

Schedule 4

BEIS STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SERVICES

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1 Definitions and Interpretations

- (1) In these terms and conditions of contract for services, unless the context otherwise requires, capitalised expressions shall have the meanings set out below.

“**Annex 1**” means the Annex 1 (Processing, Personal Data and Data Subjects schedule) attached to the Contract Offer Letter which forms part of this Contract;

“**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**” premises owned, controlled or occupied by the Authority which are made available for use by the Contractor or its subcontractors for provision of the Services (or any of them);

“**Charges**” means the Contract Price (or parts thereof) agreed in respect of the Services, excluding Value Added Tax (as more fully detailed in Schedule 4 of the Contract Offer Letter);

“**Confidential Information**”: information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, activities, suppliers, products, affairs and finances of the Authority or any other department or office of her Majesty’s Government or related to or connected with the Contract or the Services including, without limitation, technical data and know-how relating to Her Majesty’s Government, the Contract or the Services or any of their suppliers, agents, management or contacts and including (but not limited to) information that the Contractor creates, develops, receives or obtains in connection with their Contract or the Services, whether or not such information (if in anything other than oral form) is marked confidential (but “Confidential Information” does not include the Contract itself and the provisions of the Contract where, or to the extent that, the Authority publishes them in the public domain);

“**Consents**” means all permissions, consents, approvals, certificates, permits, licenses and authorisations required for the performance of any of the Contractor’s obligations under this Contract including for the avoidance of doubt environmental permits, planning permissions and obligations, consents of third parties (whether or not from a public authority or any other person whatsoever);

“**Contract**” means the agreement concluded between the Authority and the Contractor for the supply of Services, including without limitation the Contract Offer Letter (and Schedules thereto), Annex 1, these Standard Terms and 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;

“**Contract Offer Letter**” means the offer letter that sets out inter-alia the Parties to the Contract and the key Contract terms;

“**Contract Period**” means the period from the commencement of this Contract to the date of expiry of this Contract set out in the Contract Offer Letter or such earlier date as this Contract is terminated in accordance with its terms;

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

“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 6;

“Contract Manager” means the person nominated by the Authority to manage the Contract;

“Contractor Personnel” means all directors, officers, employees, other workers, agents, consultants, persons and contractors engaged by or on behalf (whether directly or indirectly) of the Contractor and of any subcontractor (of any tier) engaged in the performance of the Contractor’s obligations under this Contract;

“Contracts Finder” means the Government’s publishing portal for public sector procurement opportunities;

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

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

“Data Protection Legislation” means:

- a. the UK GDPR and any applicable national implementing Laws as amended from time to time;
- b. the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy;
- c. all applicable Law about the processing of personal data and privacy;

“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;

“Default” means any breach of the obligations of the Contractor (including abandonment of a Contract in breach of its terms) or any other default (including material default), act, omission, negligence or statement of the Contractor, of any person acting on its behalf (including subcontractors) howsoever arising in connection with or in relation to the subject-matter of a Contract and in respect of which the Contractor is liable to the Authority;

“Deliverables” means any objectives or deliverables that are required to be provided by the Contractor as part of the Services under the Contract, or any goods ordered under the Contract including, without limitation, any documentation required to be provided;

“Existing IPR” means any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Contract (whether prior to the commencement of this Contract or otherwise);

“Fixed Price” means the agreed price is “Fixed” for the period of the Contract and is not subject to variation;

“Force Majeure” means any of the below circumstances provided that they are not within a party's reasonable control including, only:

- a. acts of God, flood, drought, earthquake or other natural disaster;
- b. epidemic or pandemic;
- c. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d. nuclear, chemical or biological contamination or sonic boom;
- e. collapse of buildings, fire, explosion or accident; and
- f. interruption or failure of utility service.

“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 equipment, parts, materials, documents, papers or data issued in electronic form and any other materials;

“Health and Safety Policy” means the health and safety policy of the Authority as provided to the Contractor from time to time;

“Intellectual Property Rights” or **“IPR”** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“IPR Claim” means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Deliverables or otherwise provided and/or licensed by the Contractor (or to which the Contractor has provided access) to the Authority in the fulfilment of its obligations under the Contract;

“Law” means any legal provision the Contractor must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European

Communities Act 1972 (as implemented into UK law, by virtue of the European Union (Withdrawal Agreement) Act 2018 (as amended by the European Union (Withdrawal Agreement) Act 2020)), regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body;

“Material Breach” means a material breach of the Contract, which, for the avoidance of doubt, shall include:

- a. the failure on the part of the Contractor to provide a Rectification Plan to the Authority within 10 Working Days of being so requested;
- b. the Contractor’s proposed Rectification Plan is rejected by the Authority in line with Conditions (4) and b; or
- c. failure to deliver on an agreed Rectification Plan;

“MI Reporting Template” means the document (included as an annex to the Contract Offer Letter) as amended in accordance with Condition 23;

“New IPR” means a) IPR in Deliverables or other items created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of the Contract and updates and amendments of these items including (but not limited to) database schema; and/or b) IPR in or arising as a result of the performance of the Contractor’s obligations under the Contract and all updates and amendments to the same; but shall not include the Contractor’s Existing IPR;

“Open Book Data” means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Contract, including details and all assumptions relating to:

