



9 Millbank, London SW1P 3GE

The Gas and Electricity Markets Authority
and

[insert full and proper particulars of Contractor]

SERVICES AGREEMENT

FOR THE

(“..... Services”)

[December 2014]

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THIS AGREEMENT is made this [Day] of [Month] [Year]

BETWEEN

- (1) The Gas and Electricity Markets Authority, 9 Millbank, London SW1P 3GE
- (2) [insert full and proper particulars] (“the Contractor”) whose registered office address is [insert address].

RECITALS*

- (A) The Authority advertised in the Official Journal of the European Union (OJEU) a contract for the provision of the Services to the Authority.
- (B) The Contractor subsequently submitted a response to the Authority’s Invitation to Tender.
- (C) Following evaluation of responses to the Invitation to Tender, the Authority selected the Contractor to provide the Services forming the subject matter of this Agreement.
- (D) The Contractor has warranted and represented to the Authority in its response to the Invitation to Tender that it has the necessary skill and experience to provide the services set out in this Agreement.
- (E) The Authority has relied on the Contractor’s warranties and representations and agreed to enter into this Agreement and the Contractor has agreed to provide the services subject to and in accordance with this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS

[*Delete those not applicable.]

SECTION 1 – GENERAL PROVISIONS

1. Definitions

1.1. In this Agreement unless the context otherwise requires the following words and expressions shall have the meanings given to them below:

“Agreement”	means this written agreement between the Authority and the Contractor consisting of these Conditions and any attached Schedules.
“Agreement Period”	<p>means the period from the Commencement Date to:</p> <ul style="list-style-type: none"> • the date of expiry set out in Condition 2 (Initial Agreement Period), or • following an extension pursuant to Condition 43 (Extension of Initial Agreement Period), the date of expiry of the extended period, • or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Agreement.
“Agreement Payments”	means the sums, rates and charges (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under this Agreement but before taking into account the effect of any adjustment of price in accordance with Condition 20 (Price Adjustment on Extension of Initial Agreement Period).
“Approval”	means the written consent of the Authority.
“Authority”	<p>means the Gas and Electricity Markets Authority (or “GEMA”) which is established under s1 of the Utilities Act 2000 (as amended). The Authority’s functions may be discharged by staff appointed by it to work on its behalf in the Office of the Gas and Electricity Market (or “Ofgem”), which is a Crown Body, Non-Ministerial Government Department staffed by civil servants. “The Authority”, “GEMA” and “Ofgem” may be used interchangeably in this Agreement and elsewhere.</p> <p>it also means any Authority as defined in Regulation 3 of the Public Contracts Regulations 2006.</p>

<p>“Bribe”</p>	<p>means for the purposes of the Bribery Act 2010, the giving or receiving (or the offer or promise to do so) of a financial or other advantage with the intention of bringing about the improper performance of a function or activity. This could cover someone seeking to influence a decision-maker by giving some kind of extra benefit to that decision-maker rather than by what can legitimately be offered as part of a tender process.</p>
<p>“Commencement Date”</p>	<p>means the start date of the Agreement.</p>
<p>“Commercially Sensitive Information”</p>	<p>means the information listed in the Commercially Sensitive Information Schedule comprised of information:</p> <ul style="list-style-type: none"> • which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or • that constitutes a trade secret.
<p>“Confidential Information”</p>	<p>means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including any information provided by any person to the Authority under the Utilities Act 2000, the Gas Act 1986, the Electricity Act 1989, the Energy Act 2004 or any other statute in accordance with its functions as regulator or information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:</p> <ul style="list-style-type: none"> • was public knowledge at the time of disclosure (otherwise than by breach of Condition 30 (Confidential Information)); • was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; • is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or • is independently developed without access to the Confidential Information.

“Crown”	means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.
“Default”	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other.
“DPA”	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
“Equipment”	means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Agreement.
“Fees Regulations”	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
“Force Majeure”	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:</p> <ul style="list-style-type: none"> • any industrial action occurring within the Contractor’s or any sub-contractor’s organisation; or • the failure by any sub-contractor to perform its obligations under any sub-contract.

