



LOW CARBON
CONTRACTS COMPANY

Schedule 3

GENERAL CONDITIONS OF CONTRACT

CONTENTS

1. Definitions and Interpretation
2. Duration of the Contract
3. The Services
4. Contractor's Staff and Key Personnel
5. Continuous Improvement
6. Change to the Services
7. Unsatisfactory Performance
8. Service Levels
9. Approved Maximum Cost
10. Invoices and Payment
11. Recovery of Sums Due
12. Accounts and Records
13. Inspection and Audit
14. Bribery Act and Prevention of Fraud
15. Company Property
16. Business Continuity
17. Confidentiality
18. Announcements
19. Freedom of Information
20. Data Protection
21. Intellectual Property
22. Environmental Requirements
23. Health & Safety
24. Conflicts of Interest
25. Termination of Contract
26. Consequences of Termination
27. Force Majeure
28. Insurance
29. Warranties and Representations
30. Loss or Damage
31. Contractor's Obligations – TUPE
32. Contractor Status, Tax and National Insurance
33. Transparency
34. Assignment and Subcontracting
35. Notices
36. Dispute Resolution
37. Variations
38. Severability
39. Waiver
40. Cumulative Remedies
41. Further Assurances
42. Rights of Third Parties
43. Survivorship
44. Entire Agreement
45. Due Diligence
46. Counterparts
47. Jurisdiction

GENERAL CONDITIONS OF CONTRACT

1. Definitions and Interpretation

1.1 In these Conditions, unless the context otherwise requires, the following words and expressions shall have the following meanings:

“Additional Services”	means any additional or other services, deliverables or work that the Parties may agree from time to time in accordance with Condition 6 (Change to Services);
“Agreement”	means the agreement between the Parties (incorporating these Conditions) relating to the Services referred to in Recital A of the Agreement and more fully described in the Scope of Services (Schedule 1) to the Agreement;
“Approved Maximum Cost”	means the Approved Maximum Cost set out in the Agreement;
“Authority”	means any UK central government department, agency or body and such persons as are authorised to act on their behalf;
“Business Day”	means a day (other than a Saturday or a Sunday) on which banks are open for business (other than solely for trading and settlement in euro) in London;
“Capacity Market”	means the capacity market arrangements referred to in Chapter 3 of Part 2 to the Energy Act 2013;
“Charges”	means the price or prices set out in Schedule 2 (Charges) which are payable by the Company to the Contractor for the due and proper performance by the Contractor of its obligations under the Contract;
“Commencement Date”	means the Commencement Date specified in the Agreement or, if such date is not specified, the date of the Agreement;
“Company”	means the Company referred to in the Agreement;
“Company Property”	means anything issued or otherwise furnished in connection with the Contract by or on behalf of the Company, including but not limited to intellectual property, documents, papers, data issued in electronic form and other materials;
“Conditions”	means these General Conditions of Contract (including (if any) all appendices and annexes and schedules);
“Confidential Information”	means each and all information, documents and data (whether verbal or written and in whatever form, including electronic) relating to each or any of the Contract, the Services and/or the business, marketing, operations, affairs, activities, products or intellectual property of a Party or a member of a Party’s Group, including any information, document or data which is marked as confidential or which should by its nature be reasonably understood to be confidential by the other Party BUT does not include the Contract itself and the provisions of the Contract where, or to the extent that, the Company publishes them by virtue of Condition 33 (Transparency);
“Contract”	means the Agreement (including the Scope of Services (Schedule 1), Schedule 2 (Charges), these Conditions and any other Schedules, appendices or annexes forming part of the Contract);
“Contract for Difference” or “CFD”	means any (i) investment contract within the meaning of paragraph 1 of Schedule 2 to the Energy Act 2013 and/or (ii) CFD within the meaning of section 6(2) of the Energy Act 2013;
“Contractor”	means the person described as such in the Agreement who is responsible for the performance of the Services (including any successors to the Contractor);
“Contractor’s Staff”	means the Key Personnel, employees, contract staff and agents employed or retained from time to time by the Contractor in relation to the provision of the Services;
“EMR Rules”	means the Energy Act 2013 and any regulation or instrument made by virtue of or pursuant to Chapters 2, 3 and 4 (contracts for differences, investment contracts and capacity market) of Part 2 thereof and all rules and codes authorized thereby;
“Expiry Date”	means the date specified in the Agreement, as extended by the Company pursuant to its rights set out in Condition 2.2 or as otherwise agreed between the Parties;
“Extension Period”	means the Extension Period described in the Agreement;
“Force Majeure”	means any event or occurrence which is outside the reasonable control of the relevant Party and which is not caused by or attributable to any act or failure to take preventative action by that Party, including fire, flood, violent storm, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, but excluding:- <ul style="list-style-type: none"> (a) any industrial action occurring within the Contractor’s or any of its subcontractors or service providers; and/or (b) the failure by any of the Contractor’s subcontractors or service providers to perform its obligations under any subcontract or service provider contract or arrangement; and/or

	(c) the Contractor's lack of monies, funds or financing;
"Good Industry Practice"	means the standards, practices, methods, procedures and degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be complied with and/or expected from a very skilled and experienced person engaged in a similar type of undertaking to the Contractor and/or providing services of a similar nature to the Services;
"Group"	means the relevant Party together with each entity that is or becomes its subsidiary, its holding company or a subsidiary of such holding company, with the terms "subsidiary" and "holding company" having the meanings ascribed to them in section 1159 of the Companies Act 2006;
"Intellectual Property Rights"	means all copyright, all future rights and all rights in the nature of copyright, unregistered design rights, registered design rights, inventions, patents, patent rights including all copyright in the typographical arrangement and all design elements, all trademarks, service marks, logos, domain names, database rights, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country in the world, the right to sue for passing off and all other intellectual property rights anywhere in the world (including any application for any of the foregoing);
"Key Personnel"	means the persons listed in the Agreement and/or Scope of Services and any other person who, in the Company's reasonable opinion from time to time, is fundamental to the Contractor's performance of the Contract;
"month"	means a calendar month, unless otherwise defined;
"Party"	means (as relevant) the Company or the Contractor and "Parties" means both the Company and the Contractor;
"Pre-existing IPR"	means any Intellectual Property Rights owned by, vested in or licensed to the Company or the Contractor prior to the Commencement Date or created independently of the performance by the Company or the Contractor of their obligations under the Contract;
"Quality Standards"	means the relevant quality standards specified in the Scope of Services (Schedule 1) and, if no relevant quality standard is specified, the relevant quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation and any other reputable or equivalent body (and their successor bodies) with which it would be Good Industry Practice to comply;
"Relevant Auditor"	means any auditor acting for or appointed by any Authority to conduct an inspection, review or audit in relation to any works or services which the Company is obtaining or any project in which the Company is engaged and/or, in each case, in respect of the costs thereof;
"Replacement Contractor"	means any person appointed by the Company to replace the Contractor as provider of all, part or some of the Services;
"Schedules"	means the Schedules to the Agreement referred to in these Conditions;
"Services"	means each and all services, deliverables and work described in the Scope of Services, as may be changed or amended from time to time in accordance with Condition 6 (Change to Services), which the Contractor is required to provide under the Contract and any Additional Services as may be agreed between the Parties in accordance with Condition 6;
"Scope of Services"	means the Services to be provided by the Contractor described in Schedule 1 to the Agreement, as such Scope of Services or Services may be amended, added to or changed from time to time in accordance with Condition 6 (Change to Services);
"Service Credits"	means the Service Credits (if any) described in in the Scope of Services or in Schedule 2 (Charges);
"Service Levels"	means the Service Levels set out in the Scope of Services; and
"Tender Documents"	mean the following documents in respect of the provision of the Services, any advertisement issued by the Company seeking expressions of interest, any related pre-qualification questionnaire completed by the Contractor, any invitation to tender issued by the Company and the Contractor's tender proposal in relation to the provision of the Services.