- a. the Contractor’s costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;
- b. operating expenditure relating to the provision of the Deliverables including an analysis showing:
 - i. the unit costs and quantity of goods and any other consumables and bought-in Deliverables;
 - ii. work force resources broken down into the number and grade/role of all Contractor Personnel (free of any contingency) together with a list of agreed rates against each work force grade;
 - iii. a list of costs underpinning those rates for each work force grade, being the agreed rate less the Contractor profit margin;
 - iv. and reimbursable expenses, if allowed under the Purchase Order form;
- c. overheads; and all interest, expenses and any other third-party financing costs incurred in relation to the provision of the Deliverables;
- d. the Contractor’s profit achieved over the Contract period and on an annual basis;
- e. confirmation that all methods of cost apportionment and overhead allocation are consistent with and not more onerous than such methods applied generally by the Contractor;

- f. an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and
- g. the actual costs profile for each service period;

“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;

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

“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 the such measures adopted by it;

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

“Rectification Plan” means a plan (or revised plan) by the Contractor to rectify a Default, which shall include:

- a. full details of the Default that has occurred, including a root cause analysis;
- b. the actual or anticipated effect of the Default;
- c. the steps which the Contractor proposes to take to rectify the Default and to prevent such Default from recurring, including the Contractor’s proposed timescales for such rectification;
- d. an analysis of the Contractor’s ability to provide the Services and Deliverables under the Contract; and
- e. any reasonably foreseeable events that may impact on the Contractor’s ability to comply with the measures contained within the Rectification Plan.

“Required Insurances” means those insurances required pursuant to Conditions **Error! Reference source not found.** and (1);

“Services” means the services including the Deliverables 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;

“Standard Terms and Conditions” means the terms and conditions contained in this document;

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

“UK GDPR” the General Data Protection Regulation (EU) 2016/679 as retained into UK law by virtue of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019;

“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 (save where context requires otherwise) be subject to the following provisions:
- a. a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
 - b. 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 this Contract 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 Conflict

In the case of any conflict or inconsistency between these Standard Terms and Conditions and any specific terms of the Contract:

- (1) the specific term of the Contract dealing with conflicts shall determine which provision shall prevail; or
- (2) (if applicable) where there is no such specific conflicts provision in the Contract then, the specific terms of the Contract shall prevail (save that these Standard Terms and Conditions shall prevail over and above any terms, conditions or provisions set out in any Contractor’s proposals or terms and conditions provided by the Contractor).

3 Entire Agreement

The Contract constitutes the entire agreement and understanding between the Parties and supersedes all prior written and oral representations, assurances, warranties, 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.

Subject to any liability for fraudulent misrepresentation, each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

4 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.

5 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. Nor shall anything in this Contract entitle the Contractor to make or enter in to any agreements or commitments for or on behalf of the other Party.

6 Assignment and Subcontracting

- (1) The Contractor shall not give, bargain, assign, transfer, mortgage, charge, delegate, declare a trust over, sell, assign, subcontract 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 subcontractor 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 subcontractor.
- (4) Notwithstanding any subcontracting by the Contractor in accordance with this Condition 6, the Contractor shall remain responsible for all acts and omissions of its subcontractors and the acts and omissions of those employed or engaged by its subcontractors as if they were its 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 (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 (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 (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 (6)a shall only apply in respect of subcontract opportunities arising after the date of the commencement of the Contract.

(9) Notwithstanding Condition (6), the Authority may, by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

7 Amendments and Variations

No amendment or variation to the terms of the Contract shall be valid unless agreed in writing between the Authority and the Contractor.

8 Information Confidential to the Contractor

(1) Unless agreed expressly by both Parties:

- a. in writing; and
- b. 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 Condition (2)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.

9 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 0 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 ("FOIA").
- (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 9, 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.

10 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 subcontractors, the Contractor shall ensure that such staff, agents and subcontractors are subject to the same obligations as the Contractor in respect of all Confidential Information.
- (2) Condition (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 comply with any security requirements and instructions issued by the Authority in relation to any document classified as “Official – Sensitive”, “Confidential”, “Secret” or “Top Secret”.
- (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.

11 Freedom of Information

- (1) The Contractor acknowledges that the Authority is subject to the requirements of FOIA and the Environmental Information Regulations SI 2004 No. 3391 (“**EIR**”) and shall provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and the EIRs.
- (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; and

- 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 FOA or the EIR;
 - b. is to be disclosed in response to a Request for Information.
- (5) In no event shall the Contractor respond directly to a Request of Information unless expressly authorised to do so in writing by the Authority.
- (6) 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.
- (7) 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.
- (8) 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 (4) and (6).

12 Data Protection

- (1) The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the 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, 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 the 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;
 - 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:
 1. are aware of and comply with the Contractor's duties under this Condition;
 2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-Processor;
 3. 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
 4. 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) below, 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) of this Condition 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 Condition (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; and
 - 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 Condition. 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 12 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 12 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 12, the Authority may terminate the Contract immediately in which event the provisions of Condition 33 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 subcontractors and/or its 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.
- (18) 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.

13 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 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 the Contractor or on the Contractor's behalf, or to the Contractor's 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.
- (2) Nothing contained in this Condition shall prevent the Contractor paying such commission or bonuses to the Contractor's own staff in accordance with their agreed contracts of employment.

- (3) Any breach of this Condition by the Contractor, or by any person employed or engaged by the Contractor or acting on the Contractor's behalf (whether with or without the Contractor's 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.
- (4) In any dispute, difference or question arising in respect of:
 - a. the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under 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.

14 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 early termination of the Contract.

