

# Whistleblowing service for the Planning Inspectorate

## Annex B – Conditions of Contract for Services

Reference: PINS 17/2/816

August 2018





# The Planning Inspectorate

- 1 DEFINITIONS AND INTERPRETATIONS
- 2 DURATION OF THIS CONTRACT
- 3 CONTRACTOR'S PERFORMANCE
- 4 DUTY OF CARE
- 5 ALTERATION OF REQUIREMENT
- 6 INVOICES AND PAYMENT
- 7 VALUE ADDED TAX
- 8 TAX REGIME
- 9 MEETINGS AND REPORTS
- 10 INSPECTION
- 11 CONFLICT OF INTEREST
- 12 CORRUPT GIFTS AND PAYMENTS OF COMMISSION
- 13 OFFICIAL SECRETS ACTS
- 14 DISCLOSURE OF INFORMATION
- 15 PROCUREMENT TRANSPARENCY
- 16 DISCRIMINATION
- 17 HEALTH AND SAFETY
- 18 ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS
- 19 INSURANCE
- 20 WARRANTIES AND REPRESENTATIONS
- 21 GENERAL DATA PROTECTION REGULATIONS
- 22 GENERAL DATA PROTECTION REGULATIONS (PERSONAL DATA)
- 23 CONTRACTOR'S OBLIGATIONS IN CONNECTION WITH THE TRANSFER OF  
UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")
- 24 GOVERNMENT PREMISES
- 25 DEPARTMENT'S PROPERTY
- 26 GENERAL ENVIRONMENTAL REQUIREMENTS
- 27 TIMBER AND WOOD DERIVED PRODUCTS
- 28 INTELLECTUAL PROPERTY, ROYALTIES AND LICENCE FEES
- 29 DRAWINGS, SPECIFICATIONS, SOFTWARE, DESIGNS AND OTHER DATA
- 30 PRODUCTION AND RETENTION OF DOCUMENTATION
- 31 TRANSFER OF RESPONSIBILITY
- 32 MERGER, TAKE-OVER OR CHANGE OF CONTROL
- 33 FORCE MAJEURE
- 34 UNSATISFACTORY PERFORMANCE
- 35 INSOLVENCY OF THE CONTRACTOR
- 36 TERMINATION OF THIS CONTRACT
- 37 BREAK
- 38 CONSEQUENCES OF TERMINATION OR BREAK
- 39 LIABILITY FOR LOSS OR DAMAGE
- 40 RECOVERY OF SUMS DUE
- 41 SERVICE OF NOTICES
- 42 DISPUTE RESOLUTION
- 43 LAW
- 44 SEVERABILITY
- 45 WAIVER
- 46 RIGHTS OF THIRD PARTIES



## 1 DEFINITIONS AND INTERPRETATIONS

1.1 In this Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:

- (a) "Award Date" means the date of the award of this Contract by the Department to the Contractor as specified in the Department's Award Letter;
- (b) "CITES" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- (c) "Change of Control" means an event where any single person, or group of persons acting in concert, acquires control of the Contractor or any direct or indirect interest in the relevant share capital of the Contractor, as a result of which that person or group of persons has a direct or indirect interest in more than 25% of the relevant share capital of the Contractor. For the purposes of the operation of Condition 26 of this Contract, where the Contractor is a limited company he shall be treated as though he were a public company;
- (d) "Change of Ownership" means:
  - (i) any material change to the direct or indirect legal or beneficial ownership of any shareholding in the Contractor. A change in the ownership is material if it relates directly or indirectly to a change of 3% or more of the issued share capital of the Contractor, or
  - (ii) any material change in the composition of the Contractor's partnership. A change in the composition of the partnership is material if it directly or indirectly affects the performance of this Contract by the Contractor;
- (e) "Conditions" means the Department's Conditions of Contract for Services and the Department's Intellectual Property Conditions;



- (f) "Contract" means the agreement concluded between the Department and the Contractor, contained in the documents listed in the Department's Award Letter, the Conditions, the Specification, the Department's Award Letter and any Programme. In case of inconsistency between the Conditions and other documents forming part of this Contract, the Conditions shall prevail unless otherwise agreed in writing. In case of inconsistency between the Contractor's offer and the Specification, the Contractor's offer shall prevail unless otherwise agreed in writing;
- (g) "Contract Price" means the price or rate (exclusive of Value Added Tax) payable to the Contractor by the Department under this Contract for the full and proper performance by the Contractor of this Contract, determined in accordance with any Price Schedule or otherwise in accordance with the provisions of this Contract;
- (h) "Contractor" means the person appointed by the Department for the performance of the Services (including any successors);
- (i) "Contractor's Representative" means such competent person as the Contractor shall from time to time appoint to be his representative in relation to the performance of this Contract, who will receive and act on any directions given by the Contract Manager and whose appointment and contact details shall be notified in writing by the Contractor to the Department;
- (j) "Contract Manager" means such official of the Department, or other person, as the Department shall from time to time appoint to act on its behalf for the purpose of managing this Contract, whose appointment and contact details shall be notified in writing by the Department to the Contractor;
- (k) "data", "data controller", "personal data" and "processing" shall have the meanings set out in section 1 of the Data Protection Act 1998;



- (l) "Department" means the Secretary of State for Communities and Local Government, persons authorised to act on her behalf, the Department for Communities and Local Government, and Executive Agencies of the Department;
- (m) "Department's Award Letter" means the letter or document confirming award of this Contract to the Contractor by the Department;
- (n) "Discrimination Acts" means the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003 and, upon commencement, any age discrimination legislation;
- (o) "Expiry Date" means the date on which such contract period as has been specified comes to an end;
- (p) "Independent Verification" means, in relation to Condition 26, an evaluation undertaken and reported by an individual or body whose organisation, systems and procedures conform to ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems or equivalent: and who is accredited to audit against forest management standards by a body whose whose organisation, systems and procedures conform to ISO 17011:2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies or equivalent;
- (q) "Key Personnel" means any person who, in the Department's opinion, is fundamental to the performance of this Contract;



- (r) "Legal Timber" refers to timber from a forest that meets the requirements set out in the document titled *UK Government Timber Procurement policy - Definition of 'legal' and 'sustainable' for timber procurement*<sup>1</sup>, where the organisation or body that felled the trees and provided the timber from which the wood supplied under the Contract derived shall have had legal use rights to the forest, complied with all relevant local and national laws and codes of practice including environmental, labour and health and safety laws and paid all relevant royalties and taxes;
- (s) "month" means calendar month, unless otherwise stated;
- (t) any reference to a "person" shall, as the context may require, include any individual, firm, company, corporation, government department, agency or any association or partnership (whether or not having a separate legal personality);
- (u) "Price Schedule" means the price schedule submitted by the Contractor as part of its tender;
- (v) "Programme" means any programme or timetable agreed by the Department and Contractor which regulates or specifies the period or periods for the performance of the Services or any part of them, together with any activities ancillary to the performance of the Services or the preparation and submission of reports;
- (w) "Recycled Timber" means recovered, reclaimed or reused timber or wood that, prior to being supplied to the Department, had an end use as a stand alone object or as part of a structure and includes pre consumer recycled wood and wood fibre or industrial by-products but excludes sawmill co-products, post consumer recycled wood and wood fibre and drift wood;
- (x) "relevant share capital" shall have the meaning set out in section 198(2) of the Companies Act 1985;

