

Committee on Climate Change
Standard Terms and Conditions of Contract for Services

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1. DEFINITIONS & INTERPRETATION

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

"**Auditor**" means the National Audit Office or an auditor appointed by the Authority as the context requires;

"**Authority**" means the Committee on Climate Change constituted by the CCA 2008;

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

"**Background Intellectual Property**" means any Intellectual Property Rights owned by, licensed to or otherwise controlled by a party prior to the Effective Date, or created or acquired after the Effective Date independently of the Services and which is relevant to the Services.

"**CCA 2008**" means the Climate Change Act 2008;

"**Contractor Personnel**" means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor engaged in the performance of its obligations under this Contract, pursuant to clause 4;

"**Confidential Information**" shall mean any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Parties, including Personal Data, Intellectual Property Rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this agreement and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;

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

"**Contract Letter**" means a letter from the Authority to the Contractor setting out or attaching the Specification for the Services to be provided by the Contractor pursuant to these Conditions;

"**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 clause 4;

"**Contract Year**" the 12-month period starting on the Effective Date and each anniversary of that date;

"**Controller**" shall have the same meaning as given in Data Protection Legislation;

"**Charges**" means the price agreed in GBP sterling by the Authority in respect of the Services;

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 and regulations made thereunder, and the Privacy and Electronic Communications Regulations 2003 as amended;

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

"Data Subject" shall have the same meaning as given in Data Protection Legislation;

"Effective Date" means the date the Contract comes into force as stated by the Authority in the Contract Letter or other communication confirming the award of the Contract to the Contractor;

"EIRs" means the Environmental Information Regulations 2004 (SI 2004/3391), together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

"FOIA" the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"Foreground Intellectual Property" means any Intellectual Property Rights created or arising directly pursuant to the performance of the Services;

"GHG emissions" means emissions of the greenhouse gases listed at Annex A of the 1998 Kyoto Protocol to the United Nations Framework Convention on Climate Change, as may be amended from time to time including carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), nitrogen trifluoride (NF₃), hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride (SF₆), each expressed as a total in units of carbon dioxide equivalent;

"Government" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

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

"Information" has the meaning given under section 84 of the FOIA;

"Intellectual Property Rights" means any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and Intellectual Property

shall refer to such materials;

“**Party**” means a party to the Contract;

“**Personal Data**” shall have the same meaning as given in Data Protection Legislation;

“**Premises**” the location where the Services are to be supplied;

“**Processor**” shall have the same meaning as given in Data Protection Legislation;

“**Prohibited Act**” the following constitute Prohibited Acts:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
- (ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;

(c) committing any offence:

- (i) under the Bribery Act 2010;
- (ii) under legislation creating offences concerning fraudulent acts;
- (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Authority; or

(d) defrauding, attempting to defraud or conspiring to defraud the Authority;

“**Prohibited Plastic Items**” means the single-use plastic items listed in the Specification.

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

“**Quality Assurance Standards**” means the quality standards published by the Authority on its web site or provided with the Specification or Contract Letter;

“**Request for Information**” shall have the meaning set out in the FOIA or the EIRs as relevant (where the meaning set out for the term "request" shall apply);

“**Services**” means the services and deliverables to be supplied under the Contract as described in the Specification;

“**Specification**” means the specification for the Services (as amended by agreement between the Parties from time to time) and which is issued by the Authority to the Contractor and provided either under a Contract Letter or as part of an invitation to tender;

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

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

- (2) The interpretation and construction of the Contract shall 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) the headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (c) reference to any clause or sub-clause without further designation shall be construed as a reference to the clause or sub-clause of these Conditions so numbered;
- (d) references to "person", where the context allows, includes a natural person, corporation or unincorporated body (whether or not having separate legal personality);
- (e) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (f) words importing the masculine include the feminine and the neuter; and
- (g) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".

2. ACTS BY THE AUTHORITY

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

3. SERVICE OF NOTICE & COMMUNICATIONS

Any notice or other communication that either party gives under the Contract shall be made in writing and given either by hand, first class recorded postal delivery or facsimile transmission. Notice given by hand shall be effective immediately, notice given by recorded postal delivery shall be effective two working days after the date of posting, notice given by facsimile transmission shall be effective the working day after receipt by the notifying party of a transmission slip showing that the transmission has succeeded.