15 Contractor's 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 subcontractors, 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 they understand that the Official Secrets Acts 1911 to 1989 applies to them both during the carrying out and after expiry or termination of the Contract and that they will comply with the provisions of the Official Secrets Acts 1911 to 1989 in so far as they apply to the work/Services they are 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 subcontractors 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 required by the Authority, will not carry out any work/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 (1), (2) or (3) 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). Further no action of the Authority under this Condition shall entitle the Contractor to any relief in respect of its obligations under this Contract.
- (7) 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 early termination of the Contract.

16 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. Further, the Authority shall not be obliged to replace any item of the Government Property provided.
- (2) All Government Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Authority is notified to the contrary within 14 days or such other time as is specified in the Contract. The Contractor shall be responsible for the maintenance of any of the Government Property provided to it at its own expense. 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 the Contractor's servants, agents or subcontractors, whether or not arising from the Contractor's 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 the Contractor's negligence or default or the neglect or default of the Contractor's servants, agents, or subcontractors.
- (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 clause (5) 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 subcontractors, 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 subcontractors, 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 subcontractors, 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.

17 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 Purchase Order or contract number, the Charges and, where not all of the Services have been completed, the relevant part of the Charges with an appropriate breakdown of time worked, the part of the Services (if all the Services have not been completed) and period to which the invoice relates, and its confirmation that the Services (or relevant part of the Services referred to on the invoice) have been fully performed 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 clause (1) above. 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 7.
- (4) Except as a result of default or negligence on the part of the Authority, if the Contractor either fails to provide, or, in the reasonable opinion of the Authority, has inadequately provided, any Services or Deliverables due under the Contract, the Authority may:
 - a. reduce payment in respect of those Services or Deliverables; and/or
 - b. recoup payment(s) already made in respect of those Services or Deliverables

without prejudice to any other rights or remedies of the Authority. Such reduction or recoup of payments shall be a reduction or recoupment in direct proportion to either: (A) the amount of the Services that have actually been provided in accordance with the Contract, or (B) (if lower) the value in the Services that have been fully provided in accordance with the Contract.
- (5) If the Contractor believes that payment for a correctly submitted invoice is overdue, the Contractor 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 the Contractor's satisfaction, they should write to the Head of Procurement at the Department for Business, Energy and Industrial Strategy setting out their 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 17 the Authority will consider and verify that invoice in a timely fashion and shall make payment in accordance with this Condition 17.
- (8) Where the Contractor enters into a Subcontract, the Contractor shall include in that Subcontract:
 - a. provisions having the same effect as Condition (6) 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 (6).

In this clause (7), "**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.

18 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.

19 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.

20 Value Added Tax

- (1) If this Contract gives rise to a taxable supply for Value Added Tax purposes by the Contractor to the Authority under law from time to time in force, on the production of a valid Value Added Tax invoice, the Authority will pay to the Contractor a sum equal to that Value Added Tax in respect of relevant amounts of the Charges that become payable in accordance with this Contract.
- (2) The Contractor shall provide to the Authority any information reasonably requested in relation to the amount of VAT chargeable in accordance with this Contract. Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if they are 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.
- (4) Notwithstanding any other clause of this Condition 20 a VAT invoice will not be valid for the purposes of charging VAT if more than twelve (12) months have elapsed since the time of supply.

21 Provision of Services

- (1) The Contractor shall provide the Services (and the Deliverables):
 - a. in accordance with the requirements of this Contract (including the Specification);
 - b. in a manner which does not damage the Authority's reputation;
 - c. in accordance with Law;
 - d. in accordance with any applicable Consents;
 - e. 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;
 - f. in accordance with all appropriate and applicable standard specifications and standard codes of practice issued by the British Standards Institution or European Economic Community;

(in each case) to the reasonable satisfaction of the Authority (whose decision shall be final and conclusive as to the quality of Services provided). The Authority shall have

the power to inspect and examine the performance of the Services at any location at which they are performed.

In the event of any conflict between the requirements set out in this Condition (1), the Contractor shall notify the Authority and the Authority shall instruct the Contractor as to which requirement should apply. The Contractor shall comply with any such instruction from the Authority (and such instruction shall not give rise to any variation to this Contract or right to any additional remuneration or relief whatsoever for the Contractor).

- (2) If the Authority reasonably considers that the Contractor has, except as a result of default or negligence on the part of the Authority:
 - a. provided inadequate Services or Deliverables; or
 - b. provided Services or Deliverables that are differing from those required under Contract in any material respect,

the Authority may request that the Contractor perform (or re-perform) the work correctly at the Contractor's expense, without prejudice to any other rights or remedies of the Authority.

- (3) If the Authority exercises its right under Condition 0 above, the work shall be performed to the Authority's reasonable satisfaction and within such reasonable time as may be specified by the Authority.
- (4) Without prejudice to any other rights or remedies of the Authority, if there is a Default, the Authority may request that the Contractor provide a Rectification Plan.
- (5) Where the Authority receives a proposed Rectification Plan, in line with Condition (3) above, it can either:
 - a. reject the proposed Rectification Plan; or
 - b. accept the Rectification Plan (without limitation) and the Contractor must immediately begin work on the proposed corrective measures and actions under the Rectification Plan at its own cost.
- (6) Where the Rectification Plan is rejected, the Authority:
 - a. must provide reasonable grounds for its decision; and
 - b. may request that the Contractor provides a revised Rectification Plan.
- (7) Where the Authority requests that the Contractor provides a revised Rectification Plan the Contractor must provide such a revised plan within five (5) Working Days of the date of such request except where otherwise agreed. The revised Rectification Plan must address the grounds given by the Authority for its initial rejection of the proposed Rectification Plan.
- (8) 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 subcontractor'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.

