



## GENERAL CONDITIONS OF CONTRACT FOR GOODS AND SERVICES

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## 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) “Anti-Slavery Laws” means any and all laws including statutes, statutory instruments, bye-laws, orders, regulations, directives, treaties, decrees, decisions (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal) anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act;
- (b) “Award Date” means the date of the award of this Contract by INSS to the Contractor as specified in INSS’s Purchase Order;
- (c) “CEDR” shall have the meaning set out in Condition 41.2;
- (d) “Central Government Body” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
  - (i) Government Department;
  - (ii) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
  - (iii) Non-Ministerial Department; or
  - (iv) Executive Agency;
- (e) “Control” means in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise, and “Controlled” will be construed accordingly;
- (f) “Controller” has the meaning given in the GDPR;
- (g) “Conditions” means these General Conditions of Contract for Goods and Services;
- (h) “Confidential Information” means all information of whatsoever nature, whether written or oral (however recorded), provided by the disclosing party to the receiving party and which (i) is known by the receiving party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving party to be confidential, which shall include any information relating to this Contract, Goods and Services and any information relating to the Department for Business and Energy (BIES);
- (i) “Contract” means the agreement concluded between INSS and the Contractor, contained in the documents listed in INSS’s Purchase Order, the Conditions, the Specification and the Programme, including any annexes to



any of the foregoing. 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 Specification shall prevail unless otherwise agreed in writing;

- (j) "Contract Manager" means such official of INSS, or other person, whose name, title and contact details is specified in INSS's Purchase Order or as INSS shall from time to time appoint to act on its behalf for the purpose of managing this Contract;
- (k) "Contract Price" means the price or prices (exclusive of Value Added Tax) specified in INSS's Purchase Order and payable to the Contractor by INSS under this Contract for the full and proper performance by the Contractor of this Contract;
- (l) "Contractor" means the person appointed by INSS for the performance of the Services and/or supply of the Goods (including any successors) as specified in INSS's Purchase Order;
- (m) "Contractor Representative" means such competent person whose name, title and contact details is specified in INSS's Purchase Order or as the Contractor shall from time to time appoint to be its representative in relation to the performance of this Contract, who will receive and act on any directions given by the Contract Manager;
- (n) "Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
- (o) "DPA 2018" means the Data Protection Act 2018;
- (p) "Data Protection Impact Assessment" means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
- (q) "Data Protection Legislation" means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
- (r) "Data Protection Officer" has the meaning given in the GDPR;
- (s) "Data Subject" has the meaning given in the GDPR;
- (t) "Data Subject Access Request" means 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;
- (u) "Deliverable" shall have the meaning set out in Condition 28.1;



- (v) “Delivery” means hand over of the Goods to INSS in accordance with the requirements of the Contract, which shall include unloading and any other specific arrangements agreed in accordance with Condition 6. “Delivered” and “Deliver” shall be construed accordingly;
- (w) “Discrimination Acts” means the Equality Act 2010, Sex Discrimination Act 1975 and the Disability Discrimination Act 1995;
- (x) “Dispute” shall have the meaning set out in Condition 41.1;
- (y) “EIR” means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any in relation to such Regulations;
- (z) “Expiry Date” means the date on which such Contract period as has been specified in INSS’s Purchase Order comes to an end, as may be extended pursuant to Condition 2.2;
- (aa) “FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
- (bb) “GDPR” means the General Data Protection Regulation (*Regulation (EU) 2016/679*);
- (cc) “Good(s)” means all the good(s) that the Contractor is required to provide under this Contract as specified in INSS’s Purchase Order (if any);
- (dd) “Good Industry Practice” means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services and/or goods similar to the Goods to a customer like INSS, such supplier seeking to comply with its contractual obligations in full and complying with applicable laws;
- (ee) “Information” has the meaning given under Section 84 of FOIA;
- (ff) “INSS” means The Insolvency Service, an executive agency sponsored by The Secretary of State for Business Energy and Industrial Strategy;
- (gg) “INSS’s Purchase Order” means the document confirming award of this Contract to the Contractor by INSS;
- (hh) “Key Personnel” means any person specified in INSS’s Purchase Order as fundamental to the performance of this Contract;
- (ii) “Law” means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the



meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

- (jj) “LED” means the Law Enforcement Directive (*Directive (EU) 2016/680*);
- (kk) “Mediation Notice” shall have the meaning set out in Condition 41.2;
- (ll) “Modern Slavery Act” means the Modern Slavery Act 2015 (including any code or guidance issued under or in relation to the Modern Slavery Act 2015);
- (mm) “Modern Slavery Practice” means any practice that amounts to (a) slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as amended), (b) forced or compulsory labour (as defined by the International Labour Organisation’s Forced Labour Convention 1930 (No. 29) and Protocol) (c) human trafficking or (d) the arranging or facilitation of the travel of another person with a view to that person being exploited;
- (nn) “Personal Data” has the meaning given in the GDPR;
- (oo) “Personal Data Breach” has the meaning given in the GDPR;
- (pp) “Premises” shall have the meaning set out in Condition 25;
- (qq) “Processor” has the meaning given in the GDPR;
- (rr) “Programme” means the programme or timetable annexed to INSS’s Purchase Order or otherwise agreed in writing by INSS and the Contractor and which regulates or specifies the period or periods for the performance of the Services or any part of them and/or supply of the Goods, together with any activities ancillary to the performance of the Services and/or the supply of the Goods or the preparation and submission of reports and the dates by which the Service must be performed or Goods must be Delivered to INSS;
- (ss) “Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
- (tt) “Representatives” means in relation to any person its officers, directors, employees, consultants, advisers and agents and contractors (including in the context of the Contractor, any Sub-Contractor);
- (uu) “Request for Information” has the meaning set out in FOIA or EIR as relevant (where the meaning set out for the term “request” shall apply);
- (vv) “Senior Representative” shall have the meaning set out in Condition 41.1;



