

**BEIS DPF31 - BEIS STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SERVICES  
(including Hire, Lease and Facilities Management)**

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**BEIS STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SERVICES  
(including Hire, Lease and Facilities Management)**

## **1. Definitions and Interpretation**

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

"Annex 1" means the Annex 1 (Processing, Personal Data and Data Subjects) attached to the Authority's specification of requirements which forms part of this Contract;

"Arising Intellectual Property" means the Intellectual Property Rights which are created as a result of the Contractor's performance of the Services;

"Authority" means the Secretary of State for Business, Energy and Industrial Strategy of 1 Victoria Street, London SW1H 0ET, acting as part of the Crown;

"Authority's Premises" means land or buildings owned or occupied by the Authority;

"Background Intellectual Property" means Intellectual Property Rights owned, controlled or used by either of the Parties at the date of this Contract or which shall at any time thereafter become so owned, controlled or used otherwise than as a result of the performance of the Services under this Contract;

the "Charges" means the price agreed in respect of the Services, excluding Value Added Tax:

"Confidential Information" means:

- a) all information obtained by the Contractor from the Authority or any other department or office of Her Majesty's Government relating to and connected with the Contract and the Services; but
- b) does not include the Contract itself and the provisions of the Contract where, or to the extent that, the Authority publishes them by virtue of Condition 41;

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

the "Contract Period" means the period from the date of this Contract to the date of expiry of this Contract set out in the DPF41 Contract offer letter or such earlier date as this Contract is terminated in accordance with its terms;

the "Contract Year" means a period of 12 consecutive months starting on the date of this Contract and each anniversary thereafter;

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

"Contractor Personnel" means all directors, officers, employees, other works agents, consultants and contractors engaged by or on behalf (whether directly or indirectly) of the Contractor and any sub-contractor engaged in the performance of the Contractor's obligations under this Contract, pursuant to Condition 4;

"Contracts Finder" means the Government's publishing portal for public sector procurement opportunities;

“Crown” means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies;

“Data Controller” shall have the same meaning as given in the UK GDPR;

“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 alteration and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

“Data Protection Legislation” means (i) the UK GDPR and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

“Data Processor” shall have the same meaning as given in the UK GDPR;

“Data Protection Impact Assessment” means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Officer” shall have the same meaning as given in the UK GDPR;

“Data Subject” shall have the same meaning as given in the UK GDPR;

“Data Subject 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;

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

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

“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 4 of the EU Withdrawal Act 2018 (as amended by the EU (Withdrawal Agreement) Act 2020) 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;

“MI Reporting Template” means the document (included as an annex to the DPF41 Contract offer letter) as amended in accordance with Condition 42;

“Party” means a Party to this Contract, and “Parties” shall mean both of them;

“Personal Data” shall have the same meaning as given in the UK GDPR;

“Personal Data Breach” shall have the same meaning as given in the UK GDPR;

“Phase 1” means phase one (Feasibility Study) of the Authority’s Longer Duration Energy Storage Competition;

“Protective Measures” means any 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;

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

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;

“Sub-Processor” means any third Party appointed to process Personal Data on behalf of the Contractor related to this Contract;

“UK GDPR” has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

“Working Day” means any day other than a Saturday, Sunday or public holiday in England and Wales.

(2) The interpretation and construction of the Contract shall be (save where context requires otherwise) subject to the following provisions:

- (a) a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- (b) a reference to any agreement, consent, permission or other document at a particular time shall be construed as a reference to it as it may then have been amended, restated, varied, supplemented, modified, suspended, assigned or novated;
- (c) a reference to this Contract includes any schedules or annexures to this Contract;
- (d) references in the singular shall include references in the plural and vice versa;
- (e) a reference to a “day” means a calendar day, a reference to a “month” means a calendar month and a reference to a “year” means a calendar year;
- (f) the *ejusdem generis* rule shall not apply and references to “includes”, “including”, “in particular”, “other”, “otherwise” or any such similar terms shall be construed without limitation;
- (g) the headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract;

- (h) any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 December 2020; and
- (i) references to “person”, any person, firm, company, corporation, government (including any government department), state or agency of a state, or any association, trust or partnership.

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

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

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

- (1) A notice or communication given to a Party under or in connection with the Contract shall be in writing and sent to the Party at the address or email address given in this Contract or as otherwise notified in writing to the other Party.
- (2) This Condition 3(2) sets out the delivery methods for sending a notice to a Party under the Contract and, for each delivery method, the date and time when the notice is deemed to have been received (provided that all other requirements of this clause have been satisfied and subject to the provision in Condition 3(3) below):
  - (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address;
  - (b) if sent by pre-paid first class post or other next working day delivery service, providing proof of delivery, at the time recorded by the delivery service;
  - (c) if sent by pre-paid airmail providing proof of postage, at 9.00am on the fifth Working Day after posting; or
  - (d) if sent by email, at the time of transmission.
- (3) If deemed receipt under Condition 3(2) above would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 3(3), business hours means 9.00am to 5.00pm on a Working Day.
- (4) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

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

- (1) The Contractor shall not give, bargain, sell, assign, sub-contract or otherwise dispose of the Contract or any part thereof without the previous agreement in writing of the Authority.
- (2) The Contractor shall not use the services of self-employed individuals in connection with the Contract without the previous agreement in writing of the Authority.

- (3) If the Contractor uses a sub-contractor for the purpose of performing the Services or any part of it, the Contractor shall include in the relevant contract a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a correct invoice from the sub-contractor.
- (4) The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.
- (5) The Authority shall be entitled to assign any or all of its rights under the Contract to any contracting authority as defined in Regulation 2(1) of the Public Contracts Regulations 2015.
- (6) Where the Authority notifies the Contractor that it estimates the Charges payable under this Contract are due to exceed £5 million in one or more Contract Years the Contractor shall:
  - (a) subject to Condition 4(9), advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Contract Period;
  - (b) within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
  - (c) monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
  - (d) provide reports on the information in Condition 4(6)(c) to the Authority in the format and frequency as reasonably specified by the Authority; and
  - (e) promote Contracts Finder to its Contractors and encourage those organisations to register on Contracts Finder.
- (7) Each advert referred to in Condition 4(6)(a) above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.
- (8) The obligation in Condition 4(6)(a) shall only apply in respect of subcontract opportunities arising after the contract award date.
- (9) Notwithstanding Condition 4(6), the Contracting Authority may, by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

#### **4A. Parent Company Guarantee**

- (1) Where:
  - (a) the Authority determines that the Contractor is a special purpose vehicle (SPV); or
  - (b) the Contractor does not satisfy the financial viability checks undertaken by the Authority, and the Contractor has a parent company who is able to satisfy the Authority's financial viability checks, then, where requested to do so by the Authority, the Contractor shall on the execution of this Contract provide to the Authority a guarantee by the Contractor's parent company (whose identity shall be agreed by the Authority) which shall, unless otherwise agreed by the Authority, be substantially in the form of the document identified in Annex 2 of this Contract (Parent Company Guarantee).

