority access to any relevant premises owned or controlled by it to enable the Authority to inspect its procedures described at Condition 30(2) above and will upon the Authority's request from time to time prepare a report for it on the technical and organisational measures it has in place to protect the personal data it is processing on the Authority's behalf.

(4) The Contractor shall at its own cost, at the Authority's request, assist the Authority to comply with any requests for access to personal data under Section 7 of the Act and in particular shall respond to any such request promptly to enable the Authority to comply with its obligations under the Act. When requested by the Authority the Contractor shall at its own cost promptly provide it with any personal data relating to this Contract.

(5) If the Contractor fails to comply with any provision of this condition, the Authority may terminate the Contract immediately in which event the provisions of Condition 20 shall apply.

(6) The Contractor shall indemnify the Authority against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Authority by any person in respect of the Act or equivalent applicable legislation in any other country which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor or its sub-contractors and hold it harmless against all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Contract which results in the Authority being in breach of its obligations under the Act or equivalent applicable legislation in any other country.

(7) The Contractor warrants that it has submitted, pursuant to Section 18(1) of the Act, a notification to the Information Commissioner and shall keep that notification up to date.

(8) The Contractor shall not transfer any personal data outside the European Economic Area unless authorised in writing to do so by the Authority.

(9) Upon the termination of this Contract for whatever reason the Contractor shall, unless notified otherwise by the Authority or required by law, immediately cease any processing of the personal data on the Authority's behalf and as requested by the Authority destroy or provide the Authority with a copy on suitable media.

(10) The Contractor shall promptly carry out any request from the Authority requiring it to amend, transfer or delete the personal data or any part of the personal data.

(11) Where the Contractor is required to collect any personal data on behalf of the Authority, it shall ensure that it provides the data subjects from whom the personal data are collected with a data protection notice in a form to be agreed with the Authority.

### **31. Payment of taxes: income tax and NICs**

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

- (2) Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under the Contract, the Contractor shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- (3) The Authority may, at any time during the term of the Contract, require the Contractor to provide information to demonstrate that:
  - a) the Contractor has complied with paragraphs (1) and (2) above; or
  - b) the Contractor or its staff are not liable to the relevant taxes.
- (4) A request under paragraph (3) above may specify the information which the Contractor must provide and a reasonable deadline for response.
- (5) The Authority may supply any information which it receives under paragraph (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.
- (6) The Contractor shall ensure that any sub-contractors (including consultants) and agents engaged by the Contractor for the purpose of the Services are engaged on, and comply with, conditions equivalent to those in paragraphs (1) to (5) above and this paragraph (6), and the Contractor shall, on request, provide the Authority with evidence to satisfy the Authority that the Contractor has done so. Those conditions shall provide both the Contractor and the Authority with the right to require the sub-contractor or agent to provide information to them equivalent to paragraph (3), and the Contractor shall obtain that information where requested by the Authority.
- (7) The Authority may terminate the Contract with immediate effect by notice in writing where:
  - a) the Contractor does not comply with any requirement of this Condition 31; or
  - b) the Contractor's sub-contractors or agents do not comply with the conditions imposed on them under paragraph (6) above.
- (8) In particular (but without limitation), the Authority may terminate the Contract under paragraph (7) above:
  - a) in the case of a request under paragraph (3):
    - i. the Contractor fails to provide information in response to the request within the deadline specified; or
    - ii. the Contractor provides information which is inadequate to demonstrate how the Contractor or (where relevant) its sub-contractors

and agents have complied with the conditions set out or referred to in paragraphs (1) to (6);

or

- b) the Authority receives information which demonstrates, to its reasonable satisfaction, that the Contractor, its sub-contractors or agents, are not complying with those conditions.

**32. Payment of taxes: Occasions of Tax Non-compliance**

- (1) This Condition 32 applies where the consideration payable by the Contractor under the Contract equals or exceeds £5,000,000 (five million pounds).
- (2) The Contractor represents and warrants that it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance.
- (3) If, at any point during the term of the Contract, an Occasion of Tax Non-Compliance occurs, the Contractor shall:
  - a) notify the Authority in writing of such fact within 5 working days of its occurrence; and
  - b) promptly provide to the Authority:
    - i) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
    - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- (4) In the event that:
  - a) the warranty given by the Contractor pursuant to paragraph (2) of this Condition is materially untrue;
  - b) the Contractor commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by paragraph (3) of this Condition; or
  - c) the Contractor fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Authority, are acceptable,

the Authority may terminate the Contract with immediate effect by notice in writing.

- (5) In this condition 32, “Occasion of Tax Non-Compliance” means:

- a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
  - (i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
  - (ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime;

and/or

- b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the commencement of the Contract or to a penalty for civil fraud or evasion.

(6) For the purpose of paragraph (5):

- a) “DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
- b) “General Anti-Abuse Rule” means:
  - (i) the legislation in Part 5 of the Finance Act 2013; and
  - (ii) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
- c) “Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others; and
- d) “Relevant Tax Authority” means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

### **33. Equality and non-discrimination**

- (1) The Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and any other anti-discrimination legislation in relation to the provision of the Services or otherwise and shall take all reasonable steps to ensure that its staff, sub-contractors and agents do not do so
- (2) The Contractor shall comply with the Authority's equality scheme as published on the Authority's website, and shall take all reasonable steps to ensure that its staff, sub-contractors and agents do so.
- (3) The Authority may (without prejudice to its other rights under the Contract) terminate the Contract with immediate effect by notice in writing where the Contractor fails (or the Contractor's staff, sub-contractors or agents fail) to comply with paragraphs (1) or (2) of this Condition.