- (ww) “Service(s)” means all the Services that the Contractor is required to carry out under this Contract as specified in INSS’s Purchase Order (if any);
  - (xx) “Specification” means the document describing the Services to be performed and/or the Goods to be supplied under this Contract and annexed to INSS’s Purchase Order;
  - (yy) “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 and/or the supply of the Goods;
  - (zz) “Sub-Processor” means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract;
  - (aaa) “TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246); and
  - (bbb) “Working Days” means any other day other than a Saturday, Sunday or a bank holiday.
- 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. Any references to “re-enacted” in respect of any statute or statutory provision (including any subordinate legislation) include references to the preservation, continuation of effect, conversion or incorporation of any of them into the law of England and Wales, Scotland and Northern Ireland.
- 1.5 Any references to a “person” include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality).
- 1.6 Unless indicated otherwise, references to numbered Conditions are references to the relevant conditions in these terms and conditions.
- 1.7 Any obligation on any party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done.





- 1.8 The words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”.

## 2 DURATION OF THIS CONTRACT

- 2.1 Subject to the rights of earlier termination set out in these 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 or Delivered the Goods in accordance with this Contract, unless it is otherwise extended in accordance with Condition 2.2.
- 2.2 INSS may extend this Contract (and the Expiry Date) for such period and by giving such period of notice in writing to the Contractor as specified in INSS’s Purchase Order prior to the then Expiry Date. The terms and conditions of this Contract shall apply throughout any such extended period.

## 3 CONTRACTOR’S PERFORMANCE

- 3.1 These Conditions are the only terms and conditions on which INSS will purchase Goods and/or Services from the Contractor and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Contractor purport to apply under any quotation, acknowledgement, acceptance or confirmation of order, delivery note, invoice or similar document (whether or not such document is referred to in these Conditions) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.
- 3.2 The Contractor shall properly perform the Services and/or supply the Goods in accordance with this Contract and Good Industry Practice, and shall pro-actively manage and monitor performance of the Services and/or the supply of the Goods to ensure compliance therewith. The Contractor shall inform the Contract Manager in writing 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.
- 3.3 Subject to Condition 6.5, if any part of the Services and/or Goods provided is found to be inadequate or not in accordance with this Contract, other than as a result of material default or negligence on the part of INSS, the Contractor shall at his own expense replace or make good to the satisfaction of INSS and, if required, re-schedule and perform that part of the work or re-supply the Goods within such reasonable time as may be notified by INSS.
- 3.4 The Contractor shall provide all the necessary facilities, tools, vehicles, materials and any other equipment, and personnel of appropriate qualifications, suitable skill and experience and in sufficient number to undertake the Services and supply the Goods in accordance with the terms of this Contract.
- 3.5 In providing the Services and supplying the Goods, the Contractor shall:
- (a) co-operate with INSS and its Representatives in all matters relating to the Services and Goods (as applicable) and comply with all of INSS’s instructions;





- (b) ensure that the Services and Goods (as applicable) shall conform with all descriptions set out in the Specification;
  - (c) ensure that the Services and Goods (as applicable) are supplied or performed in accordance with the Programme;
  - (d) ensure that the Services are performed and Goods are supplied (as applicable) in accordance the requirements of INSS's Purchase Order; and
  - (e) comply with all applicable Law, British Standards, requirements of any relevant statutory and regulatory bodies and health and safety and security policies and obey all of INSS's lawful and reasonable directions.
- 3.6 The Contractor shall ensure that all its Representatives are vetted in accordance with the Good Industry Practice or, where requested by INSS, INSS's procedures for vetting of personnel as provided to the Contractor from time to time.
- 3.7 All Key Personnel and other Representatives deployed by the Contractor on work relating to this Contract shall be appropriately qualified and competent to perform the task assigned to them and shall be acceptable to INSS. The Contractor shall supervise and manage all such personnel properly. If INSS gives the Contractor notice that any Representative is to be removed from involvement in the Services and/ or the supply of the Goods, the Contractor shall take immediate steps to comply with that notice. The decision of INSS regarding the Contractor's Representatives shall be final and conclusive.
- 3.8 The Contractor shall:
  - (a) give INSS in writing, 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; and
  - (b) comply, and shall procure that his employees and Sub-Contractors comply, with any rules, regulations and any health, safety, environment and security instructions notified by INSS to the Contractor in writing, including completion of any additional security clearance procedures required by INSS, and return of any passes required.
- 3.9 The Contractor shall take all reasonable steps to avoid changes to the Key Personnel without obtaining the prior written consent of INSS. The Contractor shall give at least one month's written notice to the Contract Manager of any proposal to remove or replace Key Personnel and INSS 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 unforeseeable personal circumstances.
- 3.10 Unless otherwise agreed by INSS, neither the Contractor nor any of its Representatives 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 INSS.



- 3.11 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 INSS are entered into (unless expressly required under this Contract) without INSS's prior written consent.
- 3.12 Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between INSS and the Contractor.

#### 4 **SUPPLY OF GOODS**

- 4.1 The Contractor shall supply the Goods in accordance with this Contract, including the Specification and the Programme. The quantity and description of the Goods will be as set out in the Specification.
- 4.2 The Contractor warrants, represents, undertakes and guarantees that the Goods supplied under the Contract shall:
- (a) be free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;
  - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;
  - (c) conform with the Specification and any drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Contractor) supplied by, or on behalf of, the Contractor as part of its offer to INSS;
  - (d) be free from design defects;
  - (e) comply with all relevant applicable Laws and British Standards and the requirements of any relevant statutory and regulatory bodies; and
  - (f) be fit for any purpose expressly held out by the Contractor or expressly stated in INSS's Purchase Order or the Specification.

The Contractor acknowledges and agrees that the approval by INSS of any designs provided by the Contractor shall not relieve the Contractor of any of its obligations under this sub-Condition.