#### **5. Entire Agreement**

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

#### **6. Waiver**

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

#### **7. Severability**

If any Condition, clause or provision of the Contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court or tribunal in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected. If the court finds invalid a provision so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

#### **8. Confidentiality**

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

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

## **9 Freedom of Information**

- (1) The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR") and shall assist and cooperate with the Authority, at the Contractor's expense, to enable the Authority to comply with these information disclosure requirements.
- (2) In this Condition:-  
"Information" has the meaning ascribed to it in section 84 of the FOIA (and also includes "environmental information" as defined in the EIR;  
"Request for Information" has the meaning ascribed to it in section 8 of the FOIA, or means any request for environmental information to which the EIR applies or any apparent request for information or environmental information under the FOIA or EIR.
- (3) The Contractor shall (and shall procure that its subcontractors shall):-  
a) Transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days;  
b) Provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information;  
c) Provide all necessary assistance as reasonably requested by the Authority to enable it to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- (4) The Authority shall be responsible for determining, at its absolute discretion, whether any Information:-  
a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;  
b) is to be disclosed in response to a Request for Information.

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

- (5) The Contractor acknowledges that the Authority may, acting in accordance with the Freedom of Information Code of Practice (issued under section 45 of the FOIA in July 2018), be obliged under the FOIA or the EIR to disclose Information unless an exemption applies. The Authority may at its discretion consult the Contractor with regard to whether the FOIA applies to the Information and whether an exemption applies.
- (6) The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure in accordance with Law and shall permit the Authority to inspect such records as requested from time to time.
- (7) The Contractor acknowledges that any lists or schedules provided by it outlining information it deems confidential or commercially sensitive are of indicative value only and that the Authority may nevertheless be obliged to disclose information which the Contractor considers confidential in accordance with Conditions 9(4) and (5).

## **10. Amendments and Variations**

Unless the Contract expressly states otherwise, no amendment or variation to the terms of the Contract shall be valid unless agreed in writing between the Authority and the Contractor.

## **11. Invoices and Payment**

- (1) The Contractor shall submit invoices at times or intervals required by the Authority in the Contract or otherwise. The Contractor shall ensure that any invoice it submits sets out the Authority's contract number, the Charges and, where not all of the Services have been completed, the relevant part of the Charges with an appropriate breakdown of time worked, the part of the Services (if all the Services have not been completed) and period to which the invoice relates, and its confirmation that the Services (or relevant part of the Services referred to on the invoice) have been fully performed in accordance with this Contract.
- (2) In consideration of the provision of the Services by the Contractor, the Authority shall pay the Charges after receiving a correctly submitted invoice as set out in Condition 11(1). Such payment shall normally be made within 30 days of receipt of the correctly submitted invoice.
- (3) The Contractor shall not be entitled to charge for the provision of any services that are not part of the Services agreed within the Contract, unless the Contract has been properly varied in advance in accordance with Condition 10.
- (4) The Authority may reduce payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- (5) If the Contractor believes that payment for a correctly submitted invoice is overdue, he should, in the first instance, speak to the named contact on the face of the Contract. In the event that the problem is not resolved to his satisfaction, he should write to the Head of Procurement at the Department for Business, Energy and Industrial Strategy setting out his case. The Head of Procurement shall ensure that the complaint is dealt with by an official who is independent of the main contact and that the Contractor is not treated adversely in future for having made a complaint.
- (6) For the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last day of a period of 30 days commencing on the day when the Authority received the invoice, or, if the Contractor had not completed the Services (or the part of the Services to which the invoice relates) before submitting the invoice, the last day of a period of 30 days commencing on the day when the Contractor completed the Services, (or the part of the Services to which the invoice relates).
- (7) Where the Contractor submits an invoice (including an electronic invoice) to the Authority in accordance with this Condition 11 the Authority will consider and verify that invoice in a timely fashion and shall make payment in accordance with this Condition 11.
- (8) Where the Contractor enters into a Subcontract, the Contractor shall include in that Subcontract:
  - (a) provisions having the same effect as Condition 11(7) of this Contract; and
  - (b) a provision requiring the counterparty to that Subcontract to include in any Subcontract which it awards provisions having the same effect as Condition 11(7).

In this clause 11(8), "Subcontract" means a contract between two or more suppliers, at any stage of remoteness from the Authority 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.

## **12. Accounts**

- (1) The Contractor shall keep full and proper accounts, records and vouchers relating to all expenditure reimbursed by the Authority and all payments made by the Authority in respect of the Services.
- (2) The Contractor shall permit the Authority acting by its officers, servants and agents or independent auditor on request and at all reasonable times to examine all accounts, records and vouchers at the offices of the Contractor or at such other places as the Authority shall direct, and to take copies of such accounts, records and vouchers and the Contractor shall provide the Authority or its independent auditor with such explanations relating to that expenditure as the Authority may request.
- (3) The Contractor shall ensure that the said accounts, records and vouchers are available for a period of six years after termination or expiry of the Contract.

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

- (1) The Authority may set off any amount owed by the Contractor to the Crown or any part of the Crown (including the Authority) against any amount due to the Contractor under this Contract or under any other agreement between the Contractor and the Authority.
- (2) If the Authority wishes to set off any amount owed by the Contractor to the Crown or any part of the Crown (including the Authority) against any amount due to the Contractor pursuant to Condition 17 it shall give notice to the Contractor within 15 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant amounts.
- (3) The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

## **14. Value Added Tax**

- (1) The Authority shall pay to the Contractor, in addition to the Charges, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Contract.
- (2) Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Value Added Tax Act 1994.
- (3) The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority relating to the amount of Value Added Tax chargeable on the Services.

## **15. Provision of Services**

- (1) The Contractor shall provide the Services (and the Deliverables):
  - a) in accordance with the requirements of the Contract;
  - b) in accordance with Law;

- c) exercising the reasonable skill, care, prudence, efficiency, foresight and timeliness which would be expected from a reasonably and suitably skilled, trained and experienced person performing the relevant obligations;
- d) in accordance with all appropriate and applicable standard specifications and standard codes of practice issued by the British Standards Institution or European Economic Community;
- e) in accordance with the Authority's Code of Practice for Research, which the Authority shall provide to the Contractor upon request,

to the satisfaction of the Authority acting reasonably. The Authority shall have the power to inspect and examine the performance of the Services at any location at which the Services (or any part of them) are performed.

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

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

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

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

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

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

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

(7) The Contractor shall obtain all necessary consents from third parties including any planning permissions or environmental permits.

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

#### **16. Progress Report**

- (1) Where formal progress reports are required by the Contract, the Contractor shall render such reports at such time and in such form as may be specified by the Authority, or as otherwise agreed between the Contractor and the Authority.
- (2) The submission and acceptance of progress reports shall not prejudice any rights of the Authority under the Contract.