4. ASSIGNMENT & SUB-CONTRACTING

- (1) The Contractor shall not give, bargain, sell, assign, sub-contract or otherwise dispose of the Contract or any part thereof without the previous agreement in writing of the Authority.
- (2) The Contractor shall be responsible for the acts and omissions of Contractor Personnel as though they were its own.
- (3) 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 Services Contracts Regulations 2006, provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.

5. ENTIRE AGREEMENT

The Contract constitutes the entire agreement and understanding between the parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Contract.

6. WAIVER

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

- (3) A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

7. SEVERABILITY

- (1) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.
- (2) If any provision or part-provision of the Contract is deemed deleted under clause 7(1) the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

8. CONFIDENTIALITY

- (1) Subject to clause 8(2), the Parties shall keep confidential the Confidential Information of the other Party and all matters relating to this Contract and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- (2) Clause 8(1) shall not apply to any disclosure of information:
 - (a) required by any applicable law;
 - (b) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
 - (c) that is reasonably required by the Authority in pursuance of the requirements of the CCA 2008 or otherwise;
 - (d) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 8(1);
 - (e) by the Authority of any document to which it is a party and which the parties to this Contract have agreed contains no Confidential Information;
 - (f) which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
 - (g) by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
 - (h) by the Authority relating to the Contract and in respect of which the Contractor has given its prior written consent to disclosure.
- (3) On or before the termination or expiry of the Contract, the Contractor shall ensure that all documents and computer records in its possession, custody or control which contain Confidential Information are delivered up to the Authority or securely destroyed.
- (4) 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.
- (5) Except with the prior consent in writing of the Authority, the Contractor shall not make use of the Contract or any Confidential Information otherwise than for the purposes of carrying out the Services.

9. FREEDOM OF INFORMATION

- (1) The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Contractor shall:
 - (a) 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 EIRs;
- (b) transfer to the Authority all Requests for Information relating to the Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- (2) The Contractor acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Contractor. The Authority shall take reasonable steps to notify the Contractor of a Request for Information (in accordance with the section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Authority shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

10. AMENDMENTS & VARIATIONS

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

11. INVOICES & PAYMENTS

- (1) The Contractor shall submit invoices at times or intervals agreed by the Authority in the Contract. The Contractor shall ensure that any invoice it submits sets out the Authority's Purchase Order, the Charges and, where not all of the Services have been completed, the relevant part of the Charges with an appropriate breakdown, 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.
- (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 clauses 11(1) and 14. The Authority shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
- (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 clause 10.
- (4) The Authority may withhold or reduce payment in respect of any element of the Services that the Contractor has failed to provide, without prejudice to any other rights or remedies of the Authority.
- (5) 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).

12. RECORDS AND AUDIT ACCESS

- (1) The Contractor shall keep and maintain until six years after the termination or expiry of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Authority and the amounts paid by the Authority.
- (2) The Contractor shall on request afford the Authority, the Authority's representatives and/or the Auditor such access to such records and accounts as may be required by the Authority from time to time.
- (3) The Contractor shall provide such records and accounts during the Contract and for a period of six years after the termination or expiry of the Contract to the Authority and the Auditor.
- (4) The Authority 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, except insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Authority.
- (5) Subject to the Authority's rights of confidentiality, the Contractor shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
 - (a) all information requested by the Authority within the scope of the audit;
 - (b) reasonable access to sites controlled by the Contractor and to equipment used in the provision of the Services; and
 - (c) access to Contractor Personnel.

13. RECOVERY OF SUMS DUE

- (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 Authority.
- (2) Any over-payment by the Authority to the Contractor whether in respect of the Charges or Value Added Tax shall be a sum of money recoverable from the Contractor pursuant to clause 13(1) above or otherwise.