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<sup>1</sup> Available from the Department on request and visible on the UK Government authorised Central Point of Expertise on Timber web site. For the purpose of this Contract, the edition current on the Award Date shall apply.  
The Planning Inspectorate's Conditions of Contract for Services  
Version 1.4 August 2018



- (y) "Service(s)" means all the Services that the Contractor is required to carry out under this Contract;
- (z) "Specification" means the document describing the Services to be performed under this Contract, as at the Award Date;
- (aa) "Sub-contractor" shall, as the context may require, include any adviser, consultant or agent engaged by the Contractor to assist in the performance of the Services;
- (bb) "Sustainable Timber" means timber or wood from sustainable sources as set out in the document titled *UK Government Timber Procurement policy - Definition of 'legal' and 'sustainable' for timber procurement*<sup>2</sup>;
- (cc) "Timber and Wood Derived Products" are products which range from solid wood to those where the manufacturing process obscures the wood element (eg. paper) and are deemed to include any product that contains wood or wood fibre;
- (dd) "Virgin Timber" means Timber and Wood Derived Products that are not Recycled Timber and includes sawmill co-products.
- (ee) "Contractor's 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, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, 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.

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<sup>2</sup> Available from the Planning Inspectorate on request and visible on the UK Government authorised Central Point of Expertise on Timber web site. For the purpose of this Contract, the edition current on the Award Date shall apply.  
The Planning Inspectorate's Conditions of Contract for Services  
Version 1.4 August 2018



- 1.2 Unless the context requires otherwise, the singular shall include the plural and vice versa, and words expressed in any gender shall include any other gender.
- 1.3 The headings are inserted for convenience only and shall not affect the interpretation of this Contract.
- 1.4 Save where express provision is made to the contrary, any reference to a statute, statutory provision or subordinate legislation shall be construed as a reference to that legislation, as amended and in force from time to time, including any re-enactment, consolidation or replacement (with or without modification). In the case of a statute or statutory provision, the reference shall also be construed as a reference to all subordinate legislation made under such statute or statutory provision.

## **2 DURATION OF THIS CONTRACT**

Subject to the Department's rights of termination under the Conditions, this Contract shall be in force from the Award Date until the Expiry Date or, where there is no Expiry Date, until the Contractor has completed the Services in accordance with this Contract.

## **3 CONTRACTOR'S PERFORMANCE**

- 3.1 The Contractor shall use the best applicable techniques and standards and shall perform the Services in accordance with good industry practice and the provisions of this Contract. The Contractor shall manage and monitor performance of the Services. The Contractor shall inform the Contract Manager as soon as reasonably practicable if any of the requirements of this Contract are not being or cannot be performed in accordance with this Contract.
- 3.2 If any part of the Services provided is found to be inadequate or not in accordance with this Contract, other than as a result of default or negligence on the part of the Department, the Contractor shall at his own expense replace or make good to the satisfaction of the Department and, if required, re-schedule and perform that part of the work within such reasonable time as may be notified by the Department.





- 3.3 The Contractor shall provide all the necessary facilities, materials and any other equipment, and personnel of appropriate qualifications and experience to undertake the Services.
- 3.4 All Key Personnel and other personnel deployed on work relating to this Contract shall be appropriately qualified and competent and shall be acceptable to the Department. The Contractor shall supervise and manage all such personnel properly. If the Department gives the Contractor notice that any person is to be removed from involvement in the Services, the Contractor shall take immediate steps to comply with that notice. The decision of the Department regarding the Contractor's personnel shall be final and conclusive.
- 3.5 The Contractor shall:
- (a) give the Department, if so requested, the name, role and details of relevant work experience of all persons who are or may be at any time employed on this Contract;
  - (b) comply, and shall procure that his employees and Sub-contractors comply, with any rules, regulations and any safety and security instructions notified by the Department to the Contractor in writing, including completion of any additional security clearance procedures required by the Department, and return of any passes required.
- 3.6 The Contractor shall take all reasonable steps to avoid changes to the Key Personnel. The Contractor shall give at least one month's notice to the Contract Manager of any proposal to remove or replace Key Personnel and the Department must agree any replacement in writing, save that the Contractor shall be required to give such notice as is reasonable in the circumstances in the event that Key Personnel are changed as a result of illness, resignation or unusual personal circumstances.
- 3.7 Unless otherwise agreed by the Department, neither the Contractor nor any of his employees or Sub-contractors shall carry out any business or trading activity within or on the Premises and no advertisement, sign or notice of any description shall be exhibited without prior written approval from the Department.

3.8 The Contractor shall exercise due care and propriety when dealing with third parties in connection with this Contract and ensure that no commitments that might impose any obligations on the Department are entered into (unless expressly required under this Contract) without the Department's prior written consent.

3.9 Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Department and the Contractor.

#### **4 DUTY OF CARE**

The Contractor shall perform the Services with the standard of skill, care and diligence which a competent and suitably qualified person performing such services could reasonably be expected to exercise and in accordance with all relevant statutory requirements.

#### **5 ALTERATION OF REQUIREMENT**

Each of the parties may by notice to the other request an alteration to the requirements of this Contract, as detailed in the Specification, should this at any time become necessary or desirable. In the event of any such alteration being agreed by both parties, payment under this Contract shall be subject to fair and reasonable adjustment to be agreed between the Department and the Contractor and recorded in writing. The parties shall continue to act in accordance with this Contract until any such alteration and adjustment has been agreed in writing.

#### **6 INVOICES AND PAYMENT**

6.1 The Contractor shall submit an invoice to the Department as specified in this Contract or within 28 days of the completion of the Services. All invoices shall quote the contract number and, where appropriate, the purchase order number.

6.2 The Contractor shall submit with each invoice such records as the Department may reasonably require including, but not limited to, time sheets, details of expenses

incurred, invoices paid and any other documents which would enable the Department to verify the information and the amounts referred to in that invoice.