#### **17. Contractor Personnel**

- (1) The Authority reserves the right to refuse to admit to the Authority's Premises any person employed or engaged by the Contractor or its sub-contractors, whose admission would be undesirable in the opinion (and at the discretion) of the Authority.
- (2) If and when requested by the Authority, the Contractor shall provide a list of the names and addresses of all persons who may at any time require admission in connection with the performance of the Services to the Authority's Premises, specifying the role in which each such person is concerned with the Contractor and giving such other particulars as the Authority may require.
- (3) If and when requested by the Authority, the Contractor shall procure from each person identified by the request, a signed statement that he understands that the Official Secrets Acts 1911 to 1989 applies to him both during the carrying out and after expiry or termination of the Contract and that he will comply with the provisions of the Official Secrets Acts 1911 to 1989 in so far as they apply to the work or Services he is performing under the Contract.
- (4) If and when requested by the Authority the Contractor agrees that it will submit any person employed or engaged by the Contractor or its sub-contractors to the Authority's security vetting procedure. The Contractor further agrees that any individual who refuses to submit to such vetting procedure or does not attain the clearance it affords will not carry out any work or Services on the Contract which the Authority certifies as suitable only for people who have passed its security vetting procedure.
- (5) If the Contractor fails to comply with clauses (2) (3) or (4) of this Condition and the Authority decides that such failure is prejudicial to its interests, the Authority may immediately terminate the Contract by notice in writing to the Contractor, provided that such termination shall be without prejudice to any accrued rights of, or to any rights that shall accrue thereafter to, the Authority.
- (6) No action of the Authority under this Condition shall entitle the Contractor to any additional costs or charges (this includes any requirement of the Authority to replace any personnel). Furthermore, no action of the Authority under this Condition shall entitle the Contractor to any relief in respect of its obligations under this Contract.

#### **18. Indemnities and Insurance**

- (1) The Contractor shall hold harmless and indemnify the Authority on demand from and against all claims, demands, proceedings, actions, damages, costs (including legal costs), expenses and any other liabilities arising from claims made by the Authority's staff or agents, or by third

parties, in respect of any death or personal injury, or loss or destruction of or damage to property, or any other loss, destruction or damage, including but not limited to financial losses which are caused, whether directly or indirectly, by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Contractor, its employees, agents or sub-contractors.

- (2) The Contractor shall be liable to the Authority for any loss, damage, destruction, injury or expense, whether direct or indirect, (and including but not limited to loss or destruction of or damage to the Authority's property, which includes data) arising from the Contractor's breach of contract or duty (whether arising in negligence, tort, statute or otherwise).
- (3) The Contractor shall effect with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in respect of the indemnities provided under the Contract, which in any event shall not be less than £1,000,000, and shall at the request of the Authority produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due there under.
- (4) Nothing in these Conditions nor in any part of the Contract shall impose any liability on any member of the staff of the Authority or its representatives in their personal capacity.
- (5) The Contractor shall indemnify the Authority against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used by or on behalf of the Contractor for the purpose of the Contract, providing that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of the Authority.
- (6) The Authority shall indemnify the Contractor against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used at the request of the Authority by the Contractor in the course of providing the Services, providing that any such infringement or alleged infringement is not knowingly caused by, or contributed to by, any act of the Contractor.
- (7) Except in relation to:
  - (a) the Contractor's liability for death or personal injury caused by its negligence or that of its employees, agents or sub-contractors
  - (b) the Contractor's liability for bribery or fraud or fraudulent misrepresentation by its or its employees or sub-contractors
  - (c) the Contractor's liability that cannot be excluded or limited by Law;
  - (d) any claim pursuant to 18(5) and 31(16); or
  - (e) any liability that is covered by an insurance policy the Contractor is required to procure pursuant to this Contract,

the amount of liability under this clause shall be limited to a sum of twice the contract value, for Phase 1 only.

### **18A Clawback**

- (1) Without prejudice to the Authority's other rights and remedies under this Contract, if the Contractor fails to comply with any of its obligations in the Contract, the Authority may at its discretion, reduce, suspend or terminate payments of the Charges or require any part or all of the Charges to be repaid.
- (2) Where the Authority requires any part or all of the Charges to be repaid in accordance with Condition 18A(1) above, the Contractor shall repay this amount no later than 30 days of the date it received the demand for repayment. If the Contractor fails to repay the Charges within 30 days of a demand from the Authority for payment, the sum will be recoverable summarily as a civil debt.

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

- (1) The Contractor shall notify the Authority in writing immediately upon the occurrence of any of the following events:
  - a) the Contractor party fails to pay any amount due to the Authority (whether under this Contract or otherwise) on the due date for payment and remains in default not less than 30 days after being notified to make such payment;
  - b) the Contractor party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
  - c) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of that Contractor;
  - d) applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
  - e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor;
  - f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Contractor;
  - g) the holder of a qualifying floating charge over the assets of the Contractor has become entitled to appoint or has appointed an administrative receiver;
  - h) a person becomes entitled to appoint a receiver over all or any of the assets of the Contractor or a receiver is appointed over all or any of the assets of the Contractor;
  - i) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days;
  - j) the Contractor suspends, ceases or threatens to suspend or cease trading or carrying on a substantial part of its business;
  - k) the Contractor's financial position deteriorates materially in the reasonable view of the Authority;
  - l) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above; or
  - m) the Contractor undergoes a change of control, where "control" is interpreted in accordance with Section 1124 of the Corporation Tax Act 2010.
- (2) After receipt of the notice under clause (1) above or earlier discovery by the Authority of the occurrence of any of the events described in that clause, the Authority may, by notice in writing to the Contractor, terminate the Contract with immediate effect without compensation to the Contractor and without prejudice to any right or action or remedy which may accrue to the

Authority thereafter. The Authority's right to terminate the Contract under Condition 19(1)(m) will exist until the end of a period of three months starting from receipt of the notice provided by the Contractor pursuant to Condition 19(1), or such other period as is agreed by the Parties.

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

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

## **21. Cancellation**

- (1) The Authority shall be entitled to terminate the Contract, or to terminate the provision of any part of the Services if:
  - a) the Authority gives the Contractor not less than 28 days' notice in writing to that effect;
  - b) any of the mandatory or discretionary exclusion events listed under Regulations 57(1) or 57(2) of the Public Contracts Regulations 2015 (the "PCR") occur; or
  - c) a declaration on ineffectiveness is made pursuant to the PCR in respect of this Contract or any variation thereof.
- (2) If the Authority has given notice under Condition 21(1)(a), the Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.
- (3) On termination of the Contract in accordance with Conditions 19, 20 or 21, the Contractor may submit an invoice, in accordance with Condition 11(1), for Services properly carried out by the Contractor prior to the date of termination, where payment has not already been made by the Authority. On receipt of a correctly submitted invoice, the Authority shall make payment in accordance with Condition 11.
- (4) On termination of the Contract in accordance with Conditions 19, 20 or 21, the Contractor may submit an invoice submitted by any subcontractor, in accordance with Condition 11(1), for Services properly carried out by the subcontractor prior to the date of termination, where payment has not already been made by the Authority. On receipt of a correctly received invoice, the Authority shall make payment of the Charges in accordance with Condition 11.