14. VALUE ADDED TAX

- (1) Where Value Added Tax forms part of the Charges and is properly chargeable by the Contractor, the Contractor will provide a valid VAT invoice to the Authority.
- (2) The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority relating to the amount of Value Added Tax chargeable on the Services.

15. PROVISION OF SERVICES

- (1) The Contractor shall provide the Services in accordance with the Specification. The Authority reserves the right to refuse outputs that do not meet the Specification and

- requirements of the Contract.
- (2) If the Authority informs the Contractor that the Authority considers any part of the Services to be inadequate or in any way differing from the Contract, and this is other than as a result of default or negligence on the part of the Authority, the Contractor shall at its own expense re-schedule and perform the work correctly within such reasonable time as maybe specified by the Authority. If the Contractor is unable to do so after using good faith efforts, the Contractor must reimburse the Authority all Charges paid for such Services and any other Services that cannot be fully used by the Authority as a consequence of that failure.
 - (3) If the performance of the Contract by the Contractor is delayed by reason of any act or default on the part of the Authority or by industrial dispute (other than by an industrial dispute occurring within the Contractor's or its sub-contractor's organisation) or any other cause which the Contractor could not have prevented then the Contractor shall be allowed a reasonable extension of time for completion. For the purposes of this clause, the Contractor shall be deemed to have been able to prevent causes of delay that are within the reasonable control of the Contractor and Contractor Personnel.
 - (4) Subject clause 15(3), the Contractor shall meet all performance dates or other time schedule for delivery of Services stated in the Specification or Contract Letter. If no time for performance is specified, the Services shall be provided within a reasonable period as agreed with the Authority.
 - (5) The Contractor warrants that:
 - (a) it shall provide the Services with all due skill and care, in accordance with the Specification, Quality Assurance Standards, good industry practice and legal requirements; and
 - (b) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract.

16. PROGRESS REPORT

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

17. CONTRACTOR PERSONNEL

- (1) The Authority reserves the right to refuse to admit to the Authority's Premises any Contractor Personnel whose admission would be undesirable in the opinion of the Authority.
- (2) If and when requested by the Authority, the Contractor shall provide a list of the names and addresses of all persons who may at any time require admission in connection with the performance of the Services to the Authority's Premises, specifying the role in which each such person is concerned with the Contractor and giving such other particulars as the Authority may require.
- (3) If and when requested by the Authority, the Contractor shall procure from each person identified by the request, a signed statement that he understands that the Official Secrets Acts 1911 to 1989 applies to him both during the carrying out and after expiry or termination of the Contract and that he will comply with the provisions of those Acts insofar as they apply to the work being performed under the Contract.
- (4) If, and when, requested by the Authority, the Contractor agrees that it will submit Contractor Personnel to the Authority's security vetting procedure. The Contractor further agrees that any individual who refuses to submit to such vetting procedure or does not

attain the clearance it affords will not carry out any work on the Contract which the Authority certifies as suitable only for people who have passed its security vetting procedure.

- (5) If after allowing a reasonable period of time the Contractor fails to comply with clause 17(2), 17(3) or 17(4) 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.

18. LIABILITY & INSURANCE

- (1) The Contractor shall be liable to the Authority for any claims made by the Authority's staff or agents, or by third parties, in respect of any death or personal injury, or loss or destruction of or damage to property, or any other loss, destruction or damage, including but not limited to financial losses which are caused by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Contractor and Contractor Personnel.
- (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 or Government Property) arising from the Contractor's breach of contract or duty (whether arising in negligence, tort, statute or otherwise).
- (3) The Contractor shall effect with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all insurable risks which may be incurred by the Contractor in respect of the Contract, which in any event shall not be less than £500,000.00 (five hundred thousand pounds) and shall at the request of the Authority produce the relevant policy or policies together with receipt or evidence of payment of the latest premium due there under.
- (4) Nothing in the Contract shall be construed to limit or exclude liability for:
- death or personal injury caused by negligence;
 - fraud or fraudulent misrepresentation; and
 - the Contractor's indemnity in clauses 27(9), 30(5)(i) and 31(2).
- (5) Subject to clause 18(4), in no event shall either Party be liable to the other for any:
- loss of profits;
 - loss of business;
 - loss of revenue;
 - loss of or damage to goodwill;
 - loss of savings (whether anticipated or otherwise); or
 - any indirect or consequential loss or damage.
- (6) Subject to clauses 18(4) and 18(5), the total amount of liability owed by a Party to the other under the Contract shall be limited to a sum of £250,000.00 or twice the total value of the Charges payable under the Contract during the Contract Year in which the liability arises, whichever is the greater, or such other sum as may be agreed in writing between the Authority and the Contractor.
- (7) Where the Services comprise the provision of research with recommendations and conclusions drawn from such research, then provided that the Quality Assurance Standards are reasonably met, the Parties acknowledge that:
- the Contractor's warranty in clause 15(5)(a) will not apply to any deficiencies in the