- 6.3 The Contractor shall provide to the Department the name and address of his bank, the account name and number, the bank sort code and any other details requested by the Department.
- 6.4 The Department shall be entitled to hold back 15% of the value of any or all invoices until such time as the Department is satisfied that the Services have been fully provided in accordance with the Contract. If the Department is satisfied that the Services to which an invoice relates have been performed fully in accordance with the Contract, the Department shall pay the Contractor the amount specified in an invoice.
- 6.5 Except where otherwise provided in this Contract, the amount payable to the Contractor for the performance of the Services shall be inclusive of all costs, including but not limited to staff, facilities, equipment, materials and all other expenses incurred by the Contractor in discharging his obligations under this Contract.
- 6.6 The Department shall not accept liability for any expenditure beyond the "approved maximum cost" authorised in the Department's Award Letter or any variation thereto. If at any time the Contractor considers that the Services cannot be completed without exceeding that sum, he shall immediately submit to the Department a full written explanation of the reasons together with a detailed forecast of the excess. The Department shall not accept any liability for any forecast excess until a formal amendment to this Contract has been made in writing.
- 6.7 The Department is committed to prompt payment and shall pay the Contractor within 30 days of the receipt of a valid invoice, subject always to Condition 6.5.

## **7 VALUE ADDED TAX**

The Department shall pay to the Contractor the amount of any VAT chargeable in respect of the performance of the Services.

## **8 TAX REGIME**



- 8.1 In providing the Services, the Contractor is prohibited from taking or seeking to take advantage of any particular taxation regime (including the use of any offshore tax haven) which will or may enable the Contractor to avoid liability for taxation in the United Kingdom.
- 8.2 Where the Contractor 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.
- 8.3 Where the Contractor 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.
- 8.4 The Planning Inspectorate may, at any time during the term of this contract, request the Contractor to provide information which demonstrates how the Contractor complies with Clauses 8.2 and 8.3 above or why those Clauses do not apply to it.
- 8.5 A request under Clause 8.4 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 8.6 The Planning Inspectorate may terminate this contract if-
- (a) in the case of a request mentioned in Clause 8.4 above-
    - (i) the Contractor fails to provide information in response to the request within the specified period, or
    - (ii) the Contractor provides information which is inadequate to demonstrate either how the Contractor complies with Clauses 8.2 and 8.3 above or why those Clauses do not apply to it;
  - (b) in the case of a request mentioned in Clause 8.5 above, the Contractor fails to provide the specified information, or
  - (c) it receives information which demonstrates that, at any time when Clauses 8.2 and 8.3 apply to the Contractor, the Contractor is not complying with those Clauses.



- 8.7 The Planning Inspectorate may supply any information which it receives under Clause 8.4 and 8.5 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.

## **9 MEETINGS AND REPORTS**

- 9.1 The Contractor shall upon receipt of reasonable notice and during normal office hours attend all meetings arranged by the Department for the discussion of matters connected with the performance of the Services.
- 9.2 Without prejudice to any other requirement in this Contract, the Contractor shall provide such reports on the performance of the Services as the Contract Manager may reasonably require.

## **10 INSPECTION**

- 10.1 During the course of this Contract the Contract Manager and the Department shall have the power to inspect and examine any of the Services on the Premises at any reasonable time.
- 10.2 Where the Services are being performed on any other premises, the Contract Manager and the Department shall, on giving reasonable notice to the Contractor, be entitled to inspect and examine such Services. The right to inspect and examine the Services shall not apply to the extent that an inspection or examination would jeopardise the confidentiality of information relating to the Contractor's other clients.
- 10.3 The Contractor shall provide all facilities required by the Contract Manager and the Department for any inspection and examination free of charge.
- 10.4 In this Condition, Services includes all planning, preliminary and preparatory work for the Services.



**11 CONFLICT OF INTEREST**

It shall be the Contractor's responsibility to ensure that no conflict of interest arises in connection with the Services to be carried out under this Contract. The Department should be consulted if there is any uncertainty about whether any such conflict of interest may exist or arise and its decision on the matter shall be final.

**12 CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

12.1 The Contractor shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to this Contract or any other contract with the Crown.

12.2 The Contractor shall not conspire with any person to do any of the acts mentioned in Condition 12.1.

12.3 Any:

- (a) breach by the Contractor of this Condition; or
- (b) commission of any offence by the Contractor under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other contract with the Department, or any other government body or department

shall entitle the Department to terminate this Contract and recover from the Contractor the amount of any loss resulting from such termination and recover from the Contractor the amount of value of any such gift, consideration or commission.

12.4 The decision of the Department in relation to this Condition shall be final and conclusive.



The Contractor shall take all reasonable steps to ensure that all his employees and any Sub-contractor employed by him in connection with this Contract are aware of the Official Secrets Acts 1911 to 1989, and understand that these Acts apply to them during and after performance of any Services under or in connection with this Contract.

## 14 **DISCLOSURE OF INFORMATION**

- 14.1 The Contractor acknowledges that the Department may receive requests for information relating to this Contract ("disclosure requests") pursuant to the Freedom of Information Act 2000 ("the FOI Act"), the Environmental Information Regulations 2004 ("the EIRs") or otherwise.
- 14.2 The Contractor further acknowledges that the Department may be obliged (subject to the application of any relevant exemption(s) and, where applicable, the public interest test) to disclose information pursuant to such a request. Where the Department consults the Contractor in accordance with section IV (consultation with third parties) of the Code of Practice<sup>3</sup> issued under section 45 of the FOI Act (or, as the case may be, any Code of Practice issued under powers contained in the EIRs), the Contractor hereby agrees to respond to any such consultation promptly, within any deadline set by the Department and without charging any fee or expense to the Department. The Contractor acknowledges that it is for the Department to determine whether or not such information should be disclosed.
- 14.3 Subject to Conditions 14.4 and 14.5 below, the Contractor shall not disclose to any third party, publish, disseminate, or use other than for the purposes of this Contract:
- (a) any information relating to this Contract; or
  - (b) any other information that has come into his possession during or as a result of his performance of this Contract relating to the business, affairs, properties, assets, operations, practices, policies, developments, trade secrets or know-how, of the Department, its personnel, customers and suppliers,

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<sup>3</sup> On the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000  
The Planning Inspectorate's Conditions of Contract for Services  
Version 1.4 August 2018

without the prior written consent of the Department, which shall not be unreasonably withheld.

14.4 Condition 14.3 above shall not apply to any information which:

- (a) is or becomes public knowledge (otherwise than by breach of this Contract);
- (b) is in the possession of the Contractor, without restriction as to its disclosure, before he receives it from the Department; or
- (c) is received by the Contractor from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

14.5 Condition 14.3 above shall not prevent the Contractor from disclosing, without the Department's consent, any information:

- (a) which is required to be disclosed by law or by any professional or regulatory obligation, provided that prior to disclosure the Contractor consults the Department and takes full account of the Department's views about whether (and, if so, the extent to which) the information should be disclosed;
- (b) to such persons and to such extent as may be necessary for the performance of this Contract;
- (c) for the purpose of complying with his obligations under Condition 29 of this Contract.

14.6 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Conditions 14.3 to 14.5 inclusive above by all his employees, office holders, workers and Sub-contractors.