### **34. Welsh Language Act**

The Contractor shall for the term of the Contract comply with the principles of the Authority's Welsh Language Scheme.

### **35. Sustainable Procurement**

- (1) The Contractor shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, the Contractor shall promptly provide all such information regarding the environmental impact of the Services as may reasonably be requested by the Authority.
- (2) The Contractor shall meet all reasonable requests by the Authority for information evidencing compliance with the provisions of this Clause by the Contractor.
- (3) All written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.

### **36. Other Legislation**

The Contractor shall, and shall procure that its sub-contractors, agents and personnel, comply with all other applicable law.

### **37. Contractor Status**

Nothing in the Contract shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Authority and the Contractor.

### **38. Transfer of Services**

(1) Where the Authority intends to continue with services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement contractor, the Contractor shall (both during the term of the Contract and, where relevant, after its expiry or termination):

- (a) provide all information reasonably requested to allow the Authority to conduct the procurement for any replacement services; and
- (b) use all reasonable endeavours to ensure that the transition is undertaken with the minimum of disruption to the Authority.

(2) Without prejudice to the generality of paragraph (1) of this Condition, the Contractor shall, at times and intervals reasonably specified by the Authority, provide the Authority (for the benefit of the Authority, any replacement Contractor and any economic operator bidding to provide the replacement services) such information as the Authority may reasonably require relating to the application or potential application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 including the provision of employee liability information.

(3) Without prejudice to the generality of paragraph (1) of this Condition, the contractor shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, reports and any information, whether held in electronic or written form, which the Authority considers necessary.

### **39. Law and Jurisdiction**

The Contract shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

### **40. Transparency**

(1) In order to comply with the Government's policy on transparency in the areas of procurement and contracts, the Authority will, subject to Conditions 40(2) and (3), publish the Contract and the tender documents issued by the Authority which led to its creation on a designated web site.

(2) The entire Contract and all the tender documents issued by the Authority will be published on that web site save where the Authority, in its absolute discretion, considers that the relevant documents, or their contents, would be exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000.

(3) Where the Authority considers that any such exemption applies, the Authority will redact the relevant documents to the extent that the Authority considers the redaction is necessary to remove or obscure the relevant material, and those documents will be published on the designated web site subject to those redactions.

(4) Where the Parties later agree changes to the contract, the Authority will publish those changes, and will consider any redaction, on the same basis.

(5) In Condition 40(1) the expression “tender documents” means the advertisement issued by the Authority seeking expressions of interest, the pre qualification questionnaire and the invitation to tender and the contract includes the Contractor’s proposal.

#### **41. Monitoring and Management Information**

(1) Where requested by the Authority, the Contractor shall supply to the Authority and/or to the Cabinet Office such information relating to the Services and to the Contractor’s management and performance of the Contract as they may require.

(2) The information referred to in Condition 41(1) may include, but is not limited to, the following: Line Item Amount, Invoice Line Description, Invoice Line Number, Currency Code, Order Date, VAT Inclusion Flag, VAT Rate, List Price, Number of Items, Unit of Purchase Quantity, Price per Unit, Supplier Service Code, Service description and/or name, UNSPSC Code, Taxonomy Code and/or Name, Geographical, Project Code, Project description, Project Start Date, Project Delivery Date (Estimate and Actual), Total project cost and Project Stage. The information may also, without limitation, include information relating to the capability of the Contractor (and any key sub-Contractor) to continue to perform the Contract (including information on matters referred to in regulations 23 to 27 of the Public Contracts Regulations 2006). (3) The information referred to in Condition 41(1) shall be supplied in such form and within such timescales as the Authority or the Cabinet Office may reasonably require.

(4) The Contractor agrees that the Authority may provide the Cabinet Office, any other government department or agency or any other person or entity referred to in Condition 42(2) (Information Confidential to the Contractor), with information obtained under this Condition 41 and any other information relating to the Services procured and any payments made under the Contract.

(5) Upon receipt of the information supplied by the Contractor in response to a request under Condition 41(1) or receipt of information provided by the Authority to the Cabinet Office under Condition 41(4) the Contractor hereby consents to the Cabinet Office (acting through the Government Procurement Service):

a) storing and analysing the information and producing statistics; and

b) sharing the information or any statistics produced using the information, with any person or entity referred to in Condition 42(2).

(6) The Authority may make changes to the type of information which the Contractor is required to supply and shall give the Contractor at least one calendar month’s written notice of any such changes.

## **42. Information confidential to the Contractor**

(1) Unless agreed expressly by both parties in writing, in a confidentiality agreement identifying the relevant information, information obtained by the Authority from the Contractor shall not constitute confidential information relating to the Contractor.

(2) Where any information held by the Authority does constitute confidential information relating to the Contractor, the Authority shall nonetheless have the right to disclose that information:

- a) on a confidential basis to any other government department or agency for any proper purpose of the Authority or of that department or agency;
  - b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - c) to the extent that the Authority (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 sub-paragraph a) (including any benchmarking organisation) for any purpose relating to or connected with the Contract or the Services;
  - e) on a confidential basis for the purpose of the exercise of its rights under the Contract; 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 the Contract.
- (3) For the purpose of paragraph (2) of this Condition, references to disclosure on a confidential basis mean disclosure subject to a confidentiality agreement.