- Services due to incorrect, incomplete or inaccurate data provided by the Authority or the Authority's third party advisors or by deficiencies in publicly available information; and
- (b) the Contractor makes no representation or warranty regarding the accuracy or completeness of any documentation or model stated to be in draft form which is delivered to the Authority for comment prior to its finalisation.

19 TERMINATION FOR INSOLVENCY OR CHANGE OF CONTROL

- (1) The Contractor shall notify the Authority in writing immediately upon the occurrence of any of the following events:
- (a) where the Contractor is an individual, if a petition is presented for his bankruptcy, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or
- (b) where the Contractor is not an individual but is a firm or a number of persons acting together, if any event in clause 19(1)(a) or (c) occurs in respect of any partner in the firm or any of those persons, or if a petition is presented for the Contractor to be wound up as an unregistered company; or
- (c) where the Contractor is a company or limited liability partnership, if the company or limited liability partnership enters administration or passes a resolution to wind up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, liquidator or manager is appointed, or possession is taken of any of its property under the terms of a floating charge; or
- (d) 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 19(1) above or upon discovery by the Authority of the occurrence of any of the events described in that paragraph, 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 clause 19(1)(d) will exist until the end of a period of six months starting from receipt of the notice provided by the Contractor pursuant to clause 19(1), or such other period as is agreed by the Parties.

20. TERMINATION FOR BREACH OF CONTRACT

If either Party commits a material breach of the Contract which is either not capable of remedy, or, if it is capable of remedy, there is failure to remedy such breach within 14 days of being notified by the other Party in writing to do so, that other party shall be entitled to terminate the Contract with immediate effect by notice in writing to the Party that committed the material breach and without prejudice to any other rights or remedies of either Party in respect of the breach concerned or any other breach of the Contract.

21. CANCELLATION

The Authority shall be entitled to terminate the Contract, or to terminate the provision of any part of the Services, by giving to the Contractor not less than 28 days' notice in writing to that effect. Once it has given such notice, 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.

22. DISPUTE RESOLUTION

- (1) If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure set out in this clause:
 - (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, a representative of the Authority and of the Contractor shall attempt in good faith to resolve the Dispute;
 - (b) if those representatives of the Authority and of the Contractor are for any reason unable to resolve the Dispute within 15 days of service of the Dispute Notice, the Dispute shall be referred to the Chief Operating Officer of the Authority and the managing director (or person with equivalent standing) of the Contractor who shall attempt in good faith to resolve it; and
 - (c) if the Chief Operating Officer of the Authority and managing director of the Contractor are for any reason unable to resolve the Dispute within 15 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure.
- (2) The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the dispute.

23. BRIBERY & CORRUPTION

- (1) The Contractor:
 - (a) shall not, and shall procure that the Contractor Personnel shall not, in connection with the Contract commit a Prohibited Act; and
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Contract.
- (2) The Contractor shall, if requested, provide the Authority with any reasonable assistance, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
- (3) The Contractor shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Contractor Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- (4) If any breach of clause 23 is suspected or known, the Contractor must notify the Authority immediately.
- (5) If the Contractor notifies the Authority that it suspects or knows that there may be a breach of clause 23, the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents.
- (6) The Authority may terminate this Contract by written notice with immediate effect if the Contractor or Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 23. In determining whether to exercise the right of termination under this clause 23(6), the Authority shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, sub-contractor or supplier not acting independently of the Contractor. The

expression "not acting independently of" (when used in relation to the Contractor or a sub-contractor) means and shall be construed as acting:

- (a) with the authority or with the actual knowledge of any one or more of the directors of the Contractor or the sub-contractor (as the case may be); or
 - (b) in circumstances where any one or more of the directors of the Contractor ought reasonably to have had such knowledge.
- (7) Any notice of termination under clause 23(6) must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
 - (c) the date on which the Contract will terminate.
- (8) Any dispute relating to the interpretation of clause 23 shall be determined by the Authority and its decision shall be final and conclusive.
- (9) Any termination under clause 23 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

24. OFFICIAL SECRETS

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

25. SPECIAL PROVISIONS

In the case of any conflict or inconsistency between these Conditions and the Specification, Contract Letter, or any other document forming part of the Contract, these Conditions shall prevail unless otherwise specifically agreed in writing by the Authority.

26. CONFLICTS OF INTEREST

- (1) The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice its independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) it shall immediately notify the Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Authority may reasonably require.
- (2) Where the Authority is of the opinion that the conflict of interest notified to it under clause 26(1) above is capable of being avoided or removed, the Authority may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:
 - a) if the Contractor fails to comply with the Authority's requirements in this respect; or
 - b) if, in the opinion of the Authority, it is not possible to remove the conflict,

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

- (3) Notwithstanding clause 26(2), where the Authority is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been

discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents or Contract Letter 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.

- (4) Upon request the Authority can request that evidence be produced from the Contractor that due diligence has been undertaken when awarding any aspect of work to Contractor Personnel who may be engaged in this contract.

27. INTELLECTUAL PROPERTY RIGHTS & PUBLICATION

- (1) As between the Parties:
- (a) all Background Intellectual Property is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use the Background Intellectual Property has derived), and nothing in this agreement shall operate to transfer any Background Intellectual Property of one party to any other;
 - (b) the Contractor grants to the Authority a royalty-free, worldwide, non-exclusive, perpetual and irrevocable licence to use its Background Intellectual Property to the extent required for the Authority and Government to benefit from the Services and use the Customer Materials and any resulting Foreground Intellectual Property.
 - (c) the Authority grants to the Contractor a royalty-free, non-exclusive, non-transferable, licence to use its Background Intellectual Property to the extent necessary to enable the Contractor and Contractor Personnel to carry out the Services;
 - (d) it is agreed that all Foreground Intellectual Property in all reports, documents and other materials which are generated or acquired by the Contractor or Contractor Personnel ("the Contractor Materials") in the performance of the Services shall belong to and be vested automatically in the Authority.
 - (e) the Contractor will fully and promptly disclose if any Foreground Intellectual Property is developed in providing the Services, and if requested by the Authority, the Contractor will assign with full title guarantee all rights title and interest in it to the Authority or to such third party as the Authority may direct.
- (2) The Contractor waives all moral rights relating to the Foreground Intellectual Property and the Contractor Materials.
- (3) The Contractor warrants to the Authority that all Contractor Personnel are and will be engaged in relation to the Contract on terms which do not entitle any of them to any Intellectual Property Rights in the Contractor Materials and Foreground Intellectual Property and which require them to waive all moral rights.
- (4) If the Contractor or Contractor Personnel wish to use Contractor Materials or Foreground Intellectual Property, the prior written consent of the Authority is required. The Authority will not unreasonably withhold consent for the Contractor or Contractor Personnel to use any Contractor Materials where these materials have already been published by the Authority pursuant to the requirements of the CCA 2008 or the Authority determines that it does not wish to publish them.
- (5) Save as otherwise stated in this clause 27, the Authority shall have the sole right to use any information (whether or not it is Confidential Information) collected or collated pursuant to the Contract (excluding any information which in the opinion of the Authority is confidential to the Contractor or which has been communicated to the Contractor under a condition that it shall be confidential to the Contractor), and all original documents in whatever form which contain that information, including without limitation any computer tape, disk or stick, any voice recording and any special

computer program written to give access to the information, shall on request be deposited with the Authority.