- (9) 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.
- (10) 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.
- (11) Without prejudice to the provision of Condition (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.

22 Conflicts of Interest

- (1) For the purposes of this Condition 22, a reference to a "conflict of interest" includes any scenario where the Contractor or any person engaged by it or on its behalf (including any subcontractors) is in a position where there is or may be an actual, potential or perceived conflict between the pecuniary and/or personal interests of that person and the duties owed to the Authority under the provisions of this Contract.
- (2) The Contractor shall ensure that there is no conflict of interest likely to prejudice the Contractor's independence and objectivity in performing the Contract and undertakes that upon becoming aware of any conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) the Contractor 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.
- (3) Where the Authority is of the opinion that a conflict of interest notified to it under Condition (1) 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.

- (4) Notwithstanding Condition (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.

23 Reporting, Monitoring and Management Information

- (1) Where requested by the Authority, the Contractor shall supply to the Authority such information - including in the form of progress reports or management information ("MI") reports - relating to the Services and to the Contractor's management and performance of the Contract as they may require.
- (2) Where reports are required by the Contract, the Contractor shall render such reports in such a form and timeframe as specified by the Authority, or as otherwise agreed between the Contractor and the Authority.
- (3) The MI reports referenced in Condition (1) above shall include, without limitation, the information required by the MI Reporting Template and any guidance issued by the Authority from time to time.
- (4) The Contractor will maintain Open Book Data in relation to the Services to be performed under the terms of this Contract. The Authority may request any information comprising the Open Book Data and the Contractor will provide the information requested within five Working Days.
- (5) The Contractor's performance of the Services shall be monitored by the Contract Manager. Without prejudice to any other rights and remedies under the Contract, the Contract Manager shall be entitled to review the Contractor's performance and make reasonable recommendations to the Contractor for improving the standard of the Contractor's performance in undertaking the Services. The Contractor must use reasonable endeavours to implement such recommendations. The Contractor's Representative shall attend any meetings arranged by the Contract Manager for the purpose of discussing the Services being provided, and reviewing the Contractor's performance.
- (6) If the Contractor (or any Contractor Personnel) is unable, or considers that it is likely to be unable to provide any of the Deliverables, the Contractor must immediately:
 - a. tell the Contract Manager and provide reasons;
 - b. propose corrective action(s); and
 - c. propose a deadline for completing the corrective action(s).

24 Intellectual Property Rights

- (1) Each Party keeps ownership of its own Existing IPRs. The Contractor hereby grants the Authority a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Contractor's Existing IPR to enable it to both:
 - receive and use the Deliverables
 - make use of (including to modify) the Deliverables

- (2) The Parties hereby agree that (and the Contractor hereby assigns to the Authority) any New IPR created under the Contract is wholly owned (with full-title guarantee) by the Authority (this clause shall act as a grant and assignment of such New IPR as applicable including acting as an assignment of future New IPR). The Authority gives the Contractor a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations under the Contract.
- (3) The Parties will (as required by the Authority) execute (and procure that any Contractor Personnel or relevant third parties including consultants and subcontractors execute) any documentation at their own cost and in a timely manner to the extent required to give effect to the intent of clause (2).
- (4) Where a Party acquires ownership of IPRs incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- (5) Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 24 or otherwise agreed in writing.
- (6) The Contractor indemnifies the Authority against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of any IPR Claim.
- (7) If an IPR Claim is made or anticipated the Contractor must at its own expense and the Authority's sole option, either:
 - obtain for the Authority the rights in Clause 24.1 and 24.2 without infringing any third party IPR
 - replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables
- (8) The Contractor shall indemnify, and keep indemnified, the Authority in full against all costs, expenses, damages and losses, including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Authority as a result of or in connection with any claim made against the Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or Contractor Personnel.

25 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.

26 Indemnities and Liabilities

- (1) Subject to Condition 35 the Contractor shall hold harmless and indemnify the Authority on demand from and against all:
 - a. claims;

- b. demands;
- c. proceedings;
- d. actions;
- e. damages;
- f. costs (including legal costs);
- g. expenses; and
- h. any other liabilities,

arising from claims made by the Authority's staff or agents, or by third parties, in respect of:

- i. any death or personal injury; or
- j. loss or destruction of or damage to property;
- k. any other direct loss, destruction or damage, including but not limited to direct financial losses which are caused,

by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Contractor, its employees, agents or subcontractors.

- (2) The Contractor shall be liable to the Authority for any loss, damage, destruction, injury or expense (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) 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.
- (4) 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, provided that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of the Authority.
- (5) Subject to clause 0 and (7), each Party's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the estimated annual Charges due under this Contract.
- (6) Nothing in this Contract shall limit or exclude any of the following (nor shall any liabilities in respect of the following in any way cause or contribute to the erosion of any liability cap):
 - a. liability for death or personal injury caused by its negligence, or that of its employees, agents or subcontractors;
 - b. its liability for bribery or fraud or fraudulent misrepresentation by it or its employees or subcontractors;
 - c. any liability that cannot be excluded or limited by Law;

- d. any claim pursuant to Condition **Error! Reference source not found.**; or
- (7) Where a matter is covered by any of the insured liabilities in clause 27, then the limit of the Contractor's liability shall be the greater of the amount described in clause 26(5) or the limit of the insurance policy required under this Contract.