## 15 **PROCUREMENT TRANSPARENCY**





15.1 The Contractor acknowledges that the Department may publish this contract in full as per Government's Transparency Agenda detailed in Government's publication: "The Coalition: our programme for Government". Publication will include:

- Specification
- Terms and Conditions
- Associated Schedules (which may include the winning tenderer's bid)
- Pricing – overall and/or breakdown

#### 15.2 Confidential information

- (a) The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOI Act, the content of this Contract is not Confidential Information. The Department 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 FOI Act.
- (b) Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Department to publish the Contract in its entirety, including from time to time agreed changes to the Agreement, to the general public.

#### 15.3 Consultation and assistance

- (a) The Contractor may consult with the Department to inform its decision regarding any redactions but the Department shall have the final decision in its absolute discretion.
- (b) The Contractor shall assist and co-operate with the Department to enable the Department to publish this Contract.

### 16 **DISCRIMINATION**

16.1 The Contractor shall not discriminate directly or indirectly or by way of victimisation or harassment against any person:



- (a) on grounds of colour, race, nationality, or ethnic or national origin contrary to the Race Relations Act 1976; or
- (b) on grounds of sex contrary to the Sex Discrimination Act 1975;
- (c) on grounds of disability contrary to the Disability Discrimination Act 1995,
- (d) on grounds of sexual orientation contrary to the Employment Equality (Sexual Orientation) Regulations 2003;
- (e) on grounds of religion or belief contrary to the Employment Equality (Religion or Belief) Regulations 2003;
- (f) on commencement of any age discrimination legislation, on grounds contrary to such legislation,

and shall comply with the Equal Pay Act 1970.

16.2 Where any employee or Sub-contractor employed by the Contractor is required to carry out any activity on the Premises or alongside the Department's employees on any other premises the Contractor shall ensure that the each such employee and Sub-contractor complies with the Department's employment policies and codes of practice relating to discrimination and equal opportunities.

16.3 The Contractor shall notify the Contract Manager and the Department in writing as soon as he becomes aware of any investigation or proceedings brought against the Contractor under the Discrimination Acts in connection with the Contractor's performance of this Contract. Where there is such an investigation or proceedings the Contractor shall free of charge:

- (a) provide any information requested by the investigating body, court or tribunal in the timescale allotted;
- (b) attend, and permit a representative from the Department to attend, any associated meetings;

(c) promptly allow access to any documents and information relevant to the investigation or proceedings;

(d) co-operate fully and promptly with the investigatory body, court or tribunal.

16.4 The Contractor shall indemnify the Department against all costs, charges, expenses (including legal and administrative expenses) and payments made by the Department arising out of or in connection with any such investigation or proceedings.

16.5 The Contractor shall impose obligations on its Sub-contractors in terms substantially similar to those set out in Conditions 16.1 to 16.4.

## 17 **HEALTH AND SAFETY**

17.1 The Contractor shall be responsible for the observance by himself, his employees and Sub-contractors of all safety precautions necessary for their protection and the protection of any other persons, including all precautions required to be taken by or under or pursuant to any Act of Parliament. For the avoidance of doubt this includes the Department's health and safety policies and any regulations or by-laws issued by the Department, any other government department, local authority or other body. The Contractor shall co-operate fully with the Department to ensure the proper discharge of these duties.

17.2 Accidents to the Contractor's servants or agents which require to be reported in accordance with relevant health and safety legislation shall be reported immediately to the Contract Manager or his authorised representative.

17.3 As at the commencement of this Contract, and throughout the life of this Contract, the Department shall notify the Contractor of any special health and safety hazards of which the Department becomes aware which may be involved or introduced on the Premises or the site and which may affect the Contractor. The Contractor shall throughout the life of this Contract notify the Department of any hazards which may affect the Department or his performance of the Services.



17.4 If the Department notifies the Contractor of any special health and safety hazards pursuant to Condition 17.3, the Contractor shall immediately draw any such hazards to the attention of his employees and Sub-contractors or any other persons under his control engaged on the work being performed on the Premises. Arrangements shall be made by the Contractor so that such persons and other persons employed by or controlled by Sub-contractors and working on the Contractor's tasks on the Premises are adequately informed and instructed on the hazards and any necessary associated safety measures.

## **18 ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS**

18.1 The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of this Contract or any part of it without the prior written consent of the Department.

18.2 The Contractor shall ensure that any Sub-contractor complies with the Conditions of this Contract, so far as they are applicable. Any sub-contract shall not relieve the Contractor of his obligations under this Contract.

18.3 Where the Contractor enters into a contract with a supplier or Sub-contractor for the purpose of performing this Contract or any part of it, he shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or Sub-contractor within a specified period not exceeding 30 days from receipt of an invoice properly issued in accordance with that contract.

## **19 INSURANCE**

19.1 The Contractor shall effect and maintain an adequate level of insurance cover in respect of all risks that may be incurred by him in the performance of this Contract.

19.2 The Contractor shall hold employer's liability insurance in respect of his employees and of any Sub-contractors used by him in the performance of this Contract.

19.3 Where the Contractor sub-contracts part of this Contract, he shall procure that any Sub-contractor effects and maintains insurance to cover its liabilities under that sub-contract.



19.4 Where in compliance with Condition 19.1 the Contractor effects professional indemnity insurance the insurance policy and any renewal shall cover liabilities under this Contract from the commencement of the Services until 6 years after:

- (a) the completion of the Services; or
- (b) the termination of this Contract,

whichever is the earlier.

19.5 When requested by the Department the Contractor shall produce documentary evidence showing that the insurance required by Conditions 19.1, 19.2 and 19.3 has been effected and is being maintained.

19.6 If, for whatever reason, the Contractor fails to effect and maintain the insurance required by this Condition the Department may make alternative arrangements necessary to protect its interests and recover the costs thereof from the Contractor.

19.7 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract.

19.8 The Contractor shall impose obligations on its Sub-contractors in terms substantially similar to those set out in Conditions 19.1 to 19.7, but this shall not relieve the Contractor of any of his obligations and liabilities under this Contract.

## 20 **WARRANTIES AND REPRESENTATIONS**

20.1 The Contractor warrants and represents that:

- (a) the Contractor 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) the Contractor 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 obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained staff with all due skill, care and diligence; and
- (d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

## 21 DATA PROTECTION REGULATIONS

The following definitions apply to GDPR clauses 21 and 22;

(a) Data Protection Legislation :

*i.* the GDPR, the LED and any applicable national implementing Laws as amended from time to time

*ii.* the DPA 2018 [ subject to Royal Assent ] 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;

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

(c) 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 actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

(d) Data Subject Access 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.

(e) DPA 2018 : Data Protection Act 2018

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

(g) LED : Law Enforcement Directive (*Directive (EU) 2016/680*)



- (h) 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
- (i) and evaluating the effectiveness of the such measures adopted by it.
- (j) Sub-processor: any third Party appointed to process Personal Data on behalf of the Contractor in relation to this Agreement.