## **22. Dispute Resolution**

- (1) The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- (2) If the Parties cannot resolve the dispute pursuant to clause (1) of this Condition, the dispute may, by agreement between the parties, be referred to mediation pursuant to clause (4) of this Condition.
- (3) The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to clause(2) of this Condition.
- (5) If the Parties agree to refer the dispute to mediation:
  - (a) in order to determine the person who shall mediate the dispute (the "Mediator") the Parties shall by agreement choose a neutral adviser or mediator from one of the dispute resolution

providers listed by the Government Procurement Service on its website or in its printed guidance on dispute resolution within 30 days after agreeing to refer the dispute to mediation;

- (b) the parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Government Procurement Service to provide guidance on a suitable procedure;
  - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - (d) if the Parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the Parties, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by both the Authority and the Contractor;
  - (e) failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the Parties, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.
- (5) If the Parties do not agree to refer the dispute to mediation, or if the Parties fail to reach agreement as to who shall mediate the dispute pursuant to Condition 22(4)(a) or if they fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

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

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

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

- (2) Any breach of this Condition by the Contractor, or by any person employed or engaged by him or acting on his behalf (whether with or without his knowledge), or any act or omission by the Contractor, or by such other person, in contravention of the Bribery Act 2010 or any other anti-corruption law, in relation to this Contract or any other contract with the Authority, shall entitle the Authority to terminate the Contract with immediate effect by notice in writing and to recover from the Contractor the amount of any loss resulting from such termination and the amount of the value of any such gift, consideration or commission as the Authority shall think fit.
- (3) Where the Contract has been terminated under clause (2) of this Condition, there shall be deemed to be a failure to commence the provision of the Services, enabling the Authority to terminate the Contract with immediate effect and the Authority will not be obliged to pay the Charges.
- (3) In any dispute, difference or question arising in respect of:
- a) the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under clause (2) of this Condition in respect of any loss resulting from such determination of the Contract); or
  - b) the right of the Authority to determine the Contract; or
  - c) the amount or value of any gift, consideration or commission,
- the decision of the Authority shall be final and conclusive.

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

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

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

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

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

- (1) The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) he shall immediately notify the Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Authority may reasonably require.
- (2) Where the Authority is of the opinion that the conflict of interest notified to it under clause (1) above is capable of being avoided or removed, the Authority may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:
- a) if the Contractor fails to comply with the Authority's requirements in this respect; or
  - b) if, in the opinion of the Authority, it is not possible to remove the conflict,

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

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

## **27. Intellectual Property Rights**

- (1) Subject to Condition 27(4), all Background Intellectual Property used or supplied under this Contract in connection with the Services shall remain the property of the Party introducing the same and nothing contained in this Contract or any licence agreement pertaining or pursuant to the Contractor's performance of the Services shall affect the rights of either Party in its Background Intellectual Property.
- (2) Subject to Conditions 27(3) and 28(5), any Arising Intellectual Property shall belong to the Contractor.
- (3) The Contractor hereby grants to the Authority a worldwide, irrevocable, royalty-free, non-exclusive licence at no cost to the Authority, together with the right to grant sub-licences, to use or publish any Arising Intellectual Property, Data, results, outcomes or conclusions which are created as part of the Services, for its non-commercial purposes.
- (4) The Contractor hereby grants to the Authority a worldwide, irrevocable, royalty-free, non-exclusive licence at no cost to the Authority, to use any Background Intellectual Property used in the performance of the Services, that is essential to the functioning and use of the Arising Intellectual Property for its non-commercial purposes.
- (5) The Contractor shall procure for the Authority any worldwide, irrevocable, royalty-free licence, at no cost to the Authority, from any third party, to use any Intellectual Property Rights that are essential to the functioning and use of the Arising Intellectual Property for its non-commercial purposes.
- (6) Under clauses 27(3), 27(4) and 27(5) the Authority shall only grant sub-licences to third parties if, after five years from the date of this Contract, the Arising Intellectual Property has not been commercially exploited by the Contractor, or the Contractor has established a monopoly position.

## **28. Exploitation of Intellectual Property**

- (1) The Contractor shall inform the Authority of any Arising Intellectual Property, Data, results, outcomes or conclusions which are created in performing the Services and which are capable of exploitation whether patentable or not.
- (2) The Contractor shall, as appropriate, devise, publish, implement and maintain procedures for the management of Arising Intellectual Property and in particular, but without limitation, shall use its best endeavours to ensure that:
  - a) the data which constitutes Arising Intellectual Property is identified, recorded and carefully distinguished from the outputs of other research;

- b) prior to any publication of materials created in the course of performing the Services, patentable inventions comprised within the Arising Intellectual Property are identified, duly considered for patentability and, where it is reasonable so to do, patent applications in respect thereof are filed at the British or European Patent Office; and
  - c) all such patent applications are diligently executed having regard to all relevant circumstances.
- (3) The Contractor shall permit the Authority to monitor the operation and effectiveness of the Contractor's procedures for the management of Intellectual Property Rights in such a way as the Authority considers reasonably necessary.
- (4) Consistent with the good management of Intellectual Property Rights and the continued agreement of the Authority, the Contractor shall use its best endeavours to:
  - a) promote the dissemination of the Arising Intellectual Property; and
  - b) once the Contractor has performed the Services to the satisfaction of the Authority, commercially exploit any Arising Intellectual Property to generate either capital or revenue or both.
- (5) If, within five years of its creation, any Arising Intellectual Property has not been commercially exploited by the Contractor the Contractor shall if requested by the Authority assign the Arising Intellectual Property to the Authority.
- (6) The Contractor shall not transfer ownership of the Arising Intellectual Property without the consent of the Authority for ten years from the creation of that Arising Intellectual Property.
- (7) If, within five years of its creation, any Arising Intellectual Property has not been commercially exploited by the Contractor or the Contractor has established a monopoly position, the Authority may require the Contractor to licence the Arising Intellectual Property to third parties nominated by the Authority. Should the Authority choose to exercise its discretion under this clause, it will notify the Contractor in accordance with Condition 3.