- 4.3 INSS have the right to inspect and test the Goods at any time prior to Delivery. The Contractor shall permit INSS and its Representatives to enter upon the Contractor's premises, and will procure permission for such persons to enter upon any relevant third party premises, to carry out such inspection and testing and will provide INSS and its Representatives with all facilities reasonably required.
- 4.4 If, following inspection or testing under Condition 4.3, INSS give written notice to the Contractor that INSS are not satisfied that the Goods comply with these Conditions,



the Contractor will take all steps necessary to ensure compliance. Any breach of this obligation by the Contractor, or failure to comply with any such notice, will be deemed to be a material breach entitling INSS to terminate the Contract under Condition 34.1.

4.5 No inspection or testing under Condition 4.3 will reduce or otherwise affect the Contractor's obligations under the Contract.

4.6 The Contractor will maintain detailed quality control and manufacturing records for a period of at least 12 years from the Delivery of the Goods and will permit INSS or its Representatives to inspect and take copies of these records on demand.

## 5 **CANCELLATION**

INSS shall have the right to cancel the order for the Goods, or any part of the Goods, which have not yet been Delivered to INSS. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, INSS shall pay such Contract Price or that part of the Contract Price for Goods which have been Delivered to INSS or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials and any part of the Goods which the Contractor has already purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials or part of the Goods for a refund. For the avoidance of doubt, without prejudice to the generality of Condition 38.2, INSS shall not be liable for any loss of anticipated profits or any consequential loss.

## 6 **DELIVERY**

6.1 The Contractor shall Deliver the Goods to INSS on or by the date specified in the Programme. Unless otherwise agreed in writing by INSS, Delivery shall be on the delivery date specified in the Programme and to the address specified in INSS's Purchase Order. Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and INSS has signed for the Delivery.

6.2 Any access to INSS's premises and any labour and equipment that may be provided by INSS in connection with Delivery of the Goods shall be provided without acceptance by INSS, its Representatives, or the Crown of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of INSS or its servant or agent. The Contractor shall indemnify INSS, its Representatives and the Crown in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which INSS or the Crown may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Contractor or any of its Representatives.

6.3 Delivery of the Goods shall be accompanied by a delivery note which shows INSS's Purchase Order number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.



- 6.4 Unless otherwise stipulated by INSS in INSS's Purchase Order, Deliveries shall only be accepted by INSS on Working Days and during normal business hours.
- 6.5 Where (i) the Contractor fails to Deliver the Goods or part of the Goods in accordance with the Programme or (ii) the Goods or part of the Goods do not comply with the provisions of Condition 4, then without limiting any of its other rights or remedies implied by statute or common law, INSS shall be entitled to:
- (a) request the Contractor, free of charge, to deliver substitute Goods within the timescales specified by INSS; or
  - (b) require the Contractor, free of charge, to repair or replace the Goods; or
  - (c) reject the Goods (in whole or part) and return them to the Contractor at the Contractor's own risk and expense and INSS shall be entitled to a full refund of the Contract Price (if already paid) on those Goods or part of Goods duly returned,

INSS will be entitled to recover from the Contractor any and all liabilities, losses, damages, costs and expenses incurred by INSS as a result of the non-conformity of the Goods, including in obtaining substitute goods from another supplier. Failure of the Contractor to comply with the provisions of this Condition 6.5, or any such requirement of INSS, will be deemed to be a material breach entitling INSS to terminate this Contract under Condition 34.1.

- 6.6 Condition 6.5 will apply to any repaired or replacement Goods supplied under Condition 6.5(b).

## **7 PROPERTY AND GUARANTEE OF TITLE**

- 7.1 Without prejudice to any other rights or remedies of INSS, title and risk in the Goods shall pass to INSS when Delivery of the Goods is complete (including off-loading and stacking).
- 7.2 The Contractor warrants that
- (a) it has full clear and unencumbered title to all the Goods; and
  - (b) it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to INSS and on Delivery INSS shall acquire a valid and unencumbered title to the Goods.

## **8 ALTERATION OF REQUIREMENT**

- 8.1 Each of the parties may by written notice to the other request an alteration to the requirements of this Contract, as detailed in the Specification, Programme or INSS's Purchase Order, should this at any time become necessary or desirable. In the event of any such alteration being agreed in writing by both parties, payment under this Contract shall be subject to fair and reasonable adjustment to be agreed between INSS and the Contractor and recorded in writing. Each party shall act reasonably, promptly and in good faith in respect of any such request. The parties



shall continue to act in accordance with this Contract until any such alteration and adjustment has been agreed in writing.

**9 INVOICES AND PAYMENT**

- 9.1 Subject to the Contractor performing its obligations in accordance with the terms of the Contract, INSS will pay the Contract Price to the Contractor in accordance with this Condition 9, which shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Goods and provision of the Services.
- 9.2 No payment made by INSS will constitute acceptance or approval of the Goods or Services or otherwise prejudice any rights or remedies which INSS may have against the Contractor, including the right to recover any amount overpaid or wrongfully paid to the Contractor.
- 9.3 The Contractor shall submit an invoice to INSS as specified in INSS's Purchase Order or, where nothing is so specified, within 28 days of the completion of the Services and/or Delivery of the Goods in accordance with this Contract. All invoices shall quote the Contract number and, where applicable, INSS's Purchase Order number.
- 9.4 The Contractor shall submit in writing with each invoice such records as INSS may reasonably require including, but not limited to, time sheets, details of expenses incurred, invoices paid and any other documents which would enable INSS to verify the information and the amounts referred to in that invoice.
- 9.5 The name and address of the Contractor's bank, the account name and number, the bank sort code and any other details requested by INSS shall be specified in INSS's Purchase Order and the Contractor shall inform INSS in writing as soon as is reasonably practicable of any change to such information.
- 9.6 Except where otherwise expressly provided in this Contract, the amount payable to the Contractor for the performance of the Services and/or supply of the Goods shall be inclusive of all costs, including but not limited to staff, facilities, equipment, materials, packaging, insurance, delivery, unloading, stacking and carriage and all other expenses incurred by the Contractor in discharging his obligations under this Contract.
- 9.7 INSS is committed to prompt payment and shall pay the Contractor within 30 days of the receipt of a valid and undisputed invoice, provided that that the Services and/or supply of the Goods to which the invoice relates have been performed fully in accordance with this Contract.
- 9.8 If there is a dispute between the parties as to the amount invoiced, INSS shall pay the undisputed amount. The Contractor shall not suspend the supply of the Goods and/or the provision of Services unless the Contractor is entitled to terminate the Contract for a failure to pay undisputed sums in accordance with Condition 34.2. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in Condition 41.