21.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Department is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do by the Department is listed in Annex A of this Contract and may not be determined by the Contractor.

21.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

21.3 The Contractor shall provide all reasonable assistance to the Department in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Department, 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.

21.4 The Contractor 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 Annex A of this Contract, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Department before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Department as appropriate to protect against a Data Loss Event having taken account of the:
  - i. nature of the data to be protected;
  - ii. harm that might result from a Data Loss Event;



- iii.* state of technological development; and
- iv.* cost of implementing any measures;

(c) ensure that :

*i.* the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);

*ii.* it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Contractor's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

(C) 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 Department or as otherwise permitted by this Agreement; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(E) not transfer Personal Data outside of the EU unless the prior written consent of the Department has been obtained and the following conditions are fulfilled:

*i.* the Department or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Department;

*ii.* the Data Subject has enforceable rights and effective legal remedies;

*iii.* the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Department in meeting its obligations); and





iv. the Contractor complies with any reasonable instructions notified to it in advance by the Department with respect to the processing of the Personal Data;

v. at the written direction of the department, delete or return Personal Data (and any copies of it) to the Department on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

21.5 Subject to clause 20.6, the Contractor shall notify the Department 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;

other  
(d) receives any communication from the Information Commissioner or any regulatory authority in connection with Personal Data processed under this Agreement;

(e) receives a request from any third Party for disclosure of 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.

21.6 The Contractor's obligation to notify under clause 20.5 shall include the provision of further information to the Department in phases, as details become available.

21.7 Taking into account the nature of the processing, the Contractor shall provide the Department with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 21.5 (and insofar as possible within the timescales reasonably required by the Department) including by promptly providing:

(a) the Department with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Department to enable the Department to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Department, at its request, with any Personal Data it holds in relation to a Data Subject;



- (d) assistance as requested by the Department following any Data Loss Event;
- (e) assistance as requested by the Department with respect to any request from the Information Commissioner's Office, or any consultation by the Department with the Information Commissioner's Office.

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

- (a) the Department determines that the processing is not occasional;
- (b) the Department 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 Department determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

21.9 The Contractor shall allow for audits of its Data Processing activity by the Department or the Department's designated auditor.

21.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

21.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- (a) notify the Department in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Customer;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 20 such that they apply to the Sub-processor;
- and
- (d) provide the Department with such information regarding the Sub-processor as the Department may reasonably require.

21.12 The Department shall remain fully liable for all acts or omissions of any Sub-processor.

21.13 The Department 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).

21.14 The Parties agree to take account of any guidance issued by the Information



Commissioner's Office. The Department may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **22 DATA PROTECTION – PERSONAL DATA**

22.1 The data controller in respect of such personal data as is held or acquired by the Department in relation to this Contract is the First Secretary of State.

22.2 The data controller's nominated representative for the purposes of the General Data Protection Requirements 2018 is the Data Protection Officer for the Department of Housing, Community and Local Government.

22.3 The Department shall use such personal data only for purposes relating directly to:

- (a) the management and performance of this Agreement by the Contractor; and
- (b) the provision by the Department of references within the Department and to other government departments.

22.4 The Contractor hereby agrees and shall procure from any relevant individual agreement to the publication by the Department in any format of the following personal data: name and contact details. The Contractor shall provide a copy of any relevant individual's consent to the Department on request.

22.5 If, having regard to the circumstances in which the Department processes such personal data, the Department requires the Contractor or any relevant individual to provide additional information to enable the Department to process that personal data fairly it shall notify the Contractor in writing and the Contractor shall provide or procure the additional information within 7 days of receipt of the request.

## **23 CONTRACTOR'S OBLIGATIONS IN CONNECTION WITH THE TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 ("TUPE")**

23.1 The Contractor shall provide the Department, and/or any other person authorised by the Department who is to be invited to submit a tender in relation to the provision of



similar Services, with such information (including any changes to and interpretations thereof) in connection with TUPE as the Department may require. The Contractor shall provide the information within 10 days of the Department's request.

23.2 During the 8 month period preceding the Expiry Date or any notice period, the Contractor shall not without the prior consent of the Department (which shall be in writing, but shall not be unreasonably withheld or delayed):

- (a) materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Contract; or
- (b) materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract; or
- (c) move or deploy any Key Personnel away from the performance of the Services under this Contract.

23.3 The Contractor shall not knowingly do, or omit to do, anything which may adversely affect the orderly transfer of responsibility for provision of the Services.

## 24 **GOVERNMENT PREMISES**

24.1 Any land or premises (including temporary buildings) made available to the Contractor by the Department in connection with this Contract ("the Premises") shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purposes of performing this Contract. The Contractor shall have the use of the Premises as licensee and shall vacate the same upon completion or determination of this Contract. Any utilities required by the Contractor shall be subject to such charges as are set out elsewhere in this Contract.

24.2 The Department may permit the Contractor and its staff to use areas and facilities at the Premises (including, but not limited to, toilets, cooking facilities, heating, lighting and first aid). Where the Department so permits, the Contractor is to be responsible for the proper use and reasonable care of facilities provided.



- 24.3 The Contractor shall ensure that areas and facilities on the Premises are used with due regard for the need for the efficient use and conservation of supplies and the Department shall not bear the costs of any use of such supplies which do not conform to the requirements of this Condition, whether through the negligence or otherwise of the Contractor, or any Sub-contractor. The Contractor shall observe any instructions issued by the Contract Manager or his authorised representative in this respect.
- 24.4 Continuity of electricity, heating, telephone, cooking facilities, water supplies and sewerage is not guaranteed and no liability will be accepted by the Department for shut-down or restrictions due to any cause whatsoever.
- 24.5 All property of the Contractor while at the Premises shall be at the risk of the Contractor and the Department shall accept no liability for any loss or damage to that property or caused by that property except where any such loss or damage was caused or contributed to by any act, neglect or default of any servant of the Crown at the Premises acting in the course of his employment. The Department shall accept liability only to the extent to which such loss or damage is so caused or contributed to.
- 24.6 Where the Services are to be performed wholly or in part at the Premises the Contractor shall perform them in such a manner that the business of the Department is interfered with as little as possible. The Contract Manager or his authorised representative may specify the period during which the Contractor shall carry out his operations. In the event that the Contractor wishes to work outside normal working hours, such work shall be subject to the Contract Manager's approval and any additional costs arising therefrom shall be borne by the Contractor.

## 25 **DEPARTMENT'S PROPERTY**

- 25.1 Where for the purposes of this Contract the Department issues or provides any item of property to the Contractor ("Department Property") that item shall be and remain the property of the Department. The Contractor shall not in any circumstances have a lien on any Department Property and shall take all steps necessary to ensure that the title



of the Department and the exclusion of any lien are brought to the attention of any third party dealing with any Department Property.