<p>“Fraud”</p>	<p>means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud the Authority or the Crown. For practical purposes Fraud may be defined as the use of deception with the intention of obtaining an advantage, causing loss to another party or exposing another to a risk of loss. Fraud is generally considered to involve theft (the removal of cash or assets to which the fraudster is not entitled) or false accounting (the falsification or alteration of accounting records or other documents). Assets include Commercially Sensitive Information and Intellectual Property Rights which would disadvantage its rightful owner if it were to fall into the hands of, or be sold to, a competitor. The Fraud Act 2006, which came into effect on 15 January 2007, creates a general offence of Fraud with three ways of committing it - fraud by false representation; fraud by failing to disclose information; and fraud by abuse of position. It also creates new offences - obtaining services dishonestly; possessing, making and supplying articles for use in frauds; and fraudulent trading applicable to non-corporate traders.</p>
<p>“Good Industry Practice”</p>	<p>means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.</p>
<p>“Information”</p>	<p>has the meaning given under section 84 of the FOIA.</p>
<p>“Initial Agreement Period”</p>	<p>means the period from the Commencement Date to the date of expiry set out in Condition 2 (Initial Agreement Period), or such earlier date of termination of this Agreement in accordance with the Law or the provisions of the Agreement.</p>
<p>“Intellectual Property Rights”</p>	<p>means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.</p>
<p>“Key Personnel”</p>	<p>means those persons named in this Agreement.</p>

“Law”	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.
“Monitoring Schedule”	means the Schedule containing details of the monitoring arrangements.
“Month”	means calendar month.
“Party”	means a party to the Agreement.
“Premises”	means the location where the Services are to be supplied, as set out in the Specification.
“Pricing Schedule”	means the Schedule containing details of the Agreement Payments.
“Property”	means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Agreement.
“Quality Standards”	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.
“Receipt”	means the physical or electronic arrival of the invoice at the address of the Authority detailed at Condition 5.3 or at any other address given by the Authority to the Contractor for the submission of invoices.
“Regulatory Bodies”	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor”	means any third party service provider appointed by the Authority to supply any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement.
“Request for Information”	shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply)
“Relevant Convictions”	means a conviction that is relevant to the nature of the Services [or as listed by the Authority and/or relevant to the work of the Authority]
“Schedule”	means a schedule attached to, and forming part of, the Agreement.
“Services”	means the services to be provided as specified in the Specification.
“Specification”	means the description of the Services to be provided under this Agreement as set out in the Specification (Schedule 1, hereto) including, where appropriate, the Key Personnel, the Premises and the Quality Standards.
“Specification Schedule”	means the Schedule containing the Specification (Schedule 1).
“Staff”	means all persons employed by the Contractor to perform its obligations under this Agreement together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Agreement.
“Staff Vetting Procedure”	means the Authority’s procedures for the vetting of personnel (linked to the Cabinet Office Baseline Security Standard) and as advised to the Contractor by the Authority.
“Tender”	means the document(s) submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply it with the Services.
“Variation”	has the meaning given to it in Condition 38 (Variation).
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London

- 1.2. The interpretation and construction of this Agreement shall be subject to the following provisions:
- 1.2.1. words importing the singular include where the context so admits the plural and vice versa;
 - 1.2.2. words importing the masculine include the feminine and the neuter;
 - 1.2.3. reference to a Condition is a reference to the whole of that Condition unless stated otherwise;
 - 1.2.4. reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 1.2.5. reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.6. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
 - 1.2.7. headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

2. Initial Agreement Period

- 2.1. The Agreement shall take effect on the Commencement Date of [Date] and shall expire automatically on [Date] unless it is otherwise terminated in accordance with the provisions of the Agreement, or otherwise lawfully terminated, or extended under Condition 43 (Extension of Initial Agreement Period).

3. Contractor’s Status

- 3.1. At all times during the Agreement Period the Contractor shall be an independent contractor and nothing in this Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Agreement.