9.9 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:

- (a) provisions having the same effects as Conditions 9.3 to 9.8 of this Contract; and
- (b) a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effects as Condition 9.3 to 9.9 of this Contract.

In this Condition 9.9, “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from INSS in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract including any contract entered into between the Contractor and a Sub-Contractor.

## 10 **VALUE ADDED TAX**

All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. INSS shall following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services and/or Goods.

## 11 **INSPECTION**

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

## 12 **PREMISES AND EQUIPMENT**

- 12.1 If necessary, INSS shall provide the Contractor with reasonable access at reasonable times to its Premises for the purpose of providing the Services and/or supplying the Goods. All equipment, tools and vehicles brought onto to the Premises or any other of INSS’s premises by the Contractor or its Representative shall be at the Contractor’s risk.
- 12.2 If the Contractor supplies all or any of the Services and/or Goods at or from the Premises, on completion of the Services and/or supply of the Goods or termination or





expiry of the Contract (whichever is the earlier) the Contractor shall vacate the Premises, remove the Contractor's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and/or supply of the Goods and leave the Premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Premises or any objects contained on the Premises which is caused by the Contractor or its Representative, other than fair wear and tear.

- 12.3 INSS shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. While on the Premises the Contractor shall, and shall procure that all Representative shall, comply with all INSS's security requirements at its own costs.
- 12.4 Without prejudice to Condition 3.4, all materials, equipment, tools, dies and moulds supplied by INSS to the Contractor, or to which the Contractor is given access for the purpose of performing the Services and/or supplying the Goods, shall at all times:
- (a) be and remain INSS' exclusive property;
  - (b) be held by the Contractor in safe custody at the Contractor's own risk;
  - (c) be maintained and kept in good condition by the Contractor until returned to INSS;
  - (d) not be disposed of other than in accordance with INSS's written instructions;
  - (e) be used by the Contractor and/or its Representatives only for the purpose of discharging its obligations under this Contract;
  - (f) not be used otherwise than as authorised by INSS in writing; and
  - (g) be promptly returned to INSS on expiry or termination of this Contract or on demand by INSS.
- 12.5 The Contractor shall reimburse INSS for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any of its Representatives. Equipment supplied by INSS shall be deemed to be in a good condition when received by the Contractor or any relevant Representative unless INSS is notified otherwise in writing within 5 Working Days.

13 **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 performed out and/or the Goods to be supplied under this Contract. The Contractor shall consult INSS 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.





**14 CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

14.1 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 INSS.

14.2 The Contractor shall not conspire with any person to do any of the acts mentioned in Condition 14.1.

14.3 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by the Contractor's Representative and the Contractor (including its shareholders, members and directors) in connection with the Contractor and shall notify INSS immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

14.4 Any:

- (a) breach by the Contractor of this Condition; or
- (b) commission of any offence by the Contractor under the Bribery Act 2010 in relation to this or any other contract with INSS or the Crown,

shall entitle INSS 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.

14.5 The decision of INSS in relation to this Condition shall be final and conclusive.

**15 OFFICIAL SECRETS ACTS**

15.1 The Contractor shall take all reasonable steps to ensure that all its employees and any Sub-Contractor employed by it in connection with this Contract are aware of the Official Secrets Acts 1911 to 1989 and Section 182 of Finance Act 1989, and understand that these Acts may apply to them, to the extent that they are in receipt of official information during and after performance of any Services and/or supply of the Goods under or in connection with this Contract.

15.2 The Contractor shall comply with, and shall ensure that its Representatives shall comply with, the provisions of:

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

**16 GOVERNANCE, RECORDS AND COMPLIANCE**

16.1 The Contractor shall:



- (a) attend progress meetings with INSS at the frequency and times specified by INSS (acting reasonably and giving advance reasonable notice) and shall ensure that its Representatives attending are suitably qualified and empowered for the subject matter of such meetings; and
  - (b) submit progress reports to INSS at the times and in the format specified by INSS.
- 16.2 The Contractor shall keep and maintain until 6 years after the end of the Contract, or as long a period as may be agreed between the parties, full and accurate records of the Contractor including the Services and/or Goods supplied under it and all payments made by INSS. The Contractor shall on request afford INSS or INSS's Representatives such access to those records as may be reasonably requested by INSS in connection with the Contractor.
- 16.3 The Contractor shall promptly notify INSS of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. INSS shall promptly notify the Contractor of any health and safety hazards which may exist or arise at INSS's premises and which may affect the Contractor in the performance of its obligations under the Contract.
- 16.4 The Contractor shall:
  - (a) comply with all of INSS's health and safety measures while on INSS's premises; and
  - (b) notify INSS immediately in the event of any incident occurring in the performance of its obligations under the Contract on INSS's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 16.5 The Contractor shall supply the Services and/or Goods in accordance with INSS's environmental policy as provided to the Contractor from time to time.
- 17 **CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY**
- 17.1 Subject to Condition 17.2, each party shall:
  - (a) treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing party; and
  - (b) not use or exploit the disclosing party's Confidential Information in any way except for the purposes anticipated under the Contract.
- 17.2 Notwithstanding Condition 17.1, a party may disclose Confidential Information which it receives from the other party:
  - (a) where disclosure is required by applicable Law or by a court of competent jurisdiction;



- (b) to its auditors or for the purposes of regulatory requirements;
- (c) on a confidential basis, to its professional advisers;
- (d) to the Serious Fraud Office where the party has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- (e) where the receiving party is the Contractor, to the Representative on a need to know basis to enable performance of the Contractor's obligations under the Contract provided that the Contractor shall procure that any Representative to whom it discloses Confidential Information pursuant to this Condition 17.2(e) shall observe the Contractor's confidentiality obligations under the Contract; and
- (f) where the receiving party is INSS:
  - (i) on a confidential basis to INSS's Representative;
  - (ii) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which INSS transfers or proposes to transfer all or any part of its business;
  - (iii) to the extent that INSS (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
  - (iv) in accordance with Condition 18,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on INSS under this Condition 17.