- 25.2 The Contractor shall keep, use and maintain all items of Department Property in accordance with the manufacturer's recommendations, where provided by the Department, and in accordance with the terms of this Condition.
- 25.3 On receipt of Department Property the Contractor shall inspect it visually and carry out any additional inspections and tests necessary to check that it is not defective. Within 7 days of his inspection the Contractor shall notify the Department in writing of any defects discovered. Within 14 days of receiving such notification, the Department shall inform the Contractor of the action to be taken.
- 25.4 Without prejudice to Condition 25.3, the Contractor shall regularly inspect and test Department Property to check that it is not defective. As soon as reasonably practicable and no later than 7 days after discovering any defect the Contractor shall notify the Department of the presence of defects. Within 14 days of receiving such notification, the Department shall inform the Contractor of the action to be taken.
- 25.5 The Department shall be responsible for and shall pay for the repair or replacement of Department Property within a reasonable time, provided that:
- (a) the Contractor has complied with the terms of conditions 25.1 to 25.4;
  - (b) the defect was not caused by any act, neglect or other default by the Contractor or any Sub-contractor; and
  - (c) the defect is not one which should have been discovered upon a competent inspection by the Contractor, but which the Contractor failed to identify in a timely manner.
- 25.6 Subject to Condition 25.5, where the Contractor has given notice of a defect in an item of Department Property that is critical to the performance of the Services and the Department does not repair or replace the property within a reasonable time, the



Contractor shall not be penalised for any delay in the performance of the Services caused thereby.

25.7 The Contractor shall, subject to any overall limitation of liability contained in Condition 39, be liable for any loss or damage caused by or arising from his use of Department Property, provided that this Condition shall not apply to the extent that the Contractor is able to show that any such loss or damage was not caused by his negligence or default or by the negligence or default of his employees or any Sub-contractor or any circumstances within his or their control.

25.8 Where the Contractor uses or keeps Department Property away from the Premises he shall be responsible for its safe-keeping and shall be liable to the Department for any loss or damage to the property howsoever caused.

25.9 Any item, being a tangible productive asset, acquired or fabricated, which will yield a continuous service for one year or more, which is essential to the Services, which costs or is valued in excess of £500 and for which the Department has specifically reimbursed the Contractor under this Contract ("Capital Item"), shall be the property of the Department. The Department shall have the right to require the Contractor to pass any Capital Item into the Department's possession or to dispose of them. In the latter event the Contractor shall pass any monies realised by the disposal to the Department.

25.10 In the event that the Contractor procures goods or services including equipment from third parties on behalf of the Department, it shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2006 as though the Contractor were a Contracting Authority within the meaning of those Regulations.

## 26 **GENERAL ENVIRONMENTAL REQUIREMENTS**

26.1 In providing the Services the Contractor shall conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases (including carbon dioxide emissions), volatile organic compounds and other substances damaging to health and the environment.



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

## **27 TIMBER AND WOOD DERIVED PRODUCTS**

27.1 The Contractor shall ensure that no Virgin Timber or Timber and Wood Derived Products he procures for supply or use in performance of the Services shall have derived from any species of tree that is protected under CITES unless the supplier can prove, by producing official documentation, that it has complied with the CITES requirements that permit trading in the particular species of tree so listed under CITES.

27.2 All Virgin Timber or Timber and Wood Derived Products procured by the Contractor for supply or use in performance of the Services shall be Legal Timber, Sustainable Timber or Recycled Timber.

- (a) Before delivering any timber or wood under this Contract, the Contractor shall obtain documentary evidence that the timber or wood is either Legal Timber, Sustainable Timber or Recycled Timber. If requested in writing by the Department, the Contractor shall submit such documentary evidence to the Department either prior to delivery or at such other times as the Department may require. The Contractor shall identify, as part of the evidence submitted, a chain of custody from the forest source of the timber or wood product through to delivery of the final product (in respect of Legal Timber or Sustainable Timber) or, the previous use of the timber or wood product (in respect of Recycled Timber).

27.3 The Department reserves the right at any time during the performance of the Services and for a period of 6 years from the date the Contractor has completed the Services in accordance with the Contract to require the Contractor to produce the evidence required for the Department's inspection within 14 days of the Department's written request.

27.4 The Contractor shall maintain records of all Virgin Timber or Timber and Wood Derived Products delivered to and accepted by the Department. Such information shall be made available to the Department if requested at any time.





27.5 The Department reserves the right to decide whether the evidence submitted to demonstrate that Virgin Timber or Timber and Wood Derived Products constitutes either Legal Timber or Sustainable Timber is adequate to satisfy the Department. In the event that the Department is not so satisfied, the Contractor shall, on written request by the Department, commission and meet the costs of an Independent Verification and report that will:

- (a) verify the forest source of the Virgin Timber or Timber and Wood Derived Products; and
- (b) assess whether the Virgin Timber or Timber and Wood Derived Products constitutes Legal Timber or Sustainable Timber (as the case may be).

27.6 The Department reserves the right to decide whether the evidence submitted to demonstrate that timber or wood products constitute Recycled Timber. In the event that the Department is not so satisfied, the Contractor shall, on written request by the Department, commission and meet the costs of an Independent Verification and report that will:

- (a) verify the previous use of the timber or wood; and
- (b) assess whether the timber or wood constitutes Recycled Timber.

27.7 The Department reserves the right to reject any timber or wood derived products that do not comply with these provisions of these Conditions. Where the Department exercises its right to reject any timber, the Contractor shall supply alternative timber, which does so comply, at no additional cost to the Department and without causing delay to the performance of the Services.

## 28 **INTELLECTUAL PROPERTY, ROYALTIES AND LICENCE FEES**

28.1 In the absence of any specific provision for the allocation of intellectual property rights between the parties elsewhere in this Contract and subject to the prior rights (if any) of the Contractor, the Crown or any third parties, such intellectual property rights as are derived from or arise as a result of the performance of the Services by the Contractor



shall vest in the Crown. The Contractor shall not use, supply, reproduce, publish, modify, adapt, enhance or otherwise deal with any materials in which such intellectual property rights exist without the Department's prior written approval.

28.2 In this Condition the term 'intellectual property rights' means all intellectual and industrial property rights of any nature whatsoever, including all of the following: patents, copyrights, database rights, design rights; all rights in or arising out of discoveries, inventions, improvements, know-how, confidential information, trade marks, designs and works; the right to apply for any form of protection for any of these, applications for and registrations of any of these and all resulting registrations. In each case it includes these rights and interests in every part of the world for their full terms, including any renewals and extensions, and the right to receive any income from them and any compensation in respect of their infringement.

28.3 The Contractor shall ensure that all royalties, licence fees and similar expenses in respect of all intellectual property or intellectual property rights used in connection with this Contract have been paid and are included in the Contract Price.