4. Authority’s Obligations

- 4.1. Save as otherwise expressly provided, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to

any liability under this Agreement (howsoever arising) on the part of the Authority to the Contractor.

5. Notices

5.1. Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party concerned.

5.2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail. Such communication shall be addressed to the other Party in the manner referred to in Condition 5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

5.3. For the purposes of Condition 5.2, the address of each Party shall be:

5.3.1. for the Authority: 9 Millbank, London SW1P 3GE (for letters), 0207 901 7415 (for facsimile transmission), and forename.surname@ofgem.gov.uk [insert appropriate Ofgem personnel email address] (for electronic mail).

5.3.2. for the Contractor: [Insert details]

5.4. Either Party may change its address for service by serving a notice in accordance with this Condition.

6. Mistakes in Information

6.1. The Contractor shall be responsible for the accuracy of all drawings, documentation and information provided to the Authority by the Contractor in connection with the provision of the Services and the Authority shall have no liability for any extra costs occasioned by any discrepancies, errors or omissions therein.

7. Conflicts of Interest

7.1. The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Agreement. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

7.2. Where the Authority is of the opinion that the conflict of interest notified to it under clause A7.1 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

7.2.1. if the Contractor fails to comply with the Authority requirements in this respect, or

7.2.2. if, in the opinion of the Authority compliance does not avoid or remove the conflict,

the Authority may determine the Agreement and recover from the Contractor the amount of any loss resulting from such determination.

7.3. Where the Authority is of the opinion that the conflict of interest which existed at the time of the award of the Agreement could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Authority may determine the Agreement 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 determination.

7.4. The Authority reserves the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Agreement. The actions of the Authority pursuant to this Condition shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

SECTION 2 - PROVISION OF SERVICES

8. The Services

- 8.1. The Contractor shall supply the Services during the Agreement Period in accordance with the Authority's requirements as set out in the Specification and the provisions of this Agreement in consideration of the payment of the Agreement Payments. The Authority may inspect and examine the manner in which the Contractor provides the Services at the Premises during normal business hours on reasonable notice.
- 8.2. If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of this Agreement or differ in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Agreement within such reasonable time as may be specified by the Authority.
- 8.3. Subject to the Authority providing written consent in accordance with Condition 9.2 (Provision and Removal of Equipment), timely provision of the Services shall be of the essence of the Agreement, including in relation to commencing the provision of the Services within the time agreed or on a specified date.

9. Provision and Removal of Equipment

- 9.1. The Contractor shall supply all the Equipment necessary for the provision of the Services.
- 9.2. The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 9.3. All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- 9.4. The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 9.5. The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
 - 9.5.1. remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Agreement; and
 - 9.5.2. replace such item with a suitable substitute item of Equipment.

9.6. On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

10. Manner of Carrying Out the Services

10.1. The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Agreement, the Contractor shall agree the relevant standard of the Services with the Authority prior to the provision of the Services and, in any event, the Contractor shall perform its obligations under this Agreement in accordance with the Law and Good Industry Practice.

10.2. The Contractor shall ensure that all Staff providing the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper provision of the Services.

11. Key Personnel

11.1. The Contractor acknowledges that the Key Personnel (as referred to in Schedule 5) are essential to the proper provision of the Services to the Authority.

11.2. The Key Personnel shall not be released from providing the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

11.3. Any replacements to the Key Personnel shall be subject to the agreement of the Authority and at no additional cost to the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

11.4. The Authority shall not unreasonably withhold its agreement under Conditions 11.2 or 11.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on this Agreement which could be caused by a change in Key Personnel.

12. Contractor's Staff

12.1. The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:

12.1.1. any member of the Staff; or

12.1.2. any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

- 12.2. At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with this Agreement to the Premises, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Authority may reasonably request.
- 12.3. The Contractor's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- 12.4. The Contractor shall comply with Staff Vetting Procedures (Cabinet Office Baseline Security Standard) in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 12.5. The Authority may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Criminal Records Bureau check as per the Staff Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged in the provision of any part of the Services.
- 12.6. If the Contractor fails to comply with Condition 12.2 within 2 Months of the date of the request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Agreement, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 12.7. The decision of the Authority as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with Condition 12.2 shall be final and conclusive.