- 1.2 Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and neuter and, in each case, vice versa.
- 1.3 The headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract.
- 1.4 The reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to any subsequent replacement, amendment or re-enactment thereof.
- 1.5 The reference to a "person" shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, body or agency or any association or partnership (whether or not incorporated or having a separate legal personality).

1.6 The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.

2. Duration of the Contract

2.1 Subject to the rights of termination under the Contract, the Contract shall commence on the Commencement Date and shall terminate on the Expiry Date, or on such date to which it is extended pursuant to clause 2.2 or as otherwise may be agreed between the Parties.

2.2 The Company shall have the right to extend the duration of the Contract during the Extension Period by giving written notice in accordance with the Agreement, provided that no such extension may result in the duration of the Contract exceeding the final day of the Extension Period without the agreement in writing of the Parties.

3. The Services

3.1 The Contractor shall, and shall ensure that the Contractor’s Staff and subcontractors, perform the Services in accordance with:-

3.1.1 the terms of the Contract, including the dates and timetables specified in the Scope of Services or as otherwise agreed by the Parties;

3.1.2 Good Industry Practice;

3.1.3 the Service Levels;

3.1.4 the Quality Standards; and

3.1.5 all relevant legislation and statutory requirements in force at the date on which the Services (or relevant part thereof) are performed.

3.2 In the event that a specific qualification or accreditation is required in relation to a particular activity or service forming part of the Services, the Contractor shall ensure that (as relevant) it and its subcontractors maintain the relevant qualification or accreditation with the relevant quality standards authorisation body or other entity.

3.3 Without prejudice to any other provision of the Contract, to the extent that the Contract does not provide for or specify the:-

3.3.1 dates or timetables for the provision of the Services (or a relevant part thereof), the Contractor shall, and shall ensure that the Contractor’s Staff and subcontractors, perform the Services (or relevant part) in a timely manner; and

3.3.2 standard(s) to which the Services must be provided, the Contractor shall agree the relevant standard for the provision of the Services with the Company prior to the supply of the Services commencing.

3.4 The Contractor shall, and shall ensure its subcontractors and agents,:-

3.4.1 provide all necessary resources, facilities, materials, hardware, software and other equipment required to perform the Services in accordance with the Contract;

3.4.2 ensure that the hardware and software used to provide the Services are secure and are adequately and competently protected, supported, backed up, maintained and regularly updated;

3.4.3 where it is necessary or appropriate for the Services (or the means by which they are provided) to interface with the processes, equipment and/or software used by the Company or a third party, ensure that such Services (or the means by which they are provided) are fully compatible with the processes, equipment and/or software of (as applicable) the Company and the third party;

3.4.4 take reasonable care to ensure, in the performance of the Contractor’s obligations under the Contract, that the operations and activities of the Company and its employees and, insofar as their operations and activities relate to the Company and its operations and activities, the Company’s agents, contractors and service providers are not disrupted;

- 3.4.5 work cooperatively with the Company in the performance of the Services, and with the Company and its other contractors and service providers in respect of any interfaces (including where coordinated approaches are required);
 - 3.4.6 obtain and maintain all licences, consents and approvals required from time to time for the performance of the Services (including any third party software licences);
 - 3.4.7 ensure the accuracy of all documentation and information provided by or on its behalf to the Company in relation to the Contract and the Services; and
 - 3.4.8 keep the Company fully informed of the progress of the Services.
- 3.5 The Contractor shall manage and monitor the performance of the Services and immediately inform the Company if it becomes aware that it or its subcontractors are or may for any reason be unable to fully perform any part of the Services and/or the Contract, if the quality of such performance may be affected and/or if there may be delays in performance.
 - 3.6 The Contractor shall not (and shall ensure that the Contractor's Staff and subcontractors do not) perform the Services in such a way that the Company's reputation and/or its ability to perform its obligations and responsibilities as part of its normal business operations is adversely affected.
 - 3.7 No consent or approval by the Company shall in any way relieve the Contractor from any liability, responsibility, obligation or duty under the Contract, unless it is in writing signed by the Company.
 - 3.8 The Contractor shall attend all meetings contemplated by the Scope of Services and such further meetings (which may be by telephone) as the Company may reasonably request from time to time. If requested by the Company, the Contractor shall ensure that the relevant persons performing material aspects of the Services also attend such meetings.
 - 3.9 The Contractor shall, and shall ensure that its subcontractors, provide all reports and information required by the Scope of Services, and such other reports and information as the Company may reasonably request from time to time. Where formal progress or other reports are required by the Contract, the Contractor shall provide such reports at such time and in such form as may be specified or as otherwise requested by the Company. The submission to and/or acceptance by the Company of any progress reports or other reports shall not prejudice any rights of the Company under the Contract.
 - 3.10 The Contractor agrees that the Company relies on the skill and judgement of the Contractor in the supply of the Services and the performance of the Contractor's obligations under the Contract.

4. Contractor's Staff and Key Personnel

- 4.1 The Contractor shall:-
 - 4.1.1 provide the Key Personnel and all other appropriately qualified, skilled, trained, competent and experienced personnel required for the performance of the Services pursuant to the Contract;
 - 4.1.2 ensure that the Contractor's Staff providing the Services do so with all due skill, care and diligence;
 - 4.1.3 properly manage and supervise all the Contractor's Staff engaged in the provision of the Services;
 - 4.1.4 if requested, provide the Company with full particulars of all persons who have been, are or are expected to be engaged in the provision of the Services; and
 - 4.1.5 ensure that the Contractor's Staff and subcontractors comply with the reasonable instructions of the Company in relation to health and safety, security and other relevant matters while on the Company's premises, including by the completion of the security, access and/or clearance procedures required by the Company.
- 4.2 The Contractor acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Services to the Company. The Contractor agrees not to change, and to procure that its subcontractors do not change, the Key Personnel without the prior written consent of the Company (which shall not be unreasonably withheld or delayed).