## 29 **DRAWINGS, SPECIFICATIONS, SOFTWARE, DESIGNS AND OTHER DATA**

29.1 The final 'deliverable' version of any data, including written reports, calculations, software, designs, drawings, specifications, maps and photographs completed or provided in connection with this Contract (each a "Deliverable") shall be delivered up to the Department on completion (or, if sooner, termination) of the Services, subject to the retention of proper professional records. The Deliverables shall be supplied by the Contractor in an agreed format.

29.2 If this Contract is terminated by the Department pursuant to the provisions of Conditions 35, 36, or 37 the provisions of Condition 29.1 shall apply to the working version of each Deliverable (a "Working Deliverable") that has not been completed as at the date of termination of this Contract. The Department acknowledges that Working Deliverables may contain information that is incomplete and agrees that should it choose to rely upon any Working Deliverable that reliance shall be at its own risk.



**30 PRODUCTION AND RETENTION OF DOCUMENTATION**

- 30.1 The Contractor shall produce such accounts, documents (including working documents) and records related to this Contract as the Department, or the Contract Manager, may request at any time during this Contract. Subject to the provisions of Condition 14, the Department's right to request the production of documents shall not apply to the extent that production of the documents would cause the Contractor to breach confidentiality obligations to his other clients.
- 30.2 The Contractor shall retain and produce such accounts, documents (including working documents) and records related to this Contract as the Department, or the Contract Manager, may request for a period of 2 years from the Expiry Date or termination of this Contract, or such longer period as may be agreed between the Department and the Contractor in writing at or before the commencement of this Contract.
- 30.3 The Contractor shall afford such facilities as the Department may reasonably require for its representatives to visit the Contractor's premises and examine the records held under this Condition. The right to these records shall not apply to the extent that an examination would jeopardise the confidentiality of information relating to the Contractor's other clients.
- 30.4 Subject to the provision of reasonable notice to the Contractor, and for the purpose of:
- (a) examining and certifying Department'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 the Department has used its resources
- the Comptroller and Auditor General shall have a right of access to such relevant documents as are owned, held or otherwise within the control of the Contractor.
- 30.5 The Contractor shall assist the Comptroller and Auditor General to understand such documents and provide any oral and/or written information and explanation of the documents as may reasonably be requested.

30.6 For the avoidance of doubt, nothing in this Condition constitutes a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the Contractor.

### **31 TRANSFER OF RESPONSIBILITY**

In the event that a different organisation is required to take over the Services at the expiry or termination of this Contract, the Contractor shall co-operate in the transfer, under arrangements notified to him by the Department.

### **32 MERGER, TAKE-OVER OR CHANGE OF CONTROL**

32.1 The Contractor shall obtain the Department's written consent (which shall not be unreasonably withheld, but may be given subject to conditions) prior to any Change of Control of the Contractor, provided that where a Change of Control arises from any change in the beneficial or legal ownership of shares that are listed on the stock exchange, such approval shall be obtained promptly as soon as the Contractor becomes aware of the same. If such consent is not obtained when required by this Condition 32.1, the Department has the right to terminate this Contract at its election as set out in Condition 36.

32.2 The Contractor shall inform the Department immediately of any Change of Ownership of the Contractor.

32.3 The Contractor shall inform the Department of any change, or proposed change in the name of or status of the Contractor.

### **33 FORCE MAJEURE**

33.1 If, by any reason of any acts of terrorism, nature, war, hostilities, strikes, lock-outs, or of any fire at any of the Contractor's premises or those of his suppliers or any act or default of the Department the Contractor shall have been delayed in or prevented from performing all or part of the Services, the Contractor shall, immediately upon becoming aware that any such delay has been caused, give to the Department notice in writing of



any claim for an extension of time for the performance of the Services and the Department shall allow the Contractor an extension of time for such completion in respect of any delay caused by any of the circumstances before mentioned as shall be reasonable. Provided always that the Contractor shall not be entitled to any extension of time unless he shall at all times have used all reasonable endeavours to prevent any such delay and to minimise any such delay and to do all that may be reasonably required to the satisfaction of the Department to proceed with the work.

33.2 The Contractor shall not be in breach of this Contract by reason only of any delay in the performance of the Services or any temporary inability to perform the Services as a result of force majeure. The Contractor shall not be entitled to any payment for that part of the Services he was unable to perform as a result of force majeure.

#### 34 **UNSATISFACTORY PERFORMANCE**

34.1 Where in the opinion of the Department the Contractor has failed to perform the whole or any part of the Services in accordance with this Contract the Department may:

- (a) give the Contractor a notice specifying the way in which his performance falls short of the requirements of this Contract, or is otherwise unsatisfactory, or
- (b) withhold or reduce payments to the Contractor, in such amount as the Department deems appropriate.

34.2 Any notice served by the Department pursuant to Condition 34.1 may require from the Contractor that he re-schedules and performs the Services to the Department's satisfaction within such period as shall be specified by the Department in the notice and at his own expense, including where necessary, the correction or re-execution of any Services already carried out.

34.3 Any notice served by the Department pursuant to Conditions 34.1 and 34.2 shall be without prejudice to the Department's rights under these Conditions.

#### 35 **INSOLVENCY OF THE CONTRACTOR**

35.1 If the Contractor:



- (a) being an individual (or if the Contractor is a partnership any individual being a partner of such partnership) has a bankruptcy order made against him; applies to court for an interim order or makes an arrangement or composition with his creditors; is subject to any distress, execution or other similar process in relation to his assets; takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors; takes any step or any step is taken towards any of the matters referred to in this Condition 35.1(a): or
- (b) being a company, a limited liability partnership or a partnership has an order made or a resolution passed for the winding up of the Contractor or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order; is subject to an order made by a court of competent jurisdiction or a resolution passed for the administration of the Contractor or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Contractor or its directors or by a qualifying floating charge holder (as defined by Paragraph 14 of Schedule B1 to the Insolvency Act 1986); has a receiver, administrative receiver or manager appointed (or any step is taken to make such appointment) in respect of the whole or any part of the assets and undertaking of the Contractor; is subject to any distress, execution or other similar process in relation to any of its assets; makes any arrangement or composition with its creditors;
- (c) takes or is subject to any similar or analogous action to any of the matters referred to in Conditions 35.1(a) and (b) above in any other jurisdiction;

then without prejudice to any other rights available to it, the Department may give notice in writing at any time to the Contractor terminating this Contract with immediate effect.

35.2 The Contractor shall give notice in writing to the Department of the occurrence of any of the events referred to in Conditions 35.1 (a) to (c) above immediately on becoming aware of the same.

## 36 **TERMINATION OF THIS CONTRACT**

36.1 Without prejudice to any other power of termination, the Department may by notice in writing terminate this Contract with immediate effect for any of the following reasons:

- (a) breach by the Contractor of any of Conditions 8, 12, 13, 14 or 16 of this Contract, or any other material breach of Contract;
- (b) failure by the Contractor to comply with a notice given under Condition 34;
- (c) the Contractor ceases or proposes to cease to carry on his business; or
- (d) a Change of Control occurs without the prior approval of the Department.