- (6) Nothing in this Contract or done under the Contract shall be taken to diminish any copyright, patent rights or any other Intellectual Property Rights which would, apart from this Contract, vest in the Government or the Authority.
- (7) The Parties agrees that the Contractor and Contractor Personnel are not precluded from using the Contractor's Background Intellectual Property, general knowledge, skills and experience in providing services similar to the Services to any third party.
- (8) The Contractor shall ensure that all royalties licence fees or similar expenses in respect of its Background Intellectual Property and Foreground Intellectual Property are paid by the Contractor and shall not be rechargeable to the Authority unless quantified and agreed to form part of the Charges.
- (9) The Contractor shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services and all use of the Contractor Materials and Foreground Intellectual Property, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.
- (10) Each party shall promptly give notice in writing to the other of any actual, threatened or suspected challenge to the Intellectual Property Rights which form part of the Services or of any inadvertent disclosure or unauthorised use of such Intellectual Property Rights which comes to its knowledge.

28. 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.

29. GOVERNMENT PROPERTY

- (1) All Government Property shall remain the property of the Government 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.
- (2) If the Authority reimburses the Contractor for the cost of any equipment, such equipment shall become the property of the Authority and the Contractor shall on request deliver such equipment to the Authority. The Contractor shall keep a proper inventory of such equipment and shall deliver that inventory to the Authority on request and on completion of the Services.
- (3) All Government Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless it notifies the Authority to the contrary within 14 days or such other time as is specified in the Contract.
- (4) The Contractor undertakes to return any and all Government Property on completion of the Contract or on any earlier request by the Authority.
- (5) 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 Contractor Personnel, whether or not arising from its 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 clause 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 its negligence or default or the neglect or default of Contractor Personnel.

- (6) 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 29(7) below) or as otherwise expressly authorised in writing by the Authority.
- (7) The Contractor shall perform secure backups 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.
- (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 the 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) If, through any default of the Contractor or Contractor Personnel, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data.

30. DATA PROTECTION

- (1) Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 30 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- (2) If the Services require the Contractor to act as a Processor, the parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. Schedule 1 of the Specification sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject.
- (3) If requested, 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) Without prejudice to the generality of clause 30(1), the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this agreement.

- (5) Without prejudice to the generality of clause 30(1), the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Authority (as set out in Schedule 1 of the Specification), unless the Contractor is required by the law of any part of the United Kingdom (Domestic Law) to otherwise process the Personal Data. Where the Contractor is relying on Domestic Law as the basis for processing Personal Data, the Contractor shall promptly notify the Authority of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Contractor from so notifying the Authority;
 - (b) ensure that it has in place appropriate technical and organisational measures, (as defined in the Data Protection Legislation), (which may be reviewed and approved by the Authority), to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
 - (c) not transfer any Personal Data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective 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; and
 - (iv) the Contractor complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
 - (d) notify the Authority immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
 - (e) assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Authority immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results,

- or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Authority on termination or expiry of the Contract unless required by Domestic Law to store the Personal Data;
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 30 and allow for audits by the Authority or its designated auditor and immediately inform the Authority if, in the opinion of the Contractor, an instruction infringes the Data Protection Legislation;
 - (i) indemnify the Authority against any losses, damages, cost or expenses suffered by the Authority arising from or in connection with any breach by the Contractor of its obligations under this clause 30.
- (6) Where the Contractor intends to engage a sub-contractor and intends for that sub-contractor to process any Personal Data relating to this agreement, it shall:
- (a) notify the Authority in writing of the intended processing by the sub-contractor;
 - (b) obtain prior written consent from the Authority to the processing;
 - (c) ensure that any Sub-Contract imposes obligations on the sub-contractor to give effect to the terms set out in this clause 30.
- (7) The provisions of this clause 30 shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

31. TAXATION, NATIONAL INSURANCE & EMPLOYMENT LIABILITY

- (1) The Contractor shall comply with all requirements of law relating to the payment of taxes.
- (2) The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Contractor shall at all times indemnify the Authority and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Authority is alleged or determined to have been assumed or imposed with the liability or responsibility for the Contractor or Contractor Personnel (or any of them) as an employer of the Contractor or Contractor Personnel and/or any liability or responsibility to HM Revenue or Customs as an employer of the Contractor or Contractor Personnel whether during the Contract Period or arising from termination or expiry of the Contract.