4.3 The Contractor shall:-

4.3.1 provide the Company with at least one month's prior written notice of any intention to replace any member of Key Personnel; and

4.3.2 ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Business Days and that any replacement shall be as skilled, qualified and experienced as, or more skilled, qualified and experienced than, the previous incumbent and that such replacement is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

4.4 If the Company (acting reasonably) considers that any member of the Contractor's Staff should be removed from involvement in the Services and/or replaced, the Company may give the Contractor notice to that effect and the Contractor shall take immediate steps to comply with this notice. The Contractor shall also ensure that any relevant access pass, access numbers and passwords relating to the person removed are returned or appropriately changed. The Company shall not be liable for the cost of replacing any such person or the process of knowledge transfer to such person's replacement.

5. Continuous Improvement

5.1 The Contractor shall have an ongoing obligation throughout the period of the Contract to identify new or potential improvements to the Services, the efficiency and effectiveness with which they are provided and ways in which the cost to the Company of obtaining the Services could be reduced.

5.2 The Contractor shall ensure that the information that it provides to the Company in accordance with Condition 5.1 shall be sufficient for the Company to decide whether any improvement to the Services or cost reduction matter should be implemented. The Contractor shall provide any further information that the Company (acting reasonably) requests in connection with any potential improvements or costs reductions respecting the Services identified by the Contractor.

6. Change to the Services

6.1 The Company may at any time by written notice request a change to all or part of any Services and/or Additional Services (a "**Change**") provided that, subject to clause 6.2, such Change shall not come into effect or be provided until the Change (including in relation to Additional Services) has been agreed in writing by the Parties.

6.2 Notwithstanding Condition 6.1, the Company may reduce the Services required to be provided by the Consultant by issuing a notice specifying the reduction. If the Company does so:-

6.2.1 the Company shall pay for any Services provided in accordance with the Contract prior to the Consultant's receipt of notice of the reduction, but shall not be obliged to pay any monies merely as a consequence of the reduction in the Services; and

6.2.2 the Charges shall be adjusted accordingly by a fair and reasonable adjustment to the Charges proportionate to the Change, taking into account any relevant rates and charges forming the Charges. The Company shall record this adjustment in writing. If the Parties fail to agree the relevant adjustment, the adjustment to the Charges shall be on resolved in accordance with Condition 36 and, failing this, shall be determined by the President for the time being of the Law Society or such other person as he or she may nominate or the Parties may agree.

7. Unsatisfactory Performance

7.1 Where in the opinion of the Company (acting reasonably) the Contractor has failed to perform the Services (in whole or in part) in accordance with the Contract (otherwise than as a result and to the extent of any wrongful act of the Company), the Company may give the Contractor a notice specifying the way in which its performance falls short of the requirements of the Contract (a "**Performance Failure Notice**").

7.2 Without prejudice to its other rights and remedies, the Company may in the Performance Failure Notice request the Contractor to, at the Contractor's own expense and to the Company's reasonable satisfaction, perform or re-perform the Services such that they accord with the requirements of the Contract. Such performance or re-performance shall be undertaken and completed within such reasonable period as may be specified by the Company in the Performance Failure Notice.

- 7.3 Where the Contractor fails to perform or re-perform the Services within the period specified in the Performance Failure Notice, the Company may, without prejudice to its other rights and remedies:-
- 7.3.1 by notice require the Contractor to suspend the performance of the Services or the relevant part thereof;
 - 7.3.2 itself provide or procure the provision of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Company that the Contractor will once more be able to provide all or the relevant part of the Services in accordance with the Contract; and/or
 - 7.3.3 carry out at the Contractor's expense any work necessary to make the Services comply with the Contract.
- 7.4 Where the Company has issued a Performance Failure Notice, the Contractor shall pay the Company for any costs reasonably incurred by the Company (including any reasonable administration costs) in respect of the performance (or re-performance) of any part of the Services by the Company or a third party ("**additional costs**"), PROVIDED however, that the Contractor shall only be liable for such additional costs to the extent that they exceed the amount otherwise payable to the Contractor for the provision of the relevant Services. The Company shall use its reasonable endeavours to mitigate any such additional costs.

8. Service Levels

- 8.1 Any failure by the Contractor to meet the Service Levels shall entitle the Company to Service Credits calculated in accordance with the provisions of Schedule 2 (Charges).

9. Approved Maximum Cost

- 9.1 The Company shall not have or be deemed to have accepted (whether expressly or impliedly) any liability to pay any monies in excess of the Approved Maximum Cost, unless it has by written notice specified an increased Approved Maximum Cost.
- 9.2 The Contractor shall give the Company early warning as soon as reasonably practicable after becoming aware that it is likely that the Services cannot be completed without exceeding the Approved Maximum Cost. In such case the Contractor shall also provide the Company with a written explanation of the reasons for this together with a forecast of the expected excess.

10. Invoices and Payment

- 10.1 The Contractor shall submit an invoice to the Company on the payment date(s) or intervals set out in Schedule 2 (Charges), and otherwise within 28 days of the provision of the Services in accordance with the Contract. All invoices shall quote the Contract number and (as relevant) the purchase order number issued by the Company.
- 10.2 The Contractor shall submit with the invoice such records, breakdowns and details as the Company may reasonably require in order to verify the Contractor's entitlement to the amount claimed, including (where relevant) any timesheets, a breakdown of the time worked by Service, the period to which the breakdown relates, receipts and details of expenses incurred.
- 10.3 Without limiting the generality of Condition 10.2, the Contractor shall, if requested by the Company, provide a monthly Charge statement (the "**Monthly Charge Statement**") comprising separate statements in respect of the Services relating to CFDs and the Services relating to the Capacity Market.
- 10.4 The Contractor shall provide all such clarification, additional information, details and records as the Company may reasonably request for the purposes of reviewing the invoices and/or the Monthly Charge Statements provided by the Contractor.
- 10.5 The Contractor shall provide to the Company its bank details for payment.
- 10.6 Except where otherwise expressly provided in the Contract, the Charges shall be inclusive of all costs of staff, facilities, licences, licence fees, royalties, equipment, materials and all other costs and expenses whatsoever incurred by the Contractor in discharging its obligations under the Contract.
- 10.7 The Contractor shall not be entitled to charge for the provision of any services that are not part of the Services set out in the Contract, unless the Scope of Services has been varied in accordance with Condition 6 (Changes to Services) or the Contract has been varied in accordance with Condition 37 (Variations).