### **29. Rights of Third Parties**

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

### **30. Government Property**

- (1) All Government Property shall remain the property of the Authority and shall be used in the execution of the Contract and for no other purpose whatsoever except with the prior agreement in writing of the Authority. Save where this Contract states to the contrary, the Contractor shall not be entitled to the provision of any Government Property to carry out the Services.
- (2) All Government Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he notifies the Authority to the contrary within 14 days or such other time as is specified in the Contract. To the greatest extent permissible by Law, the Authority does not guarantee, warrant or give any assurances as to the age, state of repair or suitability for use in the Services of any item of the Government Property provided and the Contractor hereby acknowledges that it has carried out its own due diligence including inspections of such Government Property and has satisfied itself as to the condition and suitability of each item for use in the provision of the Services and accordingly the Contractor shall not be relieved from

any liability in relation to any failure to provide the Services or any part of them where such failure is caused by a failure in of or the unsuitability of any of the Government Property provided.

- (3) The Contractor undertakes to return any and all Government Property on completion of the Contract or on any earlier request by the Authority.
- (4) The Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of the Authority, pay compensation for all loss, destruction or damage occurring to any Government Property caused or sustained by the Contractor, or by his servants, agents or sub-contractors, whether or not arising from his or their performance of the Contract and wherever occurring, provided that if the loss, destruction or damage occurs at the Authority's Premises or any other Government premises, this Condition shall not apply to the extent that the Contractor is able to show that any such loss, destruction or damage was not caused or contributed to by his negligence or default or the neglect or default of his servants, agents, or sub-contractors.
- (5) Where the Government Property comprises data issued in electronic form to the Contractor (including Personal Data) the Contractor shall not store, copy, disclose or use such electronic data except as necessary for the performance by the Contractor of its obligations under the Contract (including its obligation to back up electronic data as provided in Condition 30(6) below) or as otherwise expressly authorised in writing by the Authority.
- (6) The Contractor shall perform secure back ups of all such electronic data in its possession and shall ensure that an up to date back up copy is securely stored at a site other than that where any original copies of such electronic data are being stored.
- (7) The Contractor shall, and shall procure that its sub-contractors, agents and personnel, shall observe best practice when handling or in possession of any such electronic data. By way of example if the Contractor removes any such data or information from a Government establishment, or is sent such data or information by the Authority it shall ensure that the data and any equipment on which it is stored or is otherwise being processed is kept secure at all times. The Contractor shall impress on any of its sub-contractors, agents and personnel who are required to handle or have possession of such electronic data that they must safeguard it all times, and shall not place it in jeopardy for example by leaving it unattended in a vehicle or on public transport or by transmitting or posting it by insecure means.
- (8) If at any time the Contractor suspects or has reason to believe that such electronic data has or may become corrupted, lost, destroyed, altered (other than to the extent that the Contractor alters it by lawful processing in accordance with its obligations under this contract) or so degraded as a result of the Contractor's default so as to be unusable then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.
- (9) The Contractor shall indemnify the Authority against all claims and proceedings, and all costs and expenses incurred in connection therewith arising from the corruption, loss, destruction, alteration (other than by lawful processing permitted by this Contract) or degradation of electronic data which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor or sub-contractors, agents and personnel and hold it harmless against all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Contract which results in such corruption, loss or degradation.

### 31. Data Protection

- (1) The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Contractor is the Data Processor. The only processing that the Contractor is authorised to do is listed in Annex 1 of this Contract by the Authority and may not be determined by the Contractor.
- (2) The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- (3) The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, 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.
- (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 Annex 1 of this Contract, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, as appropriate to protect against a Data Loss Event, which the Authority may reasonably reject (but failure to reject shall not amount to approval by the Authority of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;

The review and approval of the Protective Measures by the Authority shall not relieve the Contractor of its obligations under Data Protection Legislation, and the Contractor acknowledges that it is solely responsible for determining whether such Protective Measures are sufficient for it to have met its obligations under the Data Protection Legislation.

- (c) ensure that:
  - (i) the Contractor Personnel do not process Personal Data except in accordance with this Contract and in particular Annex 1 of this Contract;
  - (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 Authority or as otherwise permitted by this Contract; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data.
- (d) not transfer Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and provided the following conditions are fulfilled:-
- (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer in accordance with guidance issued by the UK Government or body appointed by the Government and approved by the Authority;
  - (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 Authority in meeting its obligations); and
  - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data.
- (5) Subject to clause (6), the Contractor shall notify the Authority immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject 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.
- (6) The Contractor's obligation to notify under clause (5) shall include the provision of further information to the Authority in phases, as details become available.

- (7) Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause (5) (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
  - (a) the Authority with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Authority following any Data Loss Event;
  - (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- (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 Authority determines that the processing is not occasional;
  - (b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
  - (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- (9) The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- (10) The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- (11) Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Contractor must:
  - (a) notify the Authority in writing of the intended Sub-Processor and processing;
  - (b) obtain the written consent of the Authority;
  - (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Condition 31 such that they apply to the Sub-Processor; and
  - (d) provide the Authority with such information regarding the Sub-Processor as the Authority may reasonably require.
- (12) The Contractor shall remain fully liable for all acts or omissions of any of its Sub-Processors.

- (13) The Authority may, at any time on not less than 30 Working Days' notice, revise this Condition 31 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).
- (14) The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority 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.
- (15) If the Contractor fails to comply with any provision of this Condition 31, the Authority may terminate the Contract immediately in which event the provisions of Condition 20 shall apply.
- (16) The Contractor shall indemnify and keep indemnified the Authority against all claims and proceedings, and all costs and expenses incurred by it in connection therewith, made or brought against the Authority by any person in respect of the Data Protection Legislation or equivalent applicable legislation in any other country which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor, its sub-contractors and/or and Sub-Processors and hold it harmless against all costs, fines, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Contract which results in the Authority being in breach of its obligations under the Data Protection Legislation or equivalent applicable legislation in any other country.
- (17) Upon expiry or earlier termination of this Contract for whatever reason, the Contractor shall, unless otherwise specified in Annex 1, or required by Law, immediately cease any processing of the Personal Data on the Authority's behalf and at the written direction of the Authority:
- (a) provide the Authority with a complete and uncorrupted version of the Personal Data in electronic form (or such other format as reasonably required by the Authority); and
  - (b) delete the Personal Data (and any copies of it) including from any computers, storage devices and storage media that are to be retained by the Contractor after the expiry of the Contract. The Contractor will certify to the Authority that it has completed such deletion.
- (19) Where the Contractor is required to collect any Personal Data on behalf of the Authority, it shall ensure that it provides the relevant Data Subjects from whom the Personal Data are collected with a privacy notice in a form to be agreed with the Authority.