27 Insurance

- (1) The Contractor shall obtain and maintain for a period of 12 years after the expiration of termination of this Contract (and on business as usual terms) with a reputable insurance company the following policy/policies:
 - a. Public liability insurance with a limit of indemnity of not less than £10,000,000 (Ten Million Pounds) in relation to any one claim, the number of claims being unlimited;
 - b. Professional indemnity insurance with a limit of indemnity of not less than £5,000,000 (Five Million Pounds) in relation to any one claim, the number of claims being unlimited;
- (2) The Required Insurances, detailed above, to be effected by the Contractor shall be in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract including death or personal injury, loss of or damage to property or any other loss. The required insurance shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.
- (3) The Contractor shall give the Authority, on request, copies of all the insurance policies required under this Condition or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- (4) If, for any reason, the Contractor fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- (5) The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract or otherwise.

28 Dispute Resolution

- (1) The Parties shall attempt in 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 (3) 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 (1) of this Condition.
- (4) If the Parties agree to refer the dispute to mediation:
- a. in order to determine the person who shall mediate the dispute (the “**Mediator**”) the Parties shall by agreement choose a neutral adviser or mediator from one of the dispute resolution providers listed by the Government Procurement Service on its website or in its printed guidance on dispute resolution within 30 days after agreeing to refer the dispute to mediation;
 - b. the Parties shall within 14 days of the appointment of the Mediator meet with them 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:
- a. do not agree to refer the dispute to mediation;
 - b. fail to reach agreement as to who shall mediate the dispute pursuant to Condition (4); or
 - c. 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.

29 **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. 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 (1)l will exist until the end of a period of three months starting from receipt of the notice provided by the Contractor pursuant to Condition (1), or such other period as is agreed by the Parties.

30 Termination for Breach of Contract

- (1) If the Contractor commits a Material Breach that is not capable of remedy the Authority shall be entitled to terminate the Contract with immediate effect by notice in writing to the Contractor.
- (2) The Authority's right to terminate the Contract under Condition (1) above is without prejudice to any other right or remedies in respect of the breach concerned or any other breach of the Contract.

31 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 90 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 (1) above, 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.

32 Suspension of the Services

- (1) 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 (for a reason other than the default of the Contractor), the Authority shall be responsible for loss incurred by the Contractor as a result of such suspension. In such circumstances, subject to the Contractor taking reasonable steps to mitigate its loss, the Contractor will be able to recover from the Authority under this Condition 32 those losses which:
 - a. were reasonably foreseeable as arising as a direct result of the suspension; and
 - b. relate to the cost of any commitments entered into by the Contractor which cannot be met as a result of the suspension 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).
- (2) The provisions of this Condition shall not apply where the reason for the suspension of the Services arises from any of the circumstances listed in Condition 39.

33 Consequences of Termination/Expiry

- (1) If the Authority terminates the Contract in accordance with Condition 12, **Error! Reference source not found.**, 15, 22, 29, (2), 31, 42, 43 or this Contract is otherwise terminated for any other reason (or indeed expires):

- a. the Contractor shall forthwith cease to provide the Services (but may be required to comply with the Exit Plan – see below);
- b. the Contractor shall submit to the Authority within five (5) Working Days of termination or expiry (at the Contractor's own cost) a comprehensive status report which shall be current as at the date of submission relating to the Services (this report shall summarise all the Services delivered up to the date of termination/expiry);
- c. the Contractor shall cease to use the Government Property in good condition (with any keys or access cards) (and any data related to the Services or Confidential Information) and (if so requested) shall hand over to the Authority a complete and uncorrupted version of all relevant data related to the Services and all records, information, documents howsoever held and including any media used to store such data including, without limitation, correspondence with staff engaged for or on behalf of the Authority, the Authority's service departments, any users of the Services and any other relevant third party and anything else relating to the performance of the Services in its possession custody or control either in its then current format or in a format nominated by the Authority whether such Government Property (or other data related to the Services or Confidential Information) is on hard copy or on a disk or on any computer systems;
- d. the Contractor shall return all Personal Data or (if instructed by the Authority) destroy or dispose of it in a secure manner, in accordance with the specific instructions issued by the Authority (for the avoidance of doubt, Personal Data shall include but not be limited to that data which is Personal Data and for which the Authority retains its Controller responsibilities);
- e. the Contractor shall vacate any Authority's Premises;
- f. in the event that termination takes place in accordance with Condition 12, **Error! Reference source not found.**, 15, 22, 29, (2), 42, 43 or otherwise based on Contractor default:
 - i. the Authority shall immediately cease to be under any obligation to make further payment to the Contractor until the costs, loss and/or damage to the Authority resulting from or arising out of the termination shall have been calculated; and
 - ii. such termination shall be at no loss or cost to the Authority and the Contractor hereby indemnifies the Authority against any losses, costs and expenses (including legal costs) which the Authority may suffer as a result of any such termination, including:
 - 1. any demonstrable and reasonably incurred wasted expenditure;
 - 2. any demonstrable and reasonably incurred additional costs (including the costs associated with time spent by Authority staff) of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
 - 3. reasonable costs incurred associated with time spent by Authority officers in terminating the Contract;

4. any demonstrable and reasonably incurred losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractors, staff, regulator or customer of the Authority) caused by the act or omission of the Contractor; and
 5. any demonstrable loss of anticipated savings (including the cost of providing the Services for the remainder of the period of the Contract to the extent that such cost exceeds the payment that otherwise would have been payable to the Contractor).
- (2) The rights of the Authority under this Condition are in addition to, and without prejudice to, any other rights that the Authority may have at law or under the Contract.
 - (3) The amounts to be recovered by the Authority in accordance with Condition (1)e may be recovered by the Authority as a debt and may be deducted from any sum or sums which would but for this Condition 33 have been due to the Contractor.
 - (4) If the Contractor fails to comply with Conditions (1)b-(1)d , the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or subcontractors where any such items may be held.
 - (5) Without prejudice to the Authority's other remedies, failure to comply with this Condition may result in the Authority withholding any payment due until reasonable compliance by the Contractor.