- 10.8 The Company shall not be obliged to pay any monies in respect of any Services that the Contractor has either failed to provide or has provided inadequately. This Condition 10.8 is without prejudice to any other rights or remedies of the Company.
- 10.9 The Company shall pay the Charges after receiving a valid and correctly submitted invoice as set out in this Condition 10. Such payment shall normally be made within 30 days of receipt of a correctly submitted invoice.
- 10.10 If either Party fails to pay any amount due under the Contract within 30 days of the due date for payment, the other Party shall be entitled to charge interest on the overdue amount, payable forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 3 per cent per annum above the base rate for the time being of the Royal Bank of Scotland.
- 10.11 Where applicable, the Company shall pay to the Contractor the amount of any Value Added Tax (VAT) chargeable in accordance with the Contract, subject to receipt by the Company of a valid VAT invoice. The Contractor shall, if requested by the Company, provide such information as may reasonably be required by the Company relating to the amount of VAT chargeable on the Services.
- 10.12 The Contractor shall indemnify the Company on demand and on a continuing basis against any liability (including without limitation any properly incurred, legally enforceable and reasonably mitigated interest, penalties or costs), which is suffered or incurred by or levied, demanded or assessed on the Company at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Condition 10.12 shall be paid by the Contractor to the Company not less than five (5) Business Days before the date upon which the tax or other liability is payable by the Company.

11. Recovery of Sums Due

- 11.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any amount then due, or which at any time thereafter may become due, to the Contractor under this Contract or any other agreement or arrangement with the Company. Any over-payment by the Company to the Contractor whether in respect of the Charges or VAT shall be a sum of money recoverable from the Contractor pursuant to this Condition 11.1 or otherwise.
- 11.2 The Contractor shall make any payments due to the Company 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 Company to the Contractor. All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the Company may from time to time direct.

12. Accounts and Records

- 12.1 The Contractor shall in accordance with Good Industry Practice and generally accepted accounting principles keep and maintain full, accurate and proper accounts and records relating to the Contract, including of Charges, expenses, time records, processes, methodologies, works and the Services. The Contractor shall ensure that such accounts and records are available for a period of six years after termination or expiry of the Contract.

13. Inspection and Audit

- 13.1 Where any Services are being performed on the Company's premises, the Company may, at any reasonable time, inspect and examine any of the Services (or the performance thereof). The Contractor shall provide free of charge all such facilities as the Company may reasonably require for this purpose. In this Condition, Services includes any part of the Services and the planning or preliminary work for the Services (or such part).
- 13.2 The Contractor shall permit the Company (acting by its servants, agents and/or independent auditor) and/or the Relevant Auditor on request and at all reasonable times to examine all accounts and records at the offices of or within the control of the Contractor, and to take copies of such accounts and records. The Contractor shall provide all reasonable cooperation, assistance, information and access to Contractor's Staff and explanations as the Company and/or Relevant Auditor may request.
- 13.3 The Company shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Relevant Auditor is outside the control of the Company.

13.4 The Company shall bear the reasonable costs and expenses incurred by the Contractor in complying with its obligations under this Condition 13, unless the audit reveals a material default by the Contractor in which case the Contractor shall reimburse the Company for the reasonable costs incurred by the Company and/or the Relevant Auditor in undertaking the audit.

14. Bribery Act and Prevention of Fraud

14.1 The Contractor shall not, and shall ensure that the Contractor's Staff do not, offer or promise any person, or accept or agree to receive from any person, gifts or financial or other advantages as an inducement or reward for the improper performance of a function or activity.

14.2 Without limiting the generality of Condition 14.1, the Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any fraud or contravention of the Bribery Act 2010 by the Contractor's Staff and subcontractors in connection with the Services. The Contractor shall notify the Company immediately if it has reason to suspect that any such fraud or contravention has occurred, is occurring or is likely to occur.

14.3 If the Contractor is in breach of this Condition 14 and/or the Contractor, the Contractor's Staff or subcontractors contravene the Bribery Act 2010 or any other anti-corruption law (whether this takes place with or without the Contractor's knowledge) in relation to the Services, the Contract or any other contract with the Company, the Company may terminate the Contract with immediate effect by notice in writing. If the Company so terminates, the Company shall be entitled to recover from the Contractor the amount of any loss or damage which it suffers or incurs as a result of such termination and (if the Company considers it to be appropriate) the amount or value of any relevant improper gift or financial or other advantage.

15. Company Property

15.1 If the Company provides Company Property to the Contractor, the Contractor's Staff or subcontractors, such Company Property shall remain the property of the Company and shall be used exclusively in the performance of the Contract and for no other purpose whatsoever, except with the prior written consent of the Company.

15.2 All Company Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Company to the contrary within 10 days of receipt thereof.

15.3 Any capital item (being a tangible productive asset acquired or fabricated) which will yield a continuous service for one year or more, is essential to the Services, costs or is valued in excess of £500 and for which the Company has specifically reimbursed the Contractor under the Contract, shall be the property of the Company. The Company shall have the right to require the Contractor to transfer ownership and/or possession of such capital items to the Company and/or to dispose of them. In the latter event the Contractor shall pass any monies realised by the disposal to the Company.

16. Business Continuity

16.1 The Contractor shall comply with all business continuity and/or disaster recovery requirements set out in the Scope of Services and, if there are no such requirements, shall comply with Good Industry Practice in order to ensure the continuation of the Services in the event of an interruption to the business of the Contractor and/or to the Services or a disaster.

16.2 Without limiting the generality of this Condition 16 and unless performing the Services (in whole or in part) by use of the Company's IT systems or hardware, the Contractor shall, and shall procure that its subcontractors and agents, perform secure back-ups of all electronic data used in the provision of the Services and observe best practice when handling or in possession of any electronic data.

16.3 If at any time the Contractor suspects or has reason to believe that electronic data used in the provision of the Services has been 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 the Contract) or so degraded as a result of the Contractor's default as to be unusable, the Contractor shall notify the Company immediately and inform the Company of the remedial action the Contractor proposes to take.

17. Confidentiality

17.1 Subject to Conditions 17.2 and 17.5, neither Party (whether directly or indirectly) shall use, disclose, exploit or allow

access to the Confidential Information belonging to or provided by or on behalf of the other Party without the prior written consent of such other Party.