13. Inspection of Premises

- 13.1. Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Agreement.

14. Licence to occupy Premises

- 14.1. Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Agreement, shall be made available to the

Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Agreement. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Agreement.

- 14.2. The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under this Agreement and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- 14.3. Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.
- 14.4. The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 14.5. The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Agreement, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

15. Property

- 15.1. Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- 15.2. The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.

- 15.3. The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with this Agreement and for no other purpose without prior Approval.
- 15.4. The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the provision of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.
- 15.5. The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.
- 15.6. The Contractor undertakes to return such property so issued and will be responsible for all loss thereof or damage thereto from whatever cause to the full amount of such loss or damage [and any consequential loss or damage].
- 15.7. Without prejudice to the above provisions, the Contractor shall, except as otherwise provided for in the Agreement, make good or, at the option of the Authority, pay compensation for any loss of and/or all damage occurring to any Authority property [and any consequential loss or damage] occasioned by the Contractor, or by his servants, agents or sub-contractors whether arising from his or their performance of the Agreement and whether on any Authority premises or elsewhere in connection with the Agreement, provided that this Condition shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed by his negligence or default or the neglect or default of his servants, agents, or sub-contractors or by any circumstances within his or their control.

16. Offers of Employment

- 16.1. For the duration of this Agreement and for a period of 12 months thereafter neither the Authority nor the Contractor shall employ or offer employment to any of the other Party's staff without that other Party's prior written consent.

SECTION 3 - PAYMENT AND AGREEMENT PRICE

17. Agreement Payments

- 17.1. In consideration of the Contractor's performance of its obligations under the Agreement, the Authority shall pay the Agreement Payments in accordance with Condition 18 (Payment and VAT).
- 17.2. The Authority shall, in addition to the Agreement Payments and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services provided in accordance with the Agreement.

18. Payment and VAT

- 18.1. The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a valid invoice, submitted **[monthly in arrears]**.
- 18.2. The Contractor shall ensure that each invoice contains all appropriate references as detailed at clause 18.3 and a detailed breakdown of the Services provided and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice.
- 18.3. **All invoices must be sent to invoices@ofgem.gov.uk and include the following:**

18.3.1 Contract Reference **[CON / SPEC / 2015 – XX]**;

18.3.2 the Contract Managers Name **[XXXX]**;

18.3.3 the title of the contract **[XXXXX]**;

18.3.4 the Rate and number of days provided or firm price; and

18.3.5 the commencement and cut-off dates for the invoice if applicable.

Failure to send the invoice to the correct address or include the information required at 18.3 will result in your invoice being rejected and will therefore considerably delay when payment is made.

- 18.4. Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 18.5. The Contractor shall add VAT to the Agreement Payments at the prevailing rate as applicable and show separately on all invoices.
- 18.6. The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority 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 Agreement. Any amounts due under this Condition 18.5 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

- 18.7. The Contractor shall not suspend the provision of the Services unless the Contractor is entitled to terminate this Agreement under Condition 50.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

19. Recovery of Sums Due

- 19.1. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under this Agreement or under any other agreement or contract with the Authority.

- 19.2. Any overpayment by either Party, whether of the Agreement Payments or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

- 19.3. The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

- 19.4. All payments due shall be made within a reasonable time unless otherwise specified in the Agreement, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

20. Price adjustment on extension of the Initial Agreement Period

- 20.1. The Agreement Payments shall apply for the Initial Agreement Period. In the event that the Authority agrees to extend the Initial Agreement Period pursuant to Condition 43 (Extension of Initial Agreement Period) the Authority shall, in the 6 month period prior to the expiry of the Initial Agreement Period, enter into good faith negotiations with the Contractor (for a period of not more than 30 Working Days) to agree a variation in the Agreement Payments.

- 20.2. If the Parties are unable to agree a variation in the Agreement Payments in accordance with Condition 20.1, this Agreement shall terminate at the end of the Initial Agreement Period.