34 **Exit Management**

- (1) The Contractor shall:
 - a. within 30 days from the commencement of this Contract provide to the Authority a copy of its depreciation policy (if so required) for the purpose of calculating net book value of relevant assets related to this Contract (which shall at all times be in accordance with good industry practice);
 - b. create and maintain a detailed register of all assets used to provide the Services (including description, condition, location and details of ownership and status as either exclusive assets (used only for the Authority) or non-exclusive assets and their net book value) and subcontracts and other relevant agreements required in connection with the Deliverables; and
 - c. create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Contractor provides the Deliverables.

(Limbs (b) and (c) together being the “**Registers**”).

- (2) The Contractor shall:

- a. ensure that all assets to be used exclusively for the Authority listed in the Registers are clearly physically labelled and identified as such;
 - b. procure that all licences for software provided by third parties and used in the Services and all sub-contracts shall be assignable and/or capable of novation (at no cost or restriction to the Authority) at the request of the Authority to the Authority and/or any replacement contractor upon the Contractor ceasing to provide the Services and if the Contractor is unable to do so then the Contractor shall promptly notify the Authority and the Authority may require the Contractor to procure an alternative sub-contractor or provider of Deliverables; or
 - c. where required, appoint an exit manager, who will liaise with the relevant representative of the Authority regarding the expiration or termination of this Contract.
- (3) The Contractor shall, on reasonable notice, provide to the Authority and/or its potential replacement contractors (subject to the potential replacement contractors entering into reasonable written confidentiality undertakings), such information (including any access) as the Authority shall reasonably require in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential replacement contractors undertaking due diligence (the "**Exit Information**").
- (4) Notwithstanding any other provision or restriction in this Contract, the Contractor acknowledges that the Authority may disclose the Contractor's Confidential Information (excluding the Contractor's or its subcontractors' prices or costs) to an actual or prospective replacement contractor to the extent that such disclosure is necessary in connection with such engagement.
- (5) The Contractor shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and/or Deliverables (and shall consult the Authority in relation to any such changes).
- (6) The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Contractor.
- (7) The Contractor shall, within three (3) months after the date on which this Contract commences, deliver to the Authority an exit plan ("**Exit Plan**") which complies with the requirements set out below and is satisfactory to the Authority.
- (8) The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20)

Working Days of the latest date for its submission (see above), then such Dispute shall be resolved in accordance with Condition 28.

- (9) The Exit Plan shall set out, as a minimum:
- a. a detailed description of both the transfer and cessation processes, including a timetable;
 - b. how the Deliverables will transfer to the replacement contractor and/or the Authority;
 - c. details of any contracts which will be available for transfer to the Authority and/or the replacement contractor upon the date of expiration or termination of this Contract together with any reasonable costs required to effect such transfer;
 - d. proposals for the training of key members of the replacement contractor's staff in connection with the continuation of the provision of the Deliverables following the date of expiration or termination of this Contract;
 - e. proposals for providing the Authority or a replacement contractor copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
 - f. proposals for the assignment or novation of all services utilised by the Contractor in connection with the supply of the Deliverables;
 - g. proposals for the identification and return of all Government Property in the possession of and/or control of the Contractor or any third party;
 - h. proposals for the disposal of any redundant Deliverables and materials;
 - i. how the Contractor will ensure that there is no disruption to or degradation of the
 - j. Deliverables during the six (6) month period after the termination/expiration of the Contract ("**Termination Assistance Period**"); and
 - k. any other information or assistance reasonably required by the Authority or a replacement contractor
- (10) The Contractor shall:
- a. maintain and update the Exit Plan (and risk management plan) no less frequently than:
 - i. every six (6) months throughout the Contract Period; and
 - ii. no later than twenty (20) Working Days after a request from the Authority for an up-to-date copy of the Exit Plan;
 - iii. as soon as reasonably possible following the Termination Assistance Notice, and in any event no later than ten (10) Working Days] after the date of the Termination Assistance Notice;
 - iv. as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Deliverables (including all changes under the Variation Procedure); and
 - v. jointly review and verify the Exit Plan if required by the Authority and promptly correct any identified failures.

- (11) The Authority shall be entitled to require the provision of all assistance as reasonably required on expiry of termination of this Contract ("**Termination Assistance**") at any time during the Contract Period by giving written notice to the Contractor (a "**Termination Assistance Notice**") at least one (1) months prior to the expiration or termination date. The Termination Assistance Notice shall specify:
- a. the nature of the Termination Assistance required; and
 - b. the start date and the Termination Assistance Period during which it is anticipated that Termination Assistance will be required.
- (12) In the event that Termination Assistance is required by the Authority but at the relevant time the Parties are still agreeing an update to the Exit Plan pursuant to this Condition, the Contractor will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Authority approved version of the Exit Plan (insofar as it still applies).
- (13) Throughout the Termination Assistance Period the Contractor shall:
- a. if required by the Authority, provide the Termination Assistance;
 - b. provide to the Authority and/or its replacement contractor any reasonable assistance and/or access requested by the Authority and/or its replacement Contractor including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Authority and/or its Replacement Contractor;
 - c. use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Authority;
 - d. at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority;
 - e. seek the Authority's prior written consent to access any Authority Premises from which the de-installation or removal of Contractor Assets is required.