- 17.2 Each Party may use the Confidential Information of the other Party, and may disclose it to their employees, professional advisers and permitted subcontractors who require it, for the purpose of performing their duties under the Contract and/or in relation to the Services, subject to:-
- 17.2.1 this being done on a strictly “need to know “basis and only to the extent necessary for such purpose; and
 - 17.2.2 the employees, professional advisers and permitted subcontractors are bound by written duties of confidentiality no less onerous than those contained in the Contract.
- 17.3 The Parties shall protect all Confidential Information and keep it in a safe and secure manner, which manner is no less safe and secure than the manner in which it treats its own confidential and/or proprietary information of a similar nature.
- 17.4 Each Party shall notify the other immediately it becomes aware that any Confidential Information belonging to the other Party has been disclosed to or is in the possession of a person who is not permitted to hold or know it pursuant to the terms of the Contract.
- 17.5 This Condition 17 shall not apply in relation to Confidential Information:-
- 17.5.1 which is in or enters the public domain otherwise than by a breach of any contractual obligation, fiduciary duty or duty of confidentiality;
 - 17.5.2 which is or becomes known to the relevant Party from third parties (who have lawfully acquired it) without breach of any restriction on disclosure;
 - 17.5.3 which was in the possession of the relevant Party, without restriction as to its disclosure, before the relevant Party received it from the other Party;
 - 17.5.4 which is independently developed by the relevant Party without access to the Confidential Information;
 - 17.5.5 which is required to be disclosed by law or a statutory or regulatory body, provided that the Party seeking to disclose the Confidential Information shall notify the other Party of the information to be disclosed (and why) as soon as reasonably practicable after receipt of a request for disclosure and take all reasonable actions to minimise such disclosure; or
 - 17.5.6 in the case of the Company, where the Company is obliged to disclose such Confidential Information by reason of Conditions 17.7, 19 (Freedom of Information and 33 (Transparency)).
- 17.6 Confidential Information shall not be exempted under Condition 17.5 from the confidentiality obligations in this Condition 17 by reason only that:-
- 17.6.1 some or all of its features are or become public knowledge or are in the possession of or become available to the Contractor in the manner stated in Condition 17.5; or
 - 17.6.2 such information could be derived or obtained from information which is or becomes public knowledge or is in the possession of or becomes available to the Contractor as set out in Condition 17.5 if to obtain or derive it would require substantial skill, labour or expense.
- 17.7 The Company shall have the right to disclose the Confidential Information of the Contractor relating to the Contract and/or the Services:-
- 17.7.1 on a confidential basis to any government department or agency for any proper purpose of the Company or of that department or agency;
 - 17.7.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - 17.7.3 to the extent that the Company (acting reasonably) considers that such disclosure is necessary or appropriate in the course or for the purpose of carrying out its public functions and/or to comply with the EMR Rules; and/or

17.7.4 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.

17.8 Subject to the retention of necessary proper professional records, the Contractor shall, as and on written request from the Company, return or destroy all Confidential Information provided to it by or on behalf of the Company.

18. Announcements

18.1 The Contractor shall not publish any information related to the Contract or the Services nor communicate any such information to any representatives of the general or technical press, radio, television or other communications media, in each case unless it obtains the Company's prior written consent.

18.2 Notwithstanding any other provision of the Contract, the Company reserves the general right to disclose information about the Contract and the Services, unless it otherwise agrees in writing.

19. Freedom of Information

19.1 The Contractor acknowledges that the Company is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations SI 2004 No. 3391 ("EIR") and shall assist and cooperate with the Company (at, unless otherwise agreed in writing by the Company, the Contractor's expense), to enable the Company to comply with its Information disclosure obligations.

19.2 In this Condition:-

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

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

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

19.3.1 transfer any Request for Information to the Company as soon as practicable after receipt, and in any event within two (2) Business Days;

19.3.2 provide the Company with a copy of all Information relating to the Services in its possession or power in the form that the Company requires within five (5) Business Days (or such other period as the Company may specify) of the Company requesting that Information; and

19.3.3 provide all necessary assistance as reasonably requested by the Company to enable it to respond to a Request for Information within the time for compliance set out in the FOIA and/or the EIR.

19.4 The Company shall be responsible for determining, at its absolute discretion, whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR and/or is to be disclosed in response to a Request for Information.

19.5 The Contractor shall not and shall ensure that the Contractor's Staff, subcontractors and agents do not respond directly to a Request of Information unless expressly authorised to do so in writing by the Company.

20. Data Protection

20.1 In this Condition references to "personal data", "data subjects" and "data processor" are to be interpreted as defined in the Data Protection Act 1998 (the "DPA").

20.2 The Contractor shall, and shall ensure that the Contractor's Staff and subcontractors:-

20.2.1 comply with the requirements of the DPA in respect of the Services and the Contract; and

20.2.2 do nothing which causes, or may cause, the Company to be in breach of its obligations under the DPA. In particular, to the extent that the Contractor acts as a data processor in respect of any personal data pursuant to the Contract, the Contractor shall only process such personal data as is necessary to enable it to fulfil its obligations under the Contract.

- 20.3 The Contractor shall, if requested by the Company, provide the Company with a report on the technical and organisational measures it has in place to protect the personal data it is processing on the Company's behalf.
- 20.4 The Contractor shall, at the request of the Company, assist the Company to comply with any requests for access to personal data under Section 7 of the DPA and in particular shall respond to any such request promptly so as to enable the Company to comply with its obligations under the DPA.

21. Intellectual Property

Pre-existing IPR

- 21.1 Subject to this Condition 21, neither Party shall acquire any right, title or interest in the other Party's Pre-existing IPR.
- 21.2 The Contractor hereby grants to the Company a non-exclusive, sub-licensable, worldwide, royalty free, perpetual licence to fully use the Contractor's Pre-existing IPR for all purposes whatsoever in connection with each of the Contract and the Services (including in order to exercise its rights and take the benefit of the Contract and the Services).
- 21.3 The Company hereby grants to the Contractor a non-exclusive, non-assignable licence to use the Company's Pre-Existing IPR for the sole purpose of and to the extent necessary to enable the Contractor to provide the Services in accordance with the Contract.

Intellectual Property Rights in the Services and Deliverables

- 21.4 Subject to the Contractor's Pre-existing IPRs and to the rights of third parties (other than the Contractor's subcontractors), all present and future Intellectual Property Rights relating to or resulting from the Services (including in all reports, documents, deliverables and other materials which are generated or acquired by the Contractor and its subcontractors and agents) (the "**Contractor Materials**") in the performance of the Services shall vest automatically in and be the absolute property of the Company.
- 21.5 The Contractor hereby assigns to the Company with full title guarantee all the present and future Intellectual Property Rights in the Contractor Materials for the full period of such Intellectual Property Rights, including any extensions, renewals, the right to apply for registration thereof and the right to sue for past infringement and retain damages obtained as a result of such action. Without limitation, the Contractor waives all moral rights relating to the Contractor Materials and all other copyright works assigned to the Company under the Contract.
- 21.6 The Contractor shall ensure that the Contractor's Staff and subcontractors are engaged in relation to the Services on terms which do not entitle them to any Intellectual Property Rights in the Contractor Materials, and which require them to waive all moral rights.
- 21.7 The assignment under Condition 21.5 shall take effect on the Commencement Date or (as appropriate) as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights.
- 21.8 The Contractor shall not incorporate any third party intellectual property into the Services (including any deliverable forming part of the Services) without the Company's prior written consent. Without limiting the foregoing, the Contractor shall ensure that each third party owner of Intellectual Property Rights that are used to provide the Services (and/or which are comprised in the Services or deliverables relating to the Services) grants to the Company a non-exclusive licence to use, reproduce, modify, develop, adapt, enhance and maintain such Intellectual Property Rights as the Company sees fit. If the Contractor is itself a licensee of those rights, the Contractor hereby grants to the Company an authorised sub-licence comprising the same rights. All such licences and sub-licences shall be non-exclusive, worldwide, perpetual, royalty free and irrevocable.