- 20.3. If a variation in the Agreement Payments is agreed between the Authority and the Contractor, the revised Agreement Payments will take effect from the first day of any period of extension and shall apply during such period of extension.

20.4. Any increase in the Agreement Payments pursuant to Condition 20.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or any other index specified in the Pricing Schedule) between the Commencement Date and the date 6 Months before the end of the Initial Agreement Period.

21. Currency

21.1. Any requirement of Law to account for the Services in any currency other than Pounds Sterling (£) shall be implemented by the Contractor at no cost to the Authority.

SECTION 4 - STATUTORY OBLIGATIONS AND REGULATIONS

22. Prevention of Corruption

- 22.1. The Contractor shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such contract.
- 22.2. The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Agreement.
- 22.3. If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by Conditions 22.1 or 22.2, the Authority may:
- 22.3.1. terminate this Agreement and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the provision of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Agreement Period; or
 - 22.3.2. recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of those Conditions.
- 22.4. In exercising its rights or remedies under this Condition, the Authority shall:
- 22.4.1. act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act
 - 22.4.2. give all due consideration, where appropriate, to action other than termination of the Agreement.
- 22.5. In any dispute, difference or question arising in respect of:
- 22.5.1. the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under clause 22.3 of this Condition in respect of any loss resulting from such determination of the Agreement); or
 - 22.5.2. the right of the Authority to determine the Agreement; or
 - 22.5.3. the amount or value of any gift, consideration or commission;

the decision of the Authority shall be final and conclusive.

22.6 Where the Agreement has been determined under this condition the Authority shall be released from any obligation to accept and pay for the Services or to cancel all or part of the Services, in either case without prejudice to the other rights and remedies of the Authority.

22.7 The Bribery Act 2010 consolidates existing offences of offering or receiving a bribe, bribery of foreign public officials and introduces a new corporate offence of failure by a commercial organisation to prevent a bribe being paid or received on its behalf. The Contractor shall:

- a. comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- b. not engage in any activity, practice or conduct which would constitute an offence under sections 1,2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- c. have and shall maintain in place throughout the term of this agreement its own policies and procedures, including, but not limited to, adequate procedures under the Bribery Act 2010, to ensure compliance with the relevant requirements and clause 22.7 (b), and will enforce them where appropriate;
- d. promptly report to the Authority's Head of Procurement any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this agreement;
- e. immediately notify the Authority's Head of Procurement and confirm in writing if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement).

22.8 The Contractor shall ensure that any person associated with the Contractor who is performing services in connection with the Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this clause 22.7. The Contractor shall be responsible for the observance and performance by such persons of the relevant terms, and shall be directly liable to the Authority for any breach by such persons of any of the relevant terms.

22.9 Breach of this clause 22.7 shall be deemed a material breach of the Agreement.

22.10 For the purpose of this clause 22.7, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

23. Prevention of Fraud/Security Vetting and Fraud Checks

23.1. Actions which constitute Fraud include any dishonest or fraudulent act; forgery or alteration of any document or account belonging to the Authority; forgery or alteration of a cheque, bank draft, or any other financial document; misappropriation of funds, securities, supplies, or other assets; impropriety in the handling or reporting of money or financial transactions; profiteering as a result of insider knowledge of the Authority's activities; disclosing confidential and proprietary information to outside parties; disclosing to other persons any securities activities engaged in or contemplated by the Authority; accepting or seeking anything of material value from contractors, vendors or persons providing services and/or materials to the Authority; destruction, removal or inappropriate use of records, furniture, fixtures, and equipment; and/or any similar or related inappropriate conduct.

23.2. The Authority takes Fraud very seriously and is committed to ensuring that opportunities for Fraud are reduced to the lowest possible level of risk. All cases of actual or suspected Fraud shall be vigorously and promptly investigated and appropriate action shall be taken. The Contractor shall be required to co-operate with the Authority with any such investigation and the instigation of resulting actions.

23.3. The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.

23.4. The Contractor shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

23.5. If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:

23.5.1. terminate this Agreement and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the provision of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Agreement Period; or

23.5.2. recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this Condition.