35 **Consequential Losses**

- (1) Save where expressly stated to the contrary in this Contract, neither Party shall be liable to the other Party for any:
- a. indirect loss;
 - b. special loss;
 - c. consequential loss;
 - d. loss of profits;
 - e. loss of turnover;
 - f. loss of business opportunities; or
 - g. damage to goodwill.
- (2) Notwithstanding Condition (1), the Contractor agrees that the Authority may, amongst other things, recover from the Contractor, the following losses incurred by the Authority to the extent that they arise as a result of the Contractor's default:
- a. any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Contractor's default;
 - b. any wasted expenditure or charges;

- c. the additional cost of procuring alternative arrangements for the provision of the Services, which shall include any incremental costs associated with procuring such alternative arrangements above those which would have been payable under the Contract;
- d. any compensation or interest payable to a third party by the Authority;
- e. any fine or penalty incurred by the Authority pursuant to law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; and
- f. where applicable, the compensation described in Condition (1)e.

36 Survival of Terms

Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Contract shall remain in full force and effect (including for the avoidance of doubt Conditions 10, 11, 12, 14, (6)c, 34 and 37).

37 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 at 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.

38 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 (1) 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 (2)d 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 (1) above would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause (2)d, 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.

39 Force Majeure

- (1) Provided it has complied with Condition (2), if a Party (“**Affected Party**”) is prevented, hindered or delayed in or from performing any of its obligations under this Contract by a Force Majeure Event, the Affected Party shall not be in breach of this Contract for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- (2) The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- (3) The Affected Party shall:
- a. as soon as reasonably practicable after the start of the Force Majeure Event but no later than 7 days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
 - b. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- (4) If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the Party not affected by the Force Majeure Event may terminate this Contract by giving 4 weeks' written notice to the Affected Party.

40 Waiver

- (1) No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- (2) No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- (3) No waiver shall be effective unless it is communicated to the other party in writing.

41 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 in a manner that achieves the intended commercial result of the original position.

42 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 (1) above; or
 - b. the Contractor or its staff are not liable to the relevant taxes.
- (4) A request under clause (2) 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 (2) 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 subcontractors (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 (4) above and this clause (5), 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 subcontractor or agent to provide information to them equivalent to clause (2), 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 42; or

- b. the Contractor's subcontractors or agents do not comply with the conditions imposed on them under clause (5) above.
- (8) In particular (but without limitation), the Authority may terminate the Contract under clause (6) above:
 - a. in the case of a request under clause (2):
 - 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 subcontractors and agents have complied with the conditions set out or referred to in clauses (1) to (5); or
 - iii. the Authority receives information which demonstrates, to its reasonable satisfaction that the Contractor, its subcontractors or agents, are not complying with those conditions.

43 Payment of Taxes: Occasions of Tax Non-Compliance

- (1) This Condition 43 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 (1) 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 (2) 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 43, “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 0 above:
- a. “**DOTAS**” means the Disclosure of Tax Avoidance Schemes rules (including VAT disclosure regime (VADR), Disclosure of Tax Avoidance Schemes: VAT and other indirect taxes (DASVOIT) and Direct taxes (including Apprenticeship Levy) and National Insurance contributions (DOTAS)) 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 (inclusive of Schedules 43, 43A, 43B and 43C of the same legislation and section 10 and 11 of the National Insurance Act 2014) (in each case as understood in accordance with HMRC’s General Anti-Abuse Rule Guidance as approved from time to time); 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.

44 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 Contractor will comply with any request by the Authority to assist the Authority in meeting its obligations under the Equality Act 2010 and to allow the Authority to assess the Contractor’s compliance with its obligations under the Equality Act 2010.
- (4) Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Contractor, its agents or subcontractors, or Contractor Personnel, and where there is a finding against the Contractor in such investigation or proceedings the Contractor will indemnify the Authority with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.
- (5) The Contractor shall (and shall procure that all Contractor Personnel shall):
 - a. perform its obligations under this Contract (including those in relation to the Services) in accordance with:
 - i. all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - ii. the Authority’s equality and diversity policy as provided to the Contractor from time to time; and
 - iii. any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
 - b. take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and
 - c. at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Contractor shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

- (6) 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) to comply with clauses (1) to (4) of this Condition.

45 Welsh Language Act

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

46 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 Condition 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.
- (4) The supplier shall meet the Government Buying Standards applicable to Deliverables which can be found online at:
<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

47 Cyber Essentials

- (1) Cyber essentials certification ("**Compliance Certification**") shall be required where:
 - a. Personal Data is handled;
 - b. data marked 'OFFICIAL' is being stored by the Contractor, or by any Contractor Personnel; or
 - c. the Contract involves the provision of certain ICT products or services as specified by the Authority from time to time.
- (2) The Authority shall determine whether the Contract requires a cyber essentials or cyber essentials plus Compliance Certification, or if no Compliance Certification is necessary.
- (3) Upon request, the Contractor shall provide the Authority with a copy of each such Compliance Certification before the Contractor or the relevant Contractor Personnel (as applicable) shall be permitted to use the Core Information Management System to receive, store or Process any Authority Data. Any exceptions to the flow down of the certification requirements to third-party suppliers and Contractor Personnel must be agreed with the Authority.