Company's Use of Intellectual Property etc

- 21.9 The Contractor warrants that the Company's use or possession of the Services (including any deliverables relating to the Services) do not and shall not infringe any existing copyright or other third party Intellectual Property Rights, proprietary rights or other right.
- 21.10 If a claim is made, or the Contractor becomes aware that a claim is likely to be made, that the provision of the Services and/or the possession or use by the Company of the Services infringes a third party's Intellectual Property

Rights, the Contractor shall immediately notify the Company of this and, subject to the consent of the Company (not to be unreasonably withheld or delayed), use its best endeavours to:-

21.10.1 modify the relevant part of the Services (or, as applicable, the relevant deliverables) without reducing the performance or functionality of the same, or substitute alternative services (or deliverables) of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions of the Contract shall apply with any necessary changes to such modified or substitute services or deliverables; or

21.10.2 procure a licence to use and supply the Services which are the subject of the alleged infringement on terms which are acceptable to the Company,

and in the event that the Contractor is unable to do so within 20 days of the Company so notifying, the Company may terminate the Contract with immediate effect by notice in writing and the Contractor shall, upon demand, refund the Company all monies paid in respect of the Services that are the subject of the claim.

21.11 The Contractor's compliance with Condition 21.10 shall be at its own expense and the Contractor shall be liable for all costs and expenses that the Company may incur as a result of or in connection with the matters referred to in Condition 21.10.

21.12 The Contractor agrees to execute such further documents and do such acts as may reasonably be necessary or desirable to give full effect to this Condition 21.

22. Environmental Requirements

22.1 The Contractor shall, so far as reasonably practicable, provide the Services in accordance with the Company's environmental policy, which is to conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment. The Contractor shall provide such information as is reasonably requested by the Company to evidence the Contractor's compliance with this Condition.

22.2 So far as reasonably practicable, all written work, including reports, 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.

23. Health & Safety

23.1 The Contractor shall and shall ensure that the Contractor's Staff and subcontractors comply with the requirements of the Health and Safety at Work etc., Act 1974 and all other acts, orders, regulations and codes of practice relating to health and safety which may apply to the Contractor's performance of the Contract.

23.2 The Contractor shall, if requested by the Company, provide the Company with a copy of the Contractor's health and safety policy and a health and safety update or report (in the form requested) in relation to the Services and/or the Contractor's Staff and subcontractors involved in the provision of the Services.

23.3 The Contractor shall promptly report to the Company all health and safety incidents which occur in relation to the Services and/or the Contractor's Staff and subcontractors engaged in the provision of the Services. Without limiting the generality of the foregoing, the Contractor shall notify the Company immediately of any such incident that causes personal injury or damage to property which could give rise to personal injury.

24. Conflicts of Interest

24.1 The Contractor shall ensure that no conflict or potential conflict of interest arises in relation to its or its subcontractors provision of the Services such as to be likely to prejudice its or their independence and objectivity in performing the Contract or the Services. The Contractor shall consult with the Company if there is any uncertainty about whether any conflict or potential conflict of interest may exist or arise.

24.2 Without prejudice to Condition 24.1, if the Contractor becomes aware of any such conflict or potential 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 give the Company written notice of the matter. The notice shall contain details of the matter and the circumstances in which it arose. The Contractor shall provide any further information in relation to the matter reasonably requested by the Company.

25. Termination of Contract

- 25.1 The Company shall be entitled to at any time terminate the Contract or any of the Services by notice in writing to the Contractor, the period of such notice being not less than the period stated in the Agreement as being applicable to this Condition 25.1. The Contract shall terminate upon the date set out in the notice.
- 25.2 The Company may terminate the Contract with immediate effect by giving written notice to the Contractor in the event that:-
- 25.2.1 the Contractor is in breach of any of Conditions 14 (Bribery Act and Fraud), 17 (Confidentiality), 21 (Intellectual Property) or 24 (Conflicts of Interest), Condition 32.2) or is in any other material breach of the Contract;
 - 25.2.2 there is a change of control of the Contractor within the meaning of section 416 of the Income and Corporations Taxes Act 1988; or
 - 25.2.3 the Contractor fails to comply with the Contract prevents the Company from discharging a statutory or legislative duty.
- 25.3 Without limiting any other provision in the Contract, the Contract may be terminated:-
- 25.3.1 by the non-defaulting Party, upon 15 Business Days' notice in the event of a breach of the Contract by the breaching Party which breach is incapable of remedy;
 - 25.3.2 by the non-defaulting Party, with immediate effect in the event of a breach of the Contract which is capable of remedy but which has not been remedied by the breaching Party within 20 Business Days of receipt of written notice from the non-defaulting Party requiring that such breach be remedied;
 - 25.3.3 by the non-defaulting Party, on 20 Business Days' notice in the event of a breach or breaches of the Contract are repeated or persistent.
 - 25.3.4 by either Party with immediate effect in the event that the other Party:-
 - (a) ceases or proposes to cease trading;
 - (b) is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (c) passes a resolution for winding-up, or is the subject of any application, petition or order for administration, winding up, dissolution or bankruptcy, or enters into any composition or voluntary arrangement with its creditors;
 - (d) has any distress, execution, sequestration or other process levied or enforced or issued upon or against the whole or any material part of its assets;
 - (e) is subject to any encumbrancer taking possession or an administrative or other receiver or manager being appointed over the whole or any material part of its assets and such person is not removed or discharged within 10 days; or
 - (f) is subject to any analogous event to those described in this Condition 25.3.4 in any other jurisdiction in the world.
- 25.4 The Contractor shall as soon as possible inform the Company in writing if the Contractor is the subject (or likely to be the subject) of any of the events described in Condition 25.3.4.

26. Consequences of Termination

- 26.1 Where the Contract is terminated by the Company under Condition 5 (Termination of Contract) the Company may during any notice period relating to such termination, give the Contractor notice in writing requiring it:-
- 26.1.1 where the Services (or relevant part) have not commenced, to refrain from commencing such Services (or part) or where the Services (or relevant part) have commenced, to cease work immediately; and/or
 - 26.1.2 to complete in accordance with the Contract such Services (or relevant part) which can be completed within

the notice period.

26.2 Where the Company terminates the Contract by reason of the Contractor's default or failure:-

26.2.1 any sum due or accruing from the Company to the Contractor may be withheld or reduced by such proportionate amount as the Company considers reasonable in the circumstances; and/or

26.2.2 the Company may make all arrangements necessary or appropriate to undertake or procure the orderly completion of the Services and recover any sums reasonably incurred in excess of the Charges that would have been payable to the Contractor had the Contractor completed such Services in accordance with the Contract.