- 23.6 In order to ensure that the Authority establishes and maintains a reputation for impartiality, integrity and high professional standards, the Authority may undertake, security vetting and fraud checks on the Contractor's personnel at any time where it is deemed appropriate. As part of these checks, we anticipate submitting details to the Credit Industry Fraud Avoidance System (CIFAS) and to the organisers of similar databases for review. If as a result of our submissions we receive any information back that raises a concern then we will review this information with the Contractor. Following such review, the Authority shall have the right to request unsuitable personnel be substituted if it deems it necessary (with personnel of equal or better standing in terms of knowledge, expertise and/or experience). If suitable individual(s) are not proposed (or, if proposed not accepted by the Authority) then the Contract will be terminated with immediate effect and the Contract termination clauses will apply. The Authority's liability for terminating the Contract under this clause shall be for Services reasonably performed up until the termination date.
- 23.7 Additionally, where the Authority has confirmed to a Contractor that our conclusion is that fraud or the commission of any other criminal offence has occurred when applying for, or during the course of their contract with the Authority, the Authority reserves the right to pass details of this to the organisers of the fraud prevention databases to which we subscribe."

24 Discrimination

- 24.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 24.2 The Contractor shall take all reasonable steps to secure the observance of Condition 24.1 by all Staff.

25 The Contracts (Rights of Third Parties) Act 1999

- 25.1 A person who is not a Party to this Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This Condition does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

26 Environmental Requirements

- 26.1 The Contractor shall, when working on the Premises, perform its obligations under this Agreement in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper 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.

27 Health and Safety

- 27.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Agreement.
- 27.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- 27.3 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under this Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 27.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Agreement.
- 27.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

SECTION 5 - PROTECTION OF INFORMATION

28 Data Protection Act

- 28.1 For the purposes of this Condition 28, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing shall have the meaning prescribed under the DPA.
- 28.2 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.
- 28.3 Notwithstanding the general obligation in Condition 28.2, where the Contractor is processing Personal Data (as defined by the DPA) as a Data Processor for the Authority the Contractor shall:
 - 28.3.1 Process the Personnel Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in this Agreement or as otherwise notified by the Authority;
 - 28.3.2 comply with all applicable laws;

- 28.3.3 Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider's obligations under this Agreement or as is required by Law or any Regulatory Body;
- 28.3.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 28.3.5 take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
- 28.3.6 obtain prior written consent from the Authority in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
- 28.3.7 not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Authority;
- 28.3.8 ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition 28;
- 28.3.9 ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority
- 28.3.10 not disclose Personnel Data to any third parties in any circumstances other than with the written consent of the Authority or in compliance with a legal obligation imposed upon the Authority; and
- 28.3.11 notify the Authority (within five Working Days) if it receives:
 - 28.3.11.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 28.3.11.2 a complaint or request relating to the Authority's obligations under the DPA;
- 28.4 The provision of this Condition 28 shall apply during the Agreement Period and indefinitely after its expiry.
- 28.5 The Contractor shall assist the Authority at no additional charge in meeting any reasonable requests for information in relation to the Agreement which are made to the Authority in connection with DPA and/or any statutory modification or re-enactment thereof or any related guidelines or codes or practice.

29 Official Secrets Acts 1911 to 1989, S182 of the Finance Act 1989

29.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

29.1.1 the Official Secrets Acts 1911 to 1989; and

29.1.2 Section 182 of the Finance Act 1989.

29.2 In the event that the Contractor or its Staff fail to comply with this Condition, the Authority reserves the right to terminate this Agreement by giving notice in writing to the Contractor.

30 Confidential Information

30.1 Except to the extent set out in this Condition or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:

30.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

30.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

30.2 Condition 30.1 shall not apply to the extent that:

30.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Condition 31 (Freedom of Information);

30.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

30.2.3 such information was obtained from a third party without obligation of confidentiality;

30.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

30.2.5 it is independently developed without access to the other party's Confidential Information.

30.3 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

30.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Agreement.