- 17.3 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of the Contract is not Confidential Information and the Contractor hereby gives its consent for INSS to publish this Contract in its entirety to the general public (but with any information that is exempt from disclosure in accordance with FOIA redacted) including any changes to the Contractor agreed from time to time. INSS may consult with the Contractor to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.
- 17.4 The Contractor shall not, and shall take reasonable steps to ensure that the Representative shall not, make any press announcement or publicise the Contract or any part of the Contract in any way, except with the prior written consent of INSS.



**18 FREEDOM OF INFORMATION**

18.1 The parties acknowledge that:

- (a) INSS is a public authority for the purposes of FOIA; and
- (b) public authorities have certain information disclosure requirements under FOIA and EIR.

18.2 The Contractor shall:

- (a) assist and co-operate with INSS (at its own expense) to enable INSS to comply with its obligations under FOIA and/or EIR;
- (b) transfer to INSS all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide INSS with a copy of all Information belonging to INSS requested in the Request for Information which is in its possession or control in the form that INSS requires within 5 Working Days (or such other period as INSS may reasonably specify) of INSS's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by INSS.

18.3 INSS is responsible for determining at its absolute discretion whether any Confidential Information, or any other information:

- (a) is exempt from disclosure in accordance with the provisions of FOIA or the EIR; or
- (b) is to be disclosed in response to a request for information.

18.4 The Contractor acknowledges that INSS may be required under FOIA and EIR Information concerning the Contractor or the Services or Goods (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances INSS shall, in accordance with any relevant guidance issued under FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

**19 DISCRIMINATION**

19.1 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, disability or ethnic or national origin contrary to the Equality Act 2010; or



- (b) on grounds of sex contrary to the Sex Discrimination Act 1975; or
  - (c) on grounds of disability contrary to the Disability Discrimination Act 1995.
- 19.2 Where any Representative employed by the Contractor is required to carry out any activity on the Premises or alongside INSS's employees on any other premises the Contractor shall ensure that each such Representative complies with INSS's employment policies and codes of practice relating to discrimination and equal opportunities.
- 19.3 The Contractor shall notify the Contract Manager and INSS in writing as soon as it becomes aware of any investigation or proceedings brought against the Contractor under the Equality Act 2010, Sex Discrimination Act 1975 or the Disability Discrimination Act 1995 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 INSS 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.
- 19.4 The Contractor shall indemnify INSS against all costs, charges, expenses (including legal and administrative expenses) and payments made by INSS arising out of or in connection with any such investigation or proceedings.
- 19.5 The Contractor shall impose obligations on its Sub-Contractors in terms substantially similar to those set out in Conditions 19.1 to 19.4.
- 20 **ANTI-SLAVERY**
- 20.1 The Contractor shall not engage in any Modern Slavery Practice.
- 20.2 The Contractor shall:
  - (a) comply with the Anti-Slavery Laws at all times and shall procure that its Representatives and any other persons who perform the services and/or supplies the goods for or on behalf of the Contractor in connection with the Contract will comply with the same at all times;
  - (b) conduct proper and detailed checks on any agency or person used by the Contractor to provide labour, employees, contractors or other persons to undertake tasks for the Contractor (in each case whether on a permanent or temporary basis) to ensure that any such agency or person does not engage in any Modern Slavery Practice;



- (c) provide INSS with such assistance and information as INSS may require from time to time to enable INSS or any person nominated by INSS to:
  - (i) perform any activity required by any government, regulatory entity or agency in any relevant jurisdiction for the purpose of compliance with any applicable Anti-Slavery Laws or as required by INSS;
  - (ii) prepare a slavery and human trafficking statement as required by section 54 Modern Slavery Act and to include the matters referred to in section 54(5) of that Act;
  - (iii) identify any non-compliance with the Anti-Slavery Laws; and
  - (iv) conduct due diligence and to measure the effectiveness of the steps INSS are taking or wish to take to ensure that Modern Slavery Practices are not taking place in INSS's business or supply chains;
  - (v) access on demand to the Contractor's premises, personnel, systems, books and records as INSS may require to verify the Contractor's compliance with this Condition 20.
- 20.3 The Contractor warrants to INSS that any information provided by it in relation to its compliance with the Anti-Slavery Laws is complete and accurate.
- 20.4 The Contractor shall immediately give written notice to INSS upon the occurrence of a breach or suspected breach of any of its obligations referred to in this Condition 20. The notice will set out full details of the breach or suspected breach.
- 20.5 INSS may terminate the Contract immediately by giving written notice to that effect to the Contractor if the Contractor are in breach of any of its obligations under this Condition 20.
- 20.6 INSS shall be entitled, by giving written notice to that effect to the Contractor, to require the Contractor to:
  - (a) remove from the performance of the Contract any of the Contractor's officers, employees, sub-contractors or agents whom INSS believe to be engaging in any Modern Slavery Practice; or
  - (b) take such action as INSS require to ensure that the Contractor fully complies with any Anti-Slavery Laws.
- 21 **ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS**
  - 21.1 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 INSS. INSS may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal.