26.3 Upon the termination (for whatsoever reason) of the Contract, the Contractor shall:-

26.3.1 (insofar as is practicable in the case of electronic information) immediately return to the Company all the Company Property in the possession or under the control of the Contractor and/or the Contractor's subcontractors, including all Confidential Information and intellectual property (and in each case, copies thereof), and shall certify that it has done so. The Contractor may retain information required for proper professional records insofar as required for audit and insurance purposes;

26.3.2 assist and co-operate with the Company to ensure the orderly termination of the Services and (if required by the Company) the orderly transition of responsibility for the provision of the Services to the Company and/or a Replacement Contractor; and

26.3.3 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Company for the purposes of (i) adequately understanding the manner in which the Services have been provided and (ii) allowing the Company to conduct a re-procurement of the Services.

26.4 If the Contractor fails to comply with Condition 26.3.1, the Company may recover possession of the Company Property and the Contractor hereby grants a licence to the Company and to its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or the Contractor's agents or subcontractors where any such Company Property may be held.

26.5 The termination (for whatsoever reason) of the Contract shall be without prejudice to the rights and remedies of either Party which may have accrued up to the date of such termination or which may accrue thereafter.

27. Force Majeure

27.1 Neither Party shall be liable to the other Party for any failure or delay in performing its obligations under the Contract to the extent that such Party is prevented from performing such obligations and/or such delay or failure is directly caused by and the result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. If such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of three (3) months, either Party may terminate the Contract with immediate effect by notice in writing.

27.2 If either Party becomes aware that it is or is likely to be subject to Force Majeure, it shall immediately notify in writing the other Party of this. Such notice shall include an estimation of the period for which it is likely that the Force Majeure shall continue.

28. Insurance

28.1 The Contractor shall, and shall ensure that each of its subcontractors and agents, maintain with reputable insurers a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in relation to the performance of its obligations under the Contract. Such policies shall as a minimum to be consistent with Good Industry Practice and, without limiting the generality of the foregoing, include all insurances (including employer's liability insurance) required by law.

28.2 Without limiting Condition 28.1, the Contractor shall, and shall ensure that its subcontractors and agents, maintain public liability insurance and professional indemnity insurance for such amounts as are set out in the Agreement (and, if no such amounts are set out, for respectively not less than £5m and £10m per claim). The Contractor shall maintain the professional indemnity insurance for a minimum of six (6) years following the expiration or earlier termination of the Contract.

- 28.3 The Contractor shall supply the Company promptly upon request with details of its insurance policies, including evidence that the required insurances are being maintained, all premiums have been paid and the insurance cover does not contain any unreasonable excess or inappropriate exclusions.
- 28.4 If the Contractor fails to maintain the insurance required by this Condition 28, the Company may obtain such insurance and recover the cost of so doing from the Contractor.
- 28.5 The obtaining and/or maintaining by the Contractor of any insurance shall not relieve the Contractor of any liabilities under the Contract.

29. Warranties and Representations

- 29.1 The Contractor warrants, represents and undertakes to the Company that:-
- 29.1.1 it has full capacity and authority and all necessary consents to enter into and perform its obligations under the Contract;
- 29.1.2 the Contract is executed by a duly authorised representative of the Contractor; and
- 29.1.3 as at the Commencement Date, all information, statements and representations contained in the Tender Documents provided by the Contractor are true, accurate and not misleading, and that it will advise the Company of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading, and all warranties and representations contained in such Tender Documents shall be deemed repeated in the Contract.

30. Loss or Damage

- 30.1 Subject to Conditions 30.2, 30.3 and 30.4, the Contractor shall indemnify the Company and keep it fully indemnified and held harmless from and against each and all claims, actions, proceedings, notices, demands, investigations, costs (including legal costs), damages, liabilities, losses and expenses (in each case, whatsoever and howsoever arising) brought against, suffered or incurred by the Company in relation to:
- 30.1.1 each of the acts, omissions, defaults, breaches of contract and/or duty (whether in negligence, tort, statute or otherwise) of or by the Contractor and/or the Contractor's Staff and/or subcontractors in relation to the Contract and/or the Services, except insofar as directly attributable to any negligent act or omission of the Company;
- 30.1.2 any defect in the Services and/or in the quality, workmanship, materials or design of any Services, except insofar as directly attributable to any negligent act or omission of the Company;
- 30.1.3 any infringement or alleged infringement of any third party's Intellectual Property Rights in respect of to the provision of the Services by or on behalf of the Contractor and/or the possession or use of the Services by the Company providing, and to the extent that, any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of the Company; and
- 30.1.4 any circumstances whereby the Company is alleged or determined to have assumed or been imposed with the liability or responsibility for the Contractor's Staff (or any of them) as an employer and/or any liability or responsibility to HM Revenue or Customs as an employer of the Contractor's Staff whether during the term of the Contract or arising from termination or expiry of the Contract.
- 30.2 Nothing in the Contract shall be construed to limit or exclude either Party's liability for death, personal injury, fraud, fraudulent misrepresentation or any other matter that may not by UK law be excluded or limited.
- 30.3 Neither Party shall have any liability to the other in respect of any indirect, economic, special or consequential loss or damage, including loss of profits, loss of business, loss of revenue, loss of or damage to goodwill and loss of savings (whether anticipated or otherwise).
- 30.4 Subject to Condition 30.2, each Party's liability to the other in relation to the Contract and the Services shall be limited in aggregate to the sum of £5m (five million pounds), or to such other sum as is set out in the Agreement.
- 30.5 Nothing in these Conditions nor in any part of the Contract shall impose any liability on any member of the staff of

the Company or its representatives in their personal capacity.

31. Contractor's Obligations - TUPE

- 31.1 The Contractor shall provide such information in connection with The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") as the Company may require. This information shall be provided to the Company and/or (at the Company's request) to any person invited by the Company to submit a tender for the provision of services similar to the Services. This information shall be provided within ten days of request.
- 31.2 During the six month period preceding the expiry of the Contract, and within any period of notice of termination, the Contractor shall not without the prior written agreement of the Company (which shall not be unreasonably withheld or delayed):-
- 31.2.1 materially amend the terms and conditions of employment of any employee whose work, wholly or mainly, falls within the scope of the Contract; or
- 31.2.2 materially increase the number of the Contractor's Staff whose work (or any part of it) is work undertaken for the purposes of the Contract.
- 31.3 For the avoidance of doubt, it is agreed that the Contractor shall have and assume full responsibility for all redundancy costs and related notice and TUPE liabilities for all the Contractor's Staff and its subcontractor's staff upon the expiration or termination of the Contract.
- 31.4 The Contractor agrees to indemnify the Company, for itself and any Replacement Contractor, and keep them indemnified and held harmless at all times from and against all actions, proceedings, claims, demands, expenses, awards, losses, damages, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the application or alleged application of TUPE in respect of the Contractor's Staff and the staff of any of its subcontractors.