48 Safeguarding

- (1) For the purposes of this Condition 48, “**Reasonable Measures**” shall mean: “all reasonable endeavours expected to be taken by a professional and prudent contractor in the Contractor’s industry to eliminate or minimise risk of actual, attempted or threatened exploitation, abuse and harassment (including sexual abuse, sexual exploitation and sexual harassment) and whether or not such conduct would amount to a criminal offence in the United Kingdom or an offence under the laws of the territory in which it takes place (together “**Serious Misconduct**”) as is reasonable and proportionate under the circumstances. Such endeavours may include (but shall not be limited to):
 - a. clear and detailed policies and guidance for Contractor Personnel, Contractor Providers and where appropriate, beneficiaries;
 - b. developing, implementing and maintaining a safeguarding plan throughout the term (including monitoring);
 - c. provision of regular training to Contractor Personnel, Contractor Providers and where appropriate, beneficiaries;
 - d. clear reporting lines and whistleblowing policies in place for Contractor Personnel, Contractor Providers and beneficiaries;
 - e. maintaining detailed records of any allegations of Serious Misconduct and regular reporting to the Authority and the Appropriate Authorities (where relevant) of any such incidents; and
 - f. any other Good Industry Practice measures (including any innovative solutions).”
- (2) The Contractor shall take all Reasonable Measures to prevent Serious Misconduct by the Contractor Personnel or any other persons engaged and controlled by it (“**Contractor Providers**”) and shall have in place at all times robust procedures which enable the reporting by Contractor Personnel, Contractor Providers and beneficiaries of any such Serious Misconduct, illegal acts and/or failures by the Contractor or Contractor Personnel to investigate such reports.
- (3) The Contractor shall promptly report in writing any complaints, concerns and incidents regarding Serious Misconduct or any attempted or threatened Serious Misconduct by the Contractor Personnel and Contractor Providers to BEIS Contract Manager and where necessary, the Appropriate Authorities.
- (4) The Contractor shall comply with all applicable laws, legislation, codes of practice and government guidance in the UK and additionally, in the territories where the Services are being performed, relevant to safeguarding and protection of children and vulnerable adults, which the Contractor acknowledges may include vetting of the Contractor Personnel by the UK Disclosure and Barring Service in respect of any regulated activity performed by the Contractor Personnel (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)) and/or vetting by a local equivalent service. Where BEIS reasonably believes that there is an increased risk to safeguarding in the performance of the Services, Contractor shall comply with any reasonable request by BEIS for additional vetting to be undertaken.

- (5) Failure by the Contractor to:
 - a. put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct; or
 - b. fully investigate allegations of Serious Misconduct; or
 - c. report any complaints to BEIS and where appropriate, the relevant authorities (including law enforcement)

shall be a material Default of this Contract and shall entitle BEIS to terminate this Contract with immediate effect.

49 Modern Slavery

- (1) The Contractor shall, and procure that each of its Contractor Personnel shall, comply with:
 - a. the Modern Slavery Act 2015 (“**Slavery Act**”); and
 - b. the Authority’s anti-slavery policy as provided to the Contractor from time to time (“**Anti-Slavery Policy**”).
- (2) The Contractor shall:
 - a. implement due diligence procedures for its Contractor Personnel and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;
 - b. respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
 - c. prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
 - d. maintain a complete set of records to trace the supply chain of all Services provided to the Authority regarding the Contract; and
 - e. implement a system of training for its employees to ensure compliance with the Slavery Act.
- (3) The Contractor represents, warrants and undertakes throughout the Term that:
 - a. it conducts its business in a manner consistent with all applicable laws, regulations and codes including the Slavery Act and all analogous legislation in place in any part of the world;
 - b. its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate; and
 - c. neither the Contractor nor any of its Contractor Personnel, nor any other persons associated with it:
 - i. has been convicted of any offence involving slavery and trafficking; or
 - ii. has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence regarding slavery and trafficking.

- (4) The Contractor shall notify the Authority as soon as it becomes aware of:
 - a. any breach, or potential breach, of the Anti-Slavery Policy; or
 - b. any actual or suspected slavery or trafficking in a supply chain which relates to the Contract.
- (5) If the Contractor notifies the Authority pursuant to Condition (3)c.ii above, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.
- (6) If the Contractor is in Default under Condition (1)b above or (2)e above Authority may by notice:
 - a. require the Contractor to remove from performance of the Contract any Contractor Personnel or other persons associated with it whose acts or omissions have caused the Default; or
 - b. immediately terminate the Contract.

50 Other Legislation

- (1) The Contractor shall, and shall procure that its subcontractors, agents and personnel, comply with all other applicable law in force from time to time for the duration of the Contract.
- (2) The Contractor must use reasonable endeavours to comply with the provisions of Schedule X (Corporate Social Responsibility).
- (3) The Contractor indemnifies the Authority against any costs resulting from any Default by the Contractor relating to any applicable Law to do with the Contract.
- (4) The Contractor must appoint a Compliance Officer who must be responsible for ensuring that the Contractor complies with the Law and Conditions **Error! Reference source not found.**, 22, 42, 43, 44 and 46.

51 Health and Safety

- (1) The Contractor shall (and shall procure that the Contractor Personnel shall) perform its obligations under this Contract (including those in relation to the Services) in accordance with:
 - a. all applicable Law regarding health and safety; and
 - b. the Health and Safety Policy whilst at the Authority's Premises.
- (2) Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Contractor shall instruct the Contractor Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

52 Law and Jurisdiction

This Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.