- 21.2 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.
- 21.3 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.
- 21.4 Where INSS has consented to the placing of sub-contracts, the Contractor shall, at the request of INSS, send copies of each sub-contract, to INSS as soon as is reasonably practicable.
- 21.5 INSS may assign, novate, or otherwise dispose of its rights and obligations under the Contract without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor's obligations under the Contract.
- 22 **INSURANCE**
- 22.1 The Contractor shall affect 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.
- 22.2 The Contractor shall hold employer's liability insurance in respect of its employees by the Contractor in the performance of this Contract.
- 22.3 Where in compliance with Condition 22.1, the Contractor effects professional indemnity insurance the insurance policy and any renewal shall cover liabilities under this Contract from the commencement of the Services and/or supply of the Goods until 6 years after:
- (i) the completion of the Services and/or Delivery of the Goods; or
  - (ii) the termination of this Contract,
- whichever is the earlier.
- 22.4 When requested by INSS the Contractor shall produce documentary evidence showing that the insurance required by Conditions 22.1 and 22.2 has been effected and is being maintained.
- 22.5 If, for whatever reason, the Contractor fails to effect and maintain the insurance required by this Condition INSS may make alternative arrangements necessary to protect its interests and recover the costs thereof from the Contractor.
- 22.6 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract.





- 22.7 The Contractor shall impose obligations on its Sub-Contractors in terms substantially similar to those set out in Conditions 22.1 to 22.6, but this shall not relieve the Contractor of any of his obligations and liabilities under this Contract.

23 **DATA PROTECTION**

- 23.1 The parties acknowledge that for the purposes of the Data Protection Legislation, INSS is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in the data protection table annexed to INSS's Purchase Order by INSS and may not be determined by the Contractor.

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

- 23.3 The Contractor shall provide all reasonable assistance to INSS in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of INSS, 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 and/or Goods supplied;
- (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.

- 23.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with the data protection table annexed to INSS's Purchase Order, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify INSS 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 INSS 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's Representative do not process Personal Data except in accordance with this Contract (and in particular the data protection table annexed to INSS's Purchase Order);
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor's Representative who have access to the Personal Data and ensure that they:
  - (A) are aware of and comply with the Contractor's duties under this Condition 23;
  - (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 INSS or as otherwise permitted by this Contract; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the United Kingdom or the EU unless the prior written consent of INSS has been obtained and the following conditions are fulfilled:
  - (i) INSS 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 INSS;
  - (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 INSS in meeting its obligations); and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by INSS with respect to the processing of the Personal Data;
- (e) at the written direction of INSS, delete or return Personal Data (and any copies of it) to INSS on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

23.5 Subject to Condition 23.6, the Contractor shall notify INSS immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;



- (c) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - (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.
- 23.6 The Contractor's obligation to notify under Condition 23.5 shall include the provision of further information to INSS in phases, as details become available.
- 23.7 Taking into account the nature of the processing, the Contractor shall provide INSS with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Condition 23.5 (and insofar as possible within the timescales reasonably required by INSS) including by promptly providing:
- (a) INSS with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by INSS to enable INSS to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) INSS, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by INSS following any Data Loss Event;
  - (e) assistance as requested by INSS with respect to any request from the Information Commissioner's Office, or any consultation by INSS with the Information Commissioner's Office.
- 23.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Condition 23. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) INSS determines that the processing is not occasional;
  - (b) INSS 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) INSS determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.



- 23.9 The Contractor shall allow for audits of its Data Processing activity by INSS or INSS's designated auditor.
- 23.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 23.11 Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Contractor must:
- (a) notify INSS in writing of the intended Sub-Processor and processing;
  - (b) obtain the written consent of INSS;
  - (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Condition 23 such that they apply to the Sub-Processor; and
  - (d) provide INSS with such information regarding the Sub-Processor as INSS may reasonably require.
- 23.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-Processor.
- 23.13 INSS may, at any time on not less than 30 Working Days' notice, revise this Condition 23 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 Contract).
- 23.14 The parties agree to take account of any guidance issued by the Information Commissioner's Office. INSS may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## 24 **TUPE**

- 24.1 The Contractor shall provide INSS, and/or any other person authorised by INSS 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 INSS may require. The Contractor shall provide the information within 10 days of INSS's request. The Contractor warrants for the benefit of INSS and any replacement supplier that such information shall be complete and accurate.
- 24.2 The Contractor shall indemnify INSS and any replacement supplier in respect of any claims or losses arising from failure by the Contractor to provide complete and accurate in connection with TUPE or in respect of any breach by it of any data protection laws.
- 24.3 During the eight (8) month period preceding the Expiry Date or any notice period, the Contractor shall not without the prior consent of INSS (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.

24.4 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.

## 25 OCCUPATION OF PREMISES

Any land or premises (including temporary buildings) made available to the Contractor by INSS 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 specified by INSS from time to time.

## 26 ENVIRONMENTAL REQUIREMENTS

- 26.1 In providing the Services and/or supply of the Goods the Contractor shall comply with INSS’s environmental policy, which is to conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 26.2 The paper for all written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) comply with the relevant Government Buying Standards and shall be used on both sides where appropriate.
- 26.3 All goods purchased by the Contractor on behalf of INSS (or which will become the property of INSS) must comply with the relevant minimum environmental standards specified in the relevant Government Buying Standards.

## 27 INTELLECTUAL PROPERTY, ROYALTIES AND LICENCE FEES

- 27.1 All intellectual property rights in any materials provided by INSS to the Contractor for the purposes of this Contract shall remain the property of INSS. INSS 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. 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 INSS’s prior written approval.



- 27.2 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 and/or supply of the Goods shall vest in the Contractor.
- 27.3 Subject to Condition 27.7, the Contractor hereby grants INSS and the Crown:
- (a) a perpetual, royalty-free, irrevocable, transferrable, 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/or Goods, including any modifications to or derivative versions of any such intellectual property rights; and
  - (b) a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right for INSS to sub-license its Representatives) 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 and/or Goods,including any modifications to or derivative versions of any such intellectual property rights, which INSS or the Crown reasonably require in order to exercise its rights and take the benefit of the Contract including the Services and/or Goods provided and the rights granted under Condition 27.3(a) .
- 27.4 The Contractor shall indemnify, and keep indemnified, INSS, its Representatives and the Crown 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 INSS, its Representatives or the Crown as a result of or in connection with any claim made against INSS, its Representatives or the Crown 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 and/or Goods, to the extent that the claim is attributable to the acts or omission of the Contractor or any Representative.
- 27.5 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.