32. Contractor Status, Tax and National Insurance

- 32.1 The Contractor is an independent contractor and nothing in the Contract shall be construed as creating a partnership, joint venture, contract of employment or relationship of principal and agent between the Parties. Neither Party shall be authorised to act in the name or on behalf of or otherwise bind the other Party save as expressly permitted by the terms of the Contract.
- 32.2 Where the Contractor is liable to be taxed in the UK or make National Insurance Contributions (NICs) in respect of consideration received under the Contract, the Contractor shall at all times comply (as applicable) with the Income Tax (Earnings and Pensions) Act 2003 and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to tax and NICs in respect of that consideration. The Contractor shall provide the Company with such information as is requested by the Company (acting reasonably) for the purpose of the Company obtaining assurance that the Contractor is compliant with its tax and NICs obligations.

33. Transparency

- 33.1 The Contractor acknowledges and agrees that in order to comply with the Government's policy on transparency in the areas of procurement and contracts, the Company shall publish the Contract and the Tender Documents on a designated website.
- 33.2 Where the Company in its absolute discretion considers that the documents referred to in Condition 33.1 or their contents would be exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000 and Environmental Information Regulations 2004, the Company may redact the relevant documents to the extent that the Company considers necessary. The documents will then be published on the designated website subject to those redactions.
- 33.3 Where the Parties later agree changes to the Contract, the Company will publish those changes, and will consider any redaction, on the same basis as provided in Condition 33.2.

34. Assignment and Subcontracting

- 34.1 The Company may at any time assign, novate or otherwise transfer the benefit and/or burden of the Contract to any other person. The Contractor shall not subcontract or transfer, assign, novate, charge or otherwise dispose of the

Contract or any part of it (or of the Services) without the prior written consent of the Company.

- 34.2 The Contractor shall be wholly responsible for the act, omissions and/or defaults of the Contractor's Staff and subcontractors as though they are its own. The subcontracting of any part of the Contract or the Services shall not relieve the Contractor of any obligation or duty owed by the Contractor under the Contract.
- 34.3 If the Contractor uses a subcontractor for the purpose of performing the Services or any part of them, the Contractor shall include in the relevant subcontract (i) a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a valid and correct invoice from the subcontractor and (ii) a right for the Contractor to terminate the subcontract if the subcontractor fails to comply in the performance of its subcontract with its legal obligations in the fields of environmental, social or labour law.
- 34.4 Where the Company has consented to the placing of subcontracts, copies of each subcontract shall, at the request of the Company, be provided by the Contractor to the Company as soon as reasonably practicable.

35. Notices

- 35.1 All notices and other communications given by a Party shall be in writing and shall be deemed to be duly given:-
- 35.1.1 at the time of delivery, if delivered by hand to the other Party's address;
- 35.1.2 two Business Days after posting, if sent by first-class pre-paid post to the other Party's address; and
- 35.1.3 four (4) hours after sending (or earlier if such email is acknowledged earlier than such time), if sent by email PROVIDED in each case that the other Party acknowledges receipt of such email and PROVIDED FURTHER that (i) if the email is sent before 9 am on a Business Day, it shall be deemed to be received at 1 p.m. on that same Business Day, and (ii) if sent after 5 pm on a Business Day, it shall be deemed to be received at 1 p.m. on the next Business Day, and (iii) if sent on a non-Business Day, it shall be deemed to have been received at 1 pm on the next Business Day.
- 35.2 For the purposes of Condition 35.1, the address and email address of each Party shall be the address set out in the Agreement or such other address or email address as relevant Party notifies to the other Party in writing from time to time.

36. Escalation

- 36.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute, disagreement or difference ("dispute") between them arising out of or in connection with the Contract within twenty (20) Business Days of either Party notifying the other in writing of the dispute. Such attempts shall include the escalation of the dispute to their respective Chief Executives (or other such persons of equivalent status as the Parties may respectively designate by notice to each other).

37. Variations

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

38. Severability

- 38.1 If any provision of the Contract not being of a fundamental nature is held to be invalid, unlawful or unenforceable for any reason by any court or tribunal of competent jurisdiction in any proceedings relating to the Contract, such provision shall be severed and the remaining provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, unlawful or unenforceable provision eliminated. If the relevant provision is fundamental to the Contract (such as to prevent the accomplishment of the purpose of the Contract), the Parties shall immediately commence negotiations in good faith to remedy the invalidity or other issue with the provision.

39. Waiver

- 39.1 The failure or delay by either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy. No waiver of a right or remedy shall be effective unless it is communicated to the other Party in writing and no waiver on any particular occasion shall operate as a future or continuing waiver of any right or remedy or

constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

40. Cumulative Remedies

40.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

41. Further Assurances

41.1 Each Party undertakes at the request of the other, and (except as otherwise provided in the Contract), at the cost of the requesting Party, to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

42. Rights of Third Parties

42.1 Nothing in the Contract confers or purports to confer on any third party any right to enforce any term of the Contract, and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply. This provision shall not apply where the third party is (as applicable and assuming that such entity is not the Company) Electricity Settlements Company Limited and Low Carbon Contracts Company Limited.

43. Survivorship

43.1 The provisions of Conditions 1, 3.7, 3.10, 6.2, 7.3.3, 7.4, 8.1, 9.1, 10, 11, 12, 13, 14.3, 15, 17-20 (inclusive), 21 (other than 21.3), 26, 28 - 30 (inclusive), 31.1, 31.3, 31.4 and 32 - 47 (inclusive) and any provision which expressly or by implication is intended to come into or remain in force on or after the termination of the Contract shall survive termination and continue in full force and effect.

44. Entire Agreement

44.1 The Contract constitutes the entire agreement and understanding between the Parties with respect to its subject matter. All prior agreements, conditions, warranties, representations, statements, negotiations, understandings and undertakings (whether express or implied, statutory or otherwise, and whether written or oral) are superseded by the Contract (other than fraudulent misrepresentation on which a Party can be shown to have relied).

44.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.

45. Due Diligence

45.1 The Contractor acknowledges that it has (i) made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Company prior to the Commencement Date, (ii) received sufficient information required by it in order to determine whether it is able to provide the Services in accordance with the terms of the Contract, (iii) raised all relevant clarification questions with the Company before the Commencement Date, and (iv) entered into the Contract in reliance on its own due diligence alone.

46. Counterparts

46.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

47. Jurisdiction

47.1 The Contract shall be governed by and interpreted in accordance with English law. The Parties submit to the exclusive jurisdiction of the Courts of England in respect of any dispute arising in connection with the Contract.