32. EQUALITY & NON-DISCRIMINATION

- (1) The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation or otherwise).
- (2) The Contractor shall take all reasonable steps to secure the observance of clause 32(1) by Contractor Personnel and all suppliers employed in the execution of the Contract.
- (3) The Contractor must take all necessary steps, and inform the Authority of the steps taken, to prevent anything that is considered by a court, tribunal or the Equality and Human Rights Commission (or any successor organisation) to be unlawful discrimination in the

execution of the Contract.

33. WELSH LANGUAGE ACT

Where stated in the Specification, the Contractor shall for the term of the Contract comply with the principles of the Government's Welsh Language Scheme.

34. SUSTAINABLE PROCUREMENT

- (1) The Contractor shall ensure that:
 - (a) its operations comply with all applicable environmental Law, including in relation to waste disposal, GHG emissions and the handling of hazardous and toxic materials;
 - (b) the goods it manufactures (including the inputs and components that it incorporates into its goods) comply with environmental Law;
 - (c) it will only use packaging materials that comply with applicable environmental Law.
- (2) The Contractor shall have in place a suitable environmental management system for managing its environmental risks, which as a minimum must:
 - (a) assess the environmental impact of all past, current and future operations;
 - (b) specify steps to continuously improve environmental performance, and reduce pollution, emissions and waste;
 - (c) specify measures to reduce the use of all raw materials, energy and supplies;
 - (d) require Contractor Personnel to be trained in environmental matters.
- (3) The Contractor shall, in performing its obligations under this agreement:
 - (a) comply with any environmental related KPIs in the Specification;
 - (b) not provide to the Authority any goods or deliverables comprising wholly or partly of Prohibited Plastic Items;
 - (c) not use any goods or deliverables which comprise wholly or partly of a Prohibited Plastic Item to provide the Services unless the use is either related to management of the Contractor's general operations, or otherwise agreed in writing with the Authority;
 - (d) minimise the release of GHG emissions, air pollutants and other substances damaging to health and the environment in providing the Services taking into account factors including the locations from which materials are sourced, transport of materials, work-related travel by Contractor Personnel, emissions from Contractor offices and equipment.
- (4) If required by the Specification, at the end of each Contract Year, the Contractor shall complete and submit to the Authority a sustainability report in relation to the Services being provided. The sustainability report shall be in the form specified in the Specification and contain information on:
 - (a) the Contractor's GHG emissions using the most recent government conversion factors for greenhouse gas reporting;
 - (b) the Contractor's water use (in metres cubed);
 - (c) the Contractor's energy consumption relating to assets used at the Premises or other locations;
 - (d) transport use (and resulting GHG emissions) for goods delivered to, or Contractor Personnel travel to, the Premises or other Authority locations;
 - (e) the volume of waste produced at the Premises or other locations that relate to the provision of the Services; and
 - (f) the overall sustainability impact of the Services, including improvements identified by the Contractor, new policies or targets adopted to reduce the environmental

impact of the Contractor's operations and contributions towards any Authority environmental policies or targets.

- (5) The Authority may audit the Contractor's compliance with this clause 35 in accordance with clause 12.

35. OTHER LEGISLATION

The Contractor shall and shall procure that its Contractor Personnel comply with all other applicable law.

36. 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.

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 use all reasonable endeavours to ensure that the transition is undertaken with the minimum of disruption to the Authority.
- (2) 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 reasonably necessary.

38. LAW & JURISDICTION

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

39. COMPLAINTS OR MALPRACTICE

If the Contractor has a complaint or feels there has been any malpractice on the Authority's part, the Contractor can use the complaints procedure available on the Authority's website, www.theccc.org.uk