### 37 **BREAK**

The Department shall in addition to its powers under any other of these Conditions have power to terminate this Contract at any time by giving to the Contractor one month's written notice.

### 38 **CONSEQUENCES OF TERMINATION OR BREAK**

38.1 Upon the expiry of any notice period, or immediately upon termination without notice, this Contract shall be terminated without prejudice to any right of action or remedy which shall have accrued or shall thereupon accrue to the parties. Termination shall not affect the continued operation of Conditions 12, 13, 14, 19, 21, 22, 30, 31 and 39.

38.2 Where this Contract is terminated under Condition 35 or 36, the following provisions shall apply:

- (a) Pending final ascertainment of such sums as are payable under this Contract any sum due or accruing from the Department to the Contractor may be withheld or reduced by such amount as the Department in either case considers reasonable and appropriate;



- (b) The Department may make all arrangements which are in its view necessary to procure the orderly completion of the Services, including the letting of another contract or contracts. In the event that a different organisation is required to take over the Services the Contractor shall co-operate in the transfer and with any arrangements notified to him by the Department. The transfer shall be arranged between the Department and the Contractor so as to reduce to a minimum any interruption in the Services;
- (c) Where the total costs reasonably and properly incurred by the Department by reason of any arrangements made under Condition 38.2(b) exceed the amount that would have been payable to the Contractor for the completion of the Services, the excess shall be recoverable from the Contractor and the Department reserves the right to recover such excess by way of set-off as provided for under Condition 40.

38.3 Without prejudice to Condition 38.1, where this Contract is terminated under Condition 37, the Department shall pay to the Contractor 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 have been reasonably and properly incurred, and would otherwise represent an unavoidable loss by the Contractor by reason of the termination of this Contract. For the avoidance of doubt the Department shall not indemnify the Contractor against loss of profit or consequential losses. The Department shall in no 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 this Contract, exceeds the total Contract Price.

38.4 Where this Contract is terminated pursuant to Condition 37, during the notice period the Department may direct the Contractor to perform all or any of the Services, or any part or component thereof in accordance with this Contract, and the Department shall pay the Contractor the agreed Contract Price or, where no price has been agreed or is applicable to an element of work, a fair and reasonable price.

## 39 **LIABILITY FOR LOSS OR DAMAGE**





39.1 The Contractor shall indemnify the Department, its servants and agents against all actions, claims, demands, costs, expenses, charges, payments and liabilities incurred by or made against the Department, its servants or agents, in respect of any loss or damage which arises out of or in connection with this Contract which is caused directly or indirectly by any act or omission of the Contractor.

39.2 In this Condition loss or damage includes, without limitation:

- (a) loss or damage to property;
- (b) personal injury and death;
- (c) loss of use; and
- (d) any other loss.

39.3 Without prejudice to any other exclusion or limitation of liability in this Contract, the liability of the Contractor for any claim or claims under this Contract shall be limited to such sums as it would be just and equitable for the Contractor to pay having regard to the extent of his responsibility for the loss or damage giving rise to such claim or claims ("the loss and damage") and on the assumptions that:

- (a) all other contractors, sub-contractors or advisers engaged in connection with the performance of the Services have provided contractual undertakings on terms no less onerous than those set out in these Conditions to the Department in respect of the carrying out of their obligations; and
- (b) there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between the Department and any other party referred to in this Condition and any such other party who is responsible to any extent for the loss and damage is contractually liable to the Department for the loss and damage; and
- (c) all such other contractors, sub-contractors or advisers have paid to the Department such sum as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage.



Whenever under this Contract any sums of money shall be recoverable from or payable by the Contractor to the Department, that amount may be deducted from any sum then due, or which at any later time may become due, to the Contractor under this Contract or under any other contract with the Department or with any other government department, agency or Office of Her Majesty's Government.

#### **41 SERVICE OF NOTICES**

Any notice required to be given or served under this Contract shall be in writing and shall be served by:

- (a) delivery to the Contractor's Representative, when it shall be deemed served at the time of delivery, or
- (b) sending it to the Contractor's Representative by first-class post, when it shall be deemed served on the second working day after posting; or
- (c) delivery to the Contract Manager, when it shall be deemed served at the time of delivery, or
- (d) sending it to the Contract Manager by first-class post, when it shall be deemed served on the second working day after posting.

#### **42 DISPUTE RESOLUTION**

42.1 Where any dispute, difference or question ("Dispute") between the Department and the Contractor arising out of or in connection with this Contract cannot be resolved by the Contract Manager and Contractor's Representative, either may refer the Dispute to a senior representative of the Department (a member of the Senior Civil Service) and of the Contractor (a director or other senior office holder) ("the Senior Representatives").

42.2 Without prejudice to Condition 42.5, if any Dispute is not resolved within 14 days of the referral to the Senior Representatives then the parties will attempt to settle it by mediation. To initiate the mediation a party must give a notice in writing ("the Mediation Notice") to the other party requesting a mediation. The Mediation Notice must



propose in outline how the mediation is to be conducted, including provision as to timing, sharing of costs and volume of documentation, having regard to the sum in issue and the complexity of the Dispute. Subject to Condition 42.5, any mediation is to take place not later than 28 days after service of the Mediation Notice.

42.3 Without prejudice to Condition 42.5, if:

- (a) there is any issue on the conduct of the mediation which the parties cannot agree within 14 days of service of the Mediation Notice; or
- (b) the Dispute is not resolved within 42 days of service of the Mediation Notice,

then the parties may litigate the Dispute in accordance with Condition 43.

42.4 Except where required to preserve the legal rights of the Department or the Contractor, or to obtain interim relief, or where the Dispute concerns a matter upon which the Department's decision is final, neither the Department nor the Contractor shall commence Court proceedings unless the Dispute remains unresolved after having been referred to the Senior Representatives, to mediation or to any other alternative means of resolving the Dispute chosen by the parties pursuant to Condition 42.5.

42.5 After a failure of the Senior Representatives to resolve the Dispute the parties may by agreement in writing elect to pursue any means of alternative dispute resolution.

#### 43 **LAW**

This Contract shall be governed by and interpreted in accordance with English law and, subject to Condition 42, any dispute arising out of or in connection with it shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

#### 44 **SEVERABILITY**



If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court, such provision shall be severed and the remainder of the provisions of this Contract shall continue in full force and effect. In the event that an invalid, illegal or unenforceable clause is fundamental to the performance of this Contract, the Department and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

#### 45 **WAIVER**

- 45.1 Any failure by the Department or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 45.2 No waiver shall be effective unless it is communicated to either the Department or the Contractor in writing.
- 45.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of this Contract.

#### 46 **RIGHTS OF THIRD PARTIES**

Nothing in this Contract confers or purports to confer on any third party any right to enforce any term of this Contract.