- 30.5 At the written request of the Authority, the Contractor shall procure that those members of the Staff identified in the Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
- 30.6 Nothing in this Agreement shall prevent the Authority from disclosing the Contractor's Confidential Information:
- 30.6.1 to any Crown Body or any other Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Authority;
 - 30.6.2 to any consultant, contractor or other person engaged by the Authority or any person conducting a gateway review;
 - 30.6.3 for the purpose of the examination and certification of the Authority's accounts; or
 - 30.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 30.7 The Authority shall use all reasonable endeavours to ensure that any government department, Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to Condition 30.6 is made aware of the Authority's obligations of confidentiality.
- 30.8 Nothing in this Condition 30 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.
- 30.9 With regard to any information provided by any person to the Authority under the Utilities Act 2000, the Gas Act 1986, the Electricity Act 1989, the Energy Act 2004 or any other statute in accordance with its functions as regulator, the Contractor hereby confirms that it has taken account of the provisions of s105 of the Utilities Act 2000 and in particular to s105(9) which provides that disclosure of such information in contravention of the provisions of s105 shall be an offence carrying the sanction of a fine, imprisonment of both.
- 30.10 In the event that the Contractor fails to comply with this clause 30, the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 30.11 The Authority reserves the right to disclose any contract information, including Confidential Information, that any Crown Body requests it to publish.

31 Freedom of Information

- 31.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations. The Contractor shall assist the Authority at no additional charge in meeting any reasonable requests for information in relation to the Agreement which are made to the Authority in connection with FOIA and/or any statutory modification or re-enactment thereof or any related guidelines or codes or practice.
- 31.2 The Contractor shall and shall procure that any sub-contractors shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- 31.2.1 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - 31.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 31.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations
- 31.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 31.5 The Contractor acknowledges that (notwithstanding the provisions of Condition 31) the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:
- 31.5.1 without consulting the Contractor; or
 - 31.5.2 following consultation with the Contractor and having taken their views into account;
- 31.6 provided always that where 31.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

31.7 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

31.8 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Authority may be obliged to disclose it in accordance with this Condition 31.

32 Publicity, Media and Official Enquiries

32.1 Without prejudice to the Authority's obligations under the FOIA, neither Party shall make any press announcement or publicise this Agreement or any part thereof in any way, except with the written consent of the other Party and except for the Authority to advertise the contract award.

32.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with Condition 32.1.

33 Security

33.1 The Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Premises, and shall ensure that all Staff comply with such requirements.

33.2 The Contractor shall immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the performance of its obligations under the Agreement and shall keep a record of such breaches. The Contractor shall use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under Condition (Confidential Information). The Contractor shall co-operate with the Authority in any investigation that the Authority reasonably considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

33.3 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of its obligations under the Agreement, the Contractor shall maintain its security systems to, in the reasonable opinion of the Authority, a suitable and sufficient standard.

33.4 Any document or thing bearing a Security classification of "Confidential" shall be examined or handled on Authority premises only and shall not be removed from such premises unless the Authority consents in writing to examination or handling or removal of that document or thing elsewhere.

33.5 The Contractor shall use all best endeavours to safeguard from loss or damage every document or thing supplied by or obtained from the Authority or by or from the Crown for the purposes of the Agreement and to protect every such document or thing from unauthorised use, disclosure or copying and shall forthwith upon termination or expiry

of the Agreement or earlier if the Authority shall request return to the Authority in good and usable condition every such document and thing.

- 33.6 The Authority shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical security arrangements.

34 Intellectual Property Rights

- 34.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):

34.1.1 furnished to or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; and

34.1.2 prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under this Agreement shall belong to the Authority;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Agreement) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

- 34.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Condition 34.1.2. This assignment shall take effect on the date of this Agreement or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

- 34.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by this Agreement or the performance of the Agreement.

- 34.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform this Agreement grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Authority.