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

- (1) Where the Contractor is liable to be taxed in the UK in respect of consideration received under the Contract, the Contractor shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax in respect of that consideration.
- (2) Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under the Contract, the Contractor shall at all times comply with the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to NICs in respect of that consideration.
- (3) The Authority may, at any time during the term of the Contract, require the Contractor to provide information to demonstrate that:

- a) the Contractor has complied with clauses (1) and (2) above; or
  - b) the Contractor or its staff are not liable to the relevant taxes.
- (4) A request under clause (3) above may specify the information which the Contractor must provide and a reasonable deadline for response.
- (5) The Authority may supply any information which it receives under clause (3) to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- (6) The Contractor shall ensure that any sub-contractors (including consultants) and agents engaged by the Contractor for the purpose of the Services are engaged on, and comply with, conditions equivalent to those in clauses(1) to (5) above and this clause (6), and the Contractor shall, on request, provide the Authority with evidence to satisfy the Authority that the Contractor has done so. Those conditions shall provide both the Contractor and the Authority with the right to require the sub-contractor or agent to provide information to them equivalent to clause (3), and the Contractor shall obtain that information where requested by the Authority.
- (7) The Authority may terminate the Contract with immediate effect by notice in writing where:
- a) the Contractor does not comply with any requirement of this Condition 32; or
  - b) the Contractor's sub-contractors or agents do not comply with the conditions imposed on them under clause (6) above.
- (8) In particular (but without limitation), the Authority may terminate the Contract under clause (7) above:
- a) in the case of a request under clause (3):
    - i. the Contractor fails to provide information in response to the request within the deadline specified; or
    - ii. the Contractor provides information which is inadequate to demonstrate how the Contractor or (where relevant) its sub-contractors and agents have complied with the conditions set out or referred to in clauses (1) to (6);
- or
- b) the Authority receives information which demonstrates, to its reasonable satisfaction, that the Contractor, its sub-contractors or agents, are not complying with those conditions.

### **33. Payment of taxes: Occasions of Tax Non-compliance**

- (1) This Condition 33 applies where the consideration payable by the Contractor under the Contract equals or exceeds £5,000,000 (five million pounds).
- (2) The Contractor represents and warrants that it has notified the Authority in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance.
- (3) If, at any point during the term of the Contract, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

- a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
- b) promptly provide to the Authority:
  - i) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
  - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

(4) In the event that:

- a) the warranty given by the Contractor pursuant to clause (2) of this Condition is materially untrue;
- b) the Contractor commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non-Compliance as required by clause (3) of this Condition; or
- c) the Contractor fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Authority, are acceptable,

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

(5) In this Condition 33, "Occasion of Tax Non-Compliance" means:

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

and/or

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

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

- a) "DOTAS" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation

made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

- b) "General Anti-Abuse Rule" means:
  - (i) the legislation in Part 5 of the Finance Act 2013; and
  - (ii) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
- c) "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others and any equivalent case law; and
- d) "Relevant Tax Authority" means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

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

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

### **35. Welsh Language Act**

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

### **36. Sustainable Procurement**

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

### **37. Other Legislation**

The Contractor shall, and shall procure that its sub-contractors, agents and Contractor Personnel, comply with all other applicable law in force from time to time for the duration of the Contract.

### **38. Contractor Status**

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

### **39. Transfer of Services**

- (1) Where the Authority intends to continue with services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement contractor, the Contractor shall (both during the term of the Contract and, where relevant, after its expiry or termination):
  - (a) provide all information reasonably requested to allow the Authority to conduct the procurement for any replacement services; and
  - (b) use all reasonable endeavours to ensure that the transition is undertaken with the minimum of disruption to the Authority.
- (2) Without prejudice to the generality of clause (1) of this Condition, the Contractor shall, at times and intervals reasonably specified by the Authority, provide the Authority (for the benefit of the Authority, any replacement Contractor and any economic operator bidding to provide the replacement services) such information as the Authority may reasonably require relating to the application or potential application of the Transfer of Undertakings (Protection of Employment) Regulations 2006 including the provision of employee liability information.
- (3) Without prejudice to the generality of clause (1) of this Condition, the Contractor shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, reports and any information, whether held in electronic or written form, which the Authority considers necessary.

### **40. Law and Jurisdiction**

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

### **41. Transparency**

- (1) In order to comply with the Government's policy on transparency in the areas of procurement and contracts, the Authority will, subject to Conditions 41(2) and (3), publish the Contract and the tender documents issued by the Authority which led to its creation on a designated web site.
- (2) The entire Contract and all the tender documents issued by the Authority will be published on that web site save where the Authority, in its absolute discretion, considers that the relevant documents, or their contents, would be exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000.
- (3) Where the Authority considers that any such exemption applies, the Authority will redact the relevant documents to the extent that the Authority considers the redaction is necessary to remove or obscure the relevant material, and those documents will be published on the designated web site subject to those redactions.

- (4) Where the Parties later agree changes to the Contract, the Authority will publish those changes, and will consider any redaction, on the same basis.
- (5) In Condition 41(1) the expression “tender documents” means the advertisement issued by the Authority seeking expressions of interest, the pre qualification questionnaire and the invitation to tender and the contract includes the Contractor’s proposal.

#### **42. Monitoring and Management Information**

- (1) Where requested by the Authority, the Contractor shall supply to the Authority and/or to the Cabinet Office such information relating to the Services and to the Contractor’s management and performance of the Contract as they may require.
- (2) The information referred to in Condition 42(1) may include, but is not limited to, the following: Line Item Amount, Invoice Line Description, Invoice Line Number, Currency Code, Order Date, VAT Inclusion Flag, VAT Rate, List Price, Number of Items, Unit of Purchase Quantity, Price per Unit, Contractor Service Code, Service description and/or name, UNSPSC Code, Taxonomy Code and/or Name, Geographical, Project Code, Project description, Project Start Date, Project Delivery Date (Estimate and Actual), Total project cost and Project Stage. The information may also, without limitation, include information relating to the capability of the Contractor (and any key sub-contractor) to continue to perform the Contract (including information on matters referred to in regulations 56 to 64 of the Public Contracts Regulations 2015).
- (3) The information referred to in Condition 42(1) shall be supplied in such form and within such timescales as the Authority or the Cabinet Office may reasonably require.
- (4) The Contractor agrees that the Authority may provide the Cabinet Office, any other government department or agency or any other person or entity referred to in Condition 43(2) (Information Confidential to the Contractor), with information obtained under this Condition 42 and any other information relating to the Services procured and any payments made under the Contract.
- (5) Upon receipt of the information supplied by the Contractor in response to a request under Condition 42(1) or receipt of information provided by the Authority to the Cabinet Office under Condition 42(4) the Contractor hereby consents to the Cabinet Office (acting through the Government Procurement Service):
  - a) storing and analysing the information and producing statistics; and
  - b) sharing the information or any statistics produced using the information, with any person or entity referred to in Condition 43(2).
- (6) The Authority may make changes to the type of information which the Contractor is required to supply and shall give the Contractor at least one calendar month’s written notice of any such changes.
- (7) Where the Authority notifies the Contractor that it estimates the Charges payable under this Contract are due to exceed £5 million in one or more Contract Years the Contractor agrees and acknowledges that it shall, in addition to any other management information requirements set out in this Contract, at no charge, provide such timely, full, accurate and complete SME management information (MI) reports to the Authority as the Authority shall require which incorporate the data described in the MI Reporting Template which is:

- (a) the total contract revenue received directly on a specific contract;
  - (b) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
  - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- (8) The SME management information reports referred to in Condition 42(7) shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Authority from time to time. The Contractor shall use the initial MI Reporting Template and which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version. The Authority shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.
- (9) The Contractor further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Authority.