- 27.6 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.
- 27.7 The Contractor shall procure and maintain all necessary licenses to use any third party commercial off-the-shelf software which is generally available to the public on standard terms and not typically negotiated by the Contractor save as to price that INSS reasonably require in order to exercise its rights and take the benefit of the Contract. The Contractor shall procure the grant to INSS of a direct licence of such software for INSS's purposes on terms no less favourable than those on which such software is usually made available by the relevant third party.
- 28 **DRAWINGS, SPECIFICATIONS, SOFTWARE, DESIGNS AND OTHER DATA**
- 28.1 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 INSS on completion (or, if sooner, termination) of the Services and/or supply of the Goods, subject to the retention of proper professional records. The Deliverables shall be supplied by the Contractor in a format agreed by the parties.
- 28.2 If this Contract is terminated by INSS pursuant to the provisions of Conditions 33, 34, or 35, the provisions of Condition 28.1 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. INSS 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.
- 29 **PRODUCTION AND RETENTION OF DOCUMENTATION**
- 29.1 The Contractor shall produce such accounts, documents (including working documents) and records related to this Contract as INSS, or the Contract Manager, may request at any time during this Contract. Subject to the provisions of Condition 18, INSS'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 its other clients.
- 29.2 The Contractor shall retain, maintain and produce such full and accurate accounts, documents (including working documents) and records related to this Contract including the Goods and/or Services supplied under it and all payments made by INSS) as INSS, or the Contract Manager, may request for a period of 6 years from the Expiry Date or termination of this Contract, or such longer period as may be agreed between INSS and the Contractor in writing at or before the commencement of this Contract. The Contractor shall on request afford INSS or its Representatives with such access to those records as may be reasonably requested by INSS in connection with the Contract.
- 29.3 The Contractor shall afford such facilities as INSS 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.

29.4 Subject to the provision of reasonable notice to the Contractor, and for the purpose of:

- (a) examining and certifying INSS's accounts; or
- (b) any examination, pursuant to section 7(1) of the National Audit Act 1983, of the economy, efficiency and effectiveness with which INSS 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.

29.5 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.

29.6 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.

### 30 **TRANSFER OF RESPONSIBILITY**

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

### 31 **CHANGE OF CONTROL**

The Contractor shall obtain INSS'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. If such consent is not obtained when required by this Condition 31, INSS has the right to terminate this Contract at its election as set out in Condition 34 (Termination of this Contract).

31.1 The Contractor shall inform INSS in writing of any change, or proposed change in the name of or status of the Contractor.

### 32 **UNSATISFACTORY PERFORMANCE**

32.1 Where in the reasonable opinion of INSS the Contractor has failed to perform the whole or any part of the Services in accordance with this Contract INSS 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 INSS deems appropriate.



32.2 Any notice served by INSS pursuant to Condition 32.1 may require from the Contractor that it re-schedules and performs the Services to INSS's satisfaction within such period as shall be specified by INSS in the notice and at his own expense, including where necessary, the correction or re-execution of any Services already carried out.

32.3 Any notice served by INSS pursuant to Conditions 32.1 and 32.2 shall be without prejudice to INSS's rights under this Contract. Failure of the Contractor to comply with the provisions of this Condition 32 or any notice will be deemed to be a material breach entitling INSS to terminate this Contract under Condition 34.1

### 33 **INSOLVENCY OF THE CONTRACTOR**

33.1 If the Contractor:

- (a) 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;
- (b) takes or is subject to any similar or analogous action to any of the matters referred to in Condition 33.1(a) above in any other jurisdiction;

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

33.2 The Contractor shall give notice in writing to INSS of the occurrence of any of the events referred to in Conditions 33.1(a) to (b) above immediately on becoming aware of the same.

### 34 **TERMINATION OF THIS CONTRACT**

34.1 Without prejudice to any other power of termination or any other right or remedy INSS has under the Contract, INSS may by notice in writing terminate this Contract with immediate effect for any of the following reasons:

- (a) breach by the Contractor of, or failure by the Contractor to comply with any notice referred to in, any of Conditions 4.4 (Supply of Goods), 6.5 (Delivery), 14 (Corrupt Gifts & Payments of Commission), 15 (Official Secrets Acts), 23 (Data Protection) or 32 (Unsatisfactory Performance) of this Contract;



- (b) the Contractor ceases or proposes to cease to carry on his business;
- (c) a change of Control occurs without the prior approval of INSS;
- (d) (without prejudice to sub-condition (a)), the Contractor is in material breach of any obligation under this Contract which is not capable of remedy;
- (e) repeatedly breaches by the Contractor of any of the terms and conditions of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
- (f) the Contractor is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied; or
- (g) the Contractor fails to comply with legal obligations in the fields of environmental, social or labour law.

34.2 The Contractor may terminate the Contract by written notice to INSS if INSS has not paid any undisputed amounts within 40 Working Days of them falling due and such amounts remain outstanding 40 Working Days after the receipt by INSS of a notice of non-payment from the Contractor.

35 **BREAK**

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

36 **FORCE MAJEURE**

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the party affected. Each party shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either party may terminate the Contract by written notice to the other party.

37 **CONSEQUENCES OF TERMINATION OR BREAK**

37.1 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 14, 15, 18, 22, 23, 29, 30, 38 and 41.