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

- (1) Unless agreed expressly by both Parties in writing, in a confidentiality agreement identifying the relevant information, information obtained by the Authority from the Contractor shall not constitute confidential information relating to the Contractor.
- (2) Where any information held by the Authority does constitute confidential information relating to the Contractor, the Authority shall nonetheless have the right to disclose that information:
- a) on a confidential basis to any other government department or agency for any proper purpose of the Authority or of that department or agency;
  - b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - d) to report a suspected criminal offence to the police or any law enforcement agency or co-operating with the police or any law enforcement agency regarding a criminal investigation or prosecution;
  - e) to comply with an order from a court or tribunal to disclose or give evidence;
  - f) to make a disclosure required by law or required by HMRC, a regulator, ombudsman or other supervisory authority;
  - g) on a confidential basis to a professional adviser, consultant, Contractor or other person engaged by any of the entities described in sub-clause (a) (including any benchmarking organisation) for any purpose relating to or connected with the Contract or the Services;
  - h) on a confidential basis for the purpose of the exercise of its rights under the Contract; or
  - i) on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the Contract.

- (3) For the purpose of clause (2) of this Condition, references to disclosure on a confidential basis mean disclosure subject to a confidentiality agreement.

**Annex 1: Processing, Personal Data and Data Subjects**

The contact details of the Authority's Data Protection Officer are:

BEIS Data Protection Officer  
Department for Business, Energy and Industrial Strategy  
1 Victoria Street  
London  
SW1H 0ET

Email: [dataprotection@beis.gov.uk](mailto:dataprotection@beis.gov.uk)

The contact details of the Contractor's Data Protection Officer are: **[To be completed]**

The Contractor shall comply with any further written instructions with respect to processing by the Authority.

Any such further instructions shall be incorporated into this Annex.

Description	Details
Subject matter of the processing	<p>The processing is needed to ensure the successful delivery of the [ ].</p> <p>The processing of names and business contact details of staff of both the Authority and the Contractor will be necessary to deliver the Services exchanged during the course of the Contract, and to undertake Contract and performance management.</p> <p>The Contract itself will include the names and business contact details of staff of both the Authority and the Contractor involved in managing the Contract.</p>
Duration of the processing	Processing will take place from [ ] for the duration of the Contract. The Contract will end [ ].
Nature and purposes of the processing	The nature of processing will include the storage and use of names and business contact details of staff of both the Authority and the Contractor as necessary to deliver the Services and to undertake Contract and performance management. The Contract itself will include the names and business contact details of staff of both the Authority and the Contractor involved in managing the Contract.
Type of Personal Data	Names, business telephone numbers and email addresses, office location and position of staff of both the Authority and the Contractor as necessary to deliver the Services and to undertake Contract and performance management. The Contract itself will include the names and business contact details of staff of both

Description	Details
	the Authority and the Contractor involved in managing the Contract.
Categories of Data Subject	Staff of the Authority and the Contractor, including where those employees are named within the Contract itself or involved within contract management.
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under European Union or European member state law to preserve that type of data</p>	<p>The Contractor will provide the Authority with a complete and uncorrupted version of the Personal Data in electronic form (or such other format as reasonably required by the Authority) and erase from any computers, storage devices and storage media that are to be retained by the Contractor after the expiry of the Contract. The Contractor will certify to the Authority that it has completed such deletion.</p> <p>Where Personal Data is contained within the Contract documentation, this will be retained in line with the Department's privacy notice found within the Invitation to Tender.</p>

**ANNEX 2 – PARENT COMPANY GUARANTEE**

Dated

202[ ]

(1) [GUARANTOR]

(2) Secretary of State for Business, Energy and Industrial Strategy

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Parent Company Guarantee

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relating to [ ] in accordance with the Longer-Duration Energy Storage Competition

## THE PARTICULARS

<b>Date of this Deed:</b>	[DATE].
<b>The Guarantor:</b>	[NAME] [(registered number [number])][whose registered office is at] [of] [Address], including successors in title.
<b>The Beneficiary:</b>	THE SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY of 1 Victoria Street, London SW1H 0ET including successors in title and permitted assigns.
<b>The [Subsidiary]<sup>1</sup>/[Recipient]:</b>	[NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title.
<b>[The Recipient JV:</b>	An unincorporated joint venture comprising: the Subsidiary, [NAME] [(registered number [number])] [whose registered office is at] [of] [Address], including successors in title, <b><i>[insert company names and details of each of the other members of the joint venture that comprises the Recipient under the Contract]</i></b> ].
<b>The Contract:</b>	the Contract dated [DATED] between the Beneficiary and the Recipient[JV] <sup>1</sup> in respect of the Competition, which expression shall include any variations to the terms and conditions of contract and any new or replacement contract created by the novation of the contract.
<b>The Services:</b>	the activities to be undertaken by the Recipient [JV] <sup>1</sup> in accordance with the provisions of the Contract as more particularly set out in the Contract.
<b>The Competition:</b>	means the Beneficiary's Longer-Duration Energy Storage Competition

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<sup>1</sup> Applies if the Contractor is a Joint Venture.

**THIS DEED** is made on the date set out in the Particulars  
**BETWEEN:**

- (1) the Guarantor; and
  - (2) the Beneficiary,
- (together the "Parties").

**BACKGROUND**

- (A) The Beneficiary has entered into the Contract with the Recipient[JV]<sup>1</sup>. Pursuant to the Contract the [Subsidiary, as part of the RecipientJV,]<sup>1</sup>[Recipient] has agreed with the Beneficiary to undertake the Services upon and subject to the terms and conditions set out within the Contract.
- (B) Pursuant to the Contract the Guarantor has, at the request of the Beneficiary, agreed to guarantee the due performance by the [Subsidiary]<sup>1</sup>[ Recipient] of its obligations under the Contract upon the terms and conditions of this Deed.
- (C) [Each of the parties comprising the Recipient JV is jointly and severally liable to the Beneficiary for the performance of the Contract and all liabilities, acts and omissions of the Recipient JV and of each other party comprising the Recipient JV under or in connection with the Contract.]<sup>1</sup>

**IT IS NOW AGREED**

1. **DEFINITIONS**

- 1.1 Terms defined in the Contract have the same meanings in this Deed unless otherwise defined in this Deed.

2. **GUARANTEE**

- 2.1 In consideration of the Beneficiary entering into the Contract, the Guarantor irrevocably and unconditionally guarantees as principal obligor a continuing obligation to the Beneficiary the full, proper and punctual performance and observance by the [Subsidiary]/[Recipient] of all his obligations and liabilities (actual or contingent) under the Contract, including the proper and punctual payment by the [Subsidiary]/[Recipient] of any amounts required to be paid under the Contract, including those amounts of the Charges to be repaid in accordance with Condition 18A(1), or as damages for any breach of any of the provisions of the Contract.
- 2.2 If there shall occur in any respect any failure fully and properly to perform and execute the Contract, or any breach of any obligations thereunder (including without limitation the occurrence of any of the events of insolvency), for which the [Subsidiary]Recipient] is liable under the Contract, then the Guarantor shall (without prejudice to clause 2.1 hereof) within 5 (five) days of receipt of the Beneficiary's written demand make good or procure the making good of such failure or breach and shall pay to the Beneficiary all losses, damages, costs, charges and expenses (including without limitation interest and enforcement costs) which are or may be incurred by the Beneficiary by reason of such failure or breach.
- 2.3 The Guarantor confirms that it has full power and capacity to give the guarantee set out in clauses 2.1 and 2.2 and to enter into this Deed.

2.4 The Guarantor's obligations under clauses 2.1 and 2.2 are additional to and not in substitution for any security, right of action, bond or other guarantee or indemnity at any time existing in favour of the Beneficiary, whether from the Guarantor or otherwise.

2.5 The Beneficiary shall not be obliged, before enforcing any of its rights or remedies under this Deed, to enforce any other security, bond or other guarantee or indemnity from time to time existing in favour of the Beneficiary in respect of the obligations and liabilities of the [Subsidiary]/[Recipient] under the Contract.

### 3. ***NO GREATER LIABILITY***

3.1 Subject to clause 4 hereof and save in respect of any costs incurred by the Beneficiary in enforcing this Deed:

3.1.1 the costs of damages, costs, expenses and other sums recoverable under this Deed shall not exceed the damages, costs, expenses and any other sums for which the Subsidiary is liable to the Beneficiary under the Contract and the Guarantor shall have no greater liability or obligations to the Beneficiary by virtue of this Deed than it would have had if the Guarantor had been a party to the Contract in place of the [Subsidiary/Recipient] and

3.1.2 the Guarantor shall be able to raise the same defences, set-offs and counterclaims in response to the enforcement of this Deed as the [Subsidiary/Recipient] is entitled to raise under the Grant Funding Contract.

### 4. ***NO DISCHARGE OF LIABILITY***

4.1 The Guarantor shall not be discharged or released by any alteration of any of the terms of the Contract or in the extent or nature or method of performance of the Funded Activities, and no allowance of time, waiver, forbearance, forgiveness, compromise or other dealing under or with the Contract or any right or remedy arising thereunder, and no invalidity, illegality, unenforceability or irregularity of the Contract or of any provision thereof, and no legal limitation, disability or incapacity of the [Subsidiary]/[Recipient], and no other act or omission which (but for this provision) might have operated to release, exonerate or discharge the Guarantor or otherwise reduce, extinguish or adversely affect the Guarantor's liability under this Deed (including without limitation any novation, assignment, termination of the Contract, whether automatic or otherwise and whether by reason of the [Subsidiary] Recipient]'s insolvency or otherwise) shall in any way release, exonerate, discharge, reduce, extinguish or otherwise adversely affect the liability of the Guarantor under this Deed, and the Guarantor hereby waives notice to it of any such event.

4.2 For all purposes of the liability of the Guarantor to the Beneficiary under this Deed, all sums from time to time owing to the Beneficiary by the [Subsidiary]/[Recipient] (or which would have become so owing were it not for the liquidation or winding up of the [Subsidiary]/[Recipient]) shall, notwithstanding the liquidation or winding up of the Subsidiary, be deemed to continue to be owing to the Beneficiary by the [Subsidiary]/[Recipient] until actually paid.

4.3 No assurance, security or payment which may be avoided under any enactment relating to bankruptcy or liquidation, and no release, settlement or discharge which may have been given or made on the face of any such assurance, security or payment, shall prejudice or affect the right of the Beneficiary to recover from the Guarantor to the full extent of this Deed.

5. **CONTINUING GUARANTEE**

- 5.1 Each of the Guarantor's obligations and liabilities under this Deed is and will remain in full force and effect by way of continuing security until the complete performance, observance and compliance by the [Subsidiary]Recipient] of and with all the terms and conditions specified in the Contract.

6. **GUARANTOR'S WAIVER**

- 6.1 The Guarantor waives any right it may have of first requiring the Beneficiary to proceed against or enforce any claims against any of the parties to the Contract or any other person.

7. **ASSIGNMENT AND NOVATION**

- 7.1 The Beneficiary may assign, in whole or in part, the benefit of and its benefits and rights under this Deed (including by way of security) to any person to whom the Beneficiary lawfully assigns, novates or charges the Contract without the consent of the Guarantor being required. The Beneficiary shall give the Guarantor written notice following any assignment.
- 7.2 The Guarantor shall not contend that any assignee (in this clause 7.2 the "**New Beneficiary**") is precluded from recovering any loss resulting from any breach of this Deed by reason:
- 7.2.1 of the assignment; or
- 7.2.2 the Beneficiary (in this clause 7.2 excluding the New Beneficiary) having suffered no loss or a different loss to the New Beneficiary.
- 7.3 The Guarantor acknowledges that the Beneficiary is entitled to novate the Contract to a new employer (in this clause 7.3 the "**New Employer**"). Within fourteen (14) days of the Beneficiary's request the Guarantor shall execute and deliver to the Beneficiary a deed of novation in the form annexed to the Contract with the Beneficiary and the relevant New Employer identified in the Beneficiary's request.

8. **GOVERNING LAW AND JURISDICTION**

- 8.1 Any and all disputes and claims between the Beneficiary and the Guarantor as to the construction, interpretation, validity and application of this Deed, and any and all matters or things of whatsoever nature arising out of or in connection therewith (including without limitation in relation to any non-contractual obligations), shall be governed by English law and the non-exclusive jurisdiction of the English Courts.

9. **ADDRESS FOR SERVICE**

- 9.1 [The Guarantor hereby appoints [●] of [●] as its agent to receive on its behalf service of any proceedings arising out of or in connection with this Deed. Service upon such agent shall be deemed valid service upon the Guarantor whether or not the process is forwarded to or received by the Guarantor. The Guarantor shall inform the Beneficiary, in writing, of any change in the address of such agent within ten (10) business days of such change. If for any reason such agent ceases to be able to act as agent or no longer has an address in England, the Guarantor will forthwith appoint a substitute acceptable to the Beneficiary and deliver to the Beneficiary the new agent's name and address. The Guarantor may from time to time replace such agent with another process agent with an address in England provided that no less than five (5) business days' prior written notice is delivered to the



.....(authorised signatory)

Name of signatory: .....