37.2 Where this Contract is terminated under Condition 33 (Insolvency of the Contractor) or 34.1 (Termination of this Contract), the following provisions shall apply:



- (a) pending final ascertainment of such sums as are payable under this Contract any sum due or accruing from INSS to the Contractor may be withheld or reduced by such amount as INSS in either case considers reasonable and appropriate;
  - (b) INSS may make all arrangements which are in its view necessary to procure the orderly completion of the Services and/or supply of the Goods, including the letting of another contract or contracts. In the event that a different organisation is required to take over the Services and/or supply of the Goods the Contractor shall co-operate in the transfer and with any arrangements notified to him by INSS. The transfer shall be arranged between INSS and the Contractor so as to reduce to a minimum any interruption in the Services and/or the supply of the Goods;
  - (c) where the total costs reasonably and properly incurred by INSS by reason of any arrangements made under Condition 37.2(b) exceed the amount that would have been payable to the Contractor for the completion of the Services and/or the supply of the Goods, the excess shall be recoverable from the Contractor and INSS reserves the right to recover such excess by way of set-off as provided for under Condition 39 (Recovery of Sums Due).
- 37.3 Without prejudice to Condition 37.1, where this Contract is terminated under Condition 34.2 (Termination of this Contract) or 35 (Break), INSS shall pay to the Contractor all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Services and/or supply of the Goods, 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 and without prejudice to the generality of Condition 38, INSS shall not indemnify the Contractor against loss of profit or consequential losses. INSS 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.
- 37.4 Where this Contract is terminated pursuant to Condition 35 (Break), during the notice period INSS may direct the Contractor to perform all or any of the Services and/or supply of the Goods, or any part or component thereof in accordance with this Contract, and INSS 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.
- 37.5 Upon termination or expiry of the Contract, the Contractor shall return all requested documents, information and data to INSS as soon as reasonably practicable.
- 38 **LIABILITY FOR LOSS OR DAMAGE**
  - 38.1 In this Condition loss or damage includes:
    - (a) loss or damage to property;
    - (b) personal injury and death;



- (c) loss of use; and
- (d) any other loss.

38.2 Subject to Condition 38.3 and except in the case of claims arising against the Contractor or its Representatives under Conditions 14.4, 23, 24 and 27.4, in respect of which liability shall be unlimited:

- (a) the aggregate liability of each party to the other in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 125% of the Contract Price paid or payable to the Contractor; and
- (b) in no event shall the either party be liable to the other for:
  - (i) loss of profits;
  - (ii) loss of business;
  - (iii) loss of revenue;
  - (iv) loss of or damage to goodwill;
  - (v) loss of savings (whether anticipated or otherwise); and/or
  - (vi) any indirect, special or consequential loss or damage.

38.3 Nothing in the Contract shall be construed to limit or exclude either party's liability for:

- (a) death or personal injury caused by its negligence or that of its Representative;
- (b) fraud or fraudulent misrepresentation by it or that of its Representative; or
- (c) any other matter which, by Law, may not be excluded or limited.

#### 39 RECOVERY OF SUMS DUE

Whenever under this Contract any sums of money shall be recoverable from or payable by the Contractor to INSS, 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 INSS or the Crown (or any part of the Crown).

#### 40 SERVICE OF NOTICES

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



- (a)
    - (i) delivery to the Contractor Representative, when it shall be deemed served at the time of delivery, or
    - (ii) sending it to the Contractor Representative by first-class post, when it shall be deemed served on the second working day after posting; or
  - (b)
    - (iii) delivery to the Contract Manager, when it shall be deemed served at the time of delivery, or
    - (iv) sending it to the Contract Manager by first-class post, when it shall be deemed served on the second Working Day after posting.
- 40.2 Subject to Condition 40.4, a notice may be served by e-mail to the address of the relevant party set out in INSS's Purchase Order, or such other address as that party may from time to time notify to the other party in writing.
- 40.3 Notices shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 40.4 Notices under Conditions 36 (Force Majeure) and 34 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in Condition 40.1.
- 41 **DISPUTE RESOLUTION**
- 41.1 Where any dispute, difference or question (the "**Dispute**") between INSS and the Contractor arising out of or in connection with this Contract cannot be resolved by the Contract Manager and the Contractor Representative, either may refer the Dispute to a senior representative of INSS and of the Contractor (a director or other senior office holder) ("the **Senior Representatives**").
- 41.2 Without prejudice to Condition 41.5, 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 in accordance with the Centre for Effective Dispute Resolution (the "**CEDR**") model conditions. To initiate the mediation a party must give a notice in writing (the "**Mediation Notice**") to the other party requesting a mediation in accordance with this Condition. The referring party must send a copy of the Mediation Notice to CEDR.
- 41.3 Any mediation is to take place not later than 28 days after service of the Mediation Notice. If there is any issue on the conduct of the mediation which the parties cannot agree within 14 days of the Mediation Notice then CEDR will, at the request of either party, decide the issue. If 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 42.





41.4 Except where required to preserve the legal rights of INSS or the Contractor, or to obtain interim relief, or where the Dispute concerns a matter upon which INSS's decision is final, neither INSS 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 41.5.

41.5 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 and such efforts shall involve the escalation of the dispute to the Senior Representatives each party.

41.6 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.

#### 42 **LAW**

This Contract and any issues, disputes or complaints (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and interpreted in accordance with English law and, subject to Condition 41, any such issues, disputes or complaints shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

#### 43 **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 condition is fundamental to the performance of this Contract, INSS and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

#### 44 **WAIVER**

44.1 Any failure by INSS or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.

44.2 No waiver shall be effective unless it is communicated to either INSS or the Contractor in writing.

44.3 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.

#### 45 **RIGHTS OF THIRD PARTIES**

The parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.





46 **GENERAL**

- 46.1 The Contract contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in this Condition shall exclude liability for fraud or fraudulent misrepresentation.
- 46.2 Each of the parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Contract, and that the Contract is executed by its duly authorised representative.
- 46.3 A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the parties.
- 46.4 The Contract cannot be varied except in writing signed by a duly authorised representative of both the parties.
- 46.5 The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Contract. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.
- 46.6 Except as otherwise expressly provided by the Contract, all remedies available to either party for breach of the Contract (whether under the Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 46.7 If any provision of the Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.