- 34.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in providing the Services and the Contractor shall, during and after the Agreement Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this Condition, except where any such claim arises from:

- 34.5.1 items or materials based upon designs provided by the Authority; or
 - 34.5.2 the use of data provided by the Authority which is not required to be verified by the Contractor under any provision of the Agreement.
- 34.6 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 34.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- 34.7.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 34.7.2 shall take due and proper account of the interests of the Authority; and
 - 34.7.3 shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 34.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under this Agreement and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in Condition 34.5.1 or 34.5.2.
- 34.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of its obligations under the Agreement.
- 34.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with this Agreement or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- 34.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services;
- or

- 34.10.2 procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority,
 - 34.10.3 and in the event that the Contractor is unable to comply with Conditions 34.7.1 or 34.7.2 within 20 Working Days of receipt of the Contractor's notification the Authority may terminate this Agreement with immediate effect by notice in writing.
- 34.11 The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order exercise its rights and take the benefit of this Agreement including the Services provided.
- 34.12 Nothing in the Agreement or done under the Agreement shall be taken to diminish any Crown copyright, patent rights or rights to any other intellectual or industrial property which would apart from this Agreement vest in the Crown or the Authority.
- 34.13 Without prejudice to the generality of the foregoing, there shall be vested in the Crown all copyright, patent rights and rights to other intellectual or industrial property in or over any information, specification, plan, drawing, pattern, sample or other thing supplied by the Authority, or any Government Department, to the Contractor in relation to the Agreement or in and over anything made or derived from or arising out of any such information, specification, plan, drawing, sample or other thing.

35 Audit

- 35.1 The Contractor shall keep and maintain until 6 years after the end of the Agreement Period, or as long a period as may be agreed between the Parties, full and accurate records of this Agreement including the Services provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Agreement.

SECTION 6 - CONTROL OF THE CONTRACT

36 Transfer and Sub-Contracting

- 36.1 Except where 36.4 and 5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of this Agreement or any part of it without prior Approval. Sub-contracting any part of this Agreement shall not relieve the Contractor of any of its obligations or duties under the Agreement.
- 36.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 36.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.
- 36.4 Notwithstanding Condition 36.1, the Contractor may assign to a third party (“the Assignee”) the right to receive payment of the Agreement Payments or any part thereof due to the Contractor under this Agreement (including any interest which the Authority incurs under Condition 18.6). Any assignment under this Condition 36.4 shall be subject to:
- 36.4.1 reduction of any sums in respect of which the Authority exercises its right of recovery under Condition 19 (Recovery of Sums Due);
 - 36.4.2 all related rights of the Authority under the contract in relation to the recovery of sums due but unpaid; and
 - 36.4.3 the Authority receiving notification under both Conditions 36.5 and 36.6.
- 36.5 In the event that the Contractor assigns the right to receive the Agreement Price under Condition 36.4, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 36.6 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee’s contact information and bank account details to which the Authority shall make payment.
- 36.7 The provisions of Condition 18 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.
- 36.8 Subject to Condition 36.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to:
- 36.8.1 any Authority; or
 - 36.8.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - 36.8.3 any private sector body which substantially performs the functions of the Authority,

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Agreement.

- 36.9 Any change in the legal status of the Authority such that it ceases to be an Authority shall not, subject to Condition 36.8, affect the validity of the Agreement. In such circumstances, this Agreement shall bind and inure to the benefit of any successor body to the Authority.
- 36.10 If the rights and obligations under this Agreement are assigned, novated or otherwise disposed of pursuant to Condition 36.8 to a body which is not a Authority or if there is a change in the legal status of the Authority such that it ceases to be a Authority (in the remainder of this Condition both such bodies being referred to as the "Transferee"):
- 36.10.1 the rights of termination of the Authority in Conditions 49 (Termination on change of control and insolvency) and 50 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - 36.10.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof with the prior consent in writing of the Contractor.
- 36.11 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Agreement. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under this Agreement and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 36.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Agreement.

37 Waiver

- 37.1 The failure of either Party to insist upon strict performance of any provision of the Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.
- 37.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Condition 6 (Notices).
- 37.3 A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

38 Variation

- 38.1 Subject to the provisions of this Condition, the Authority may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereinafter called a "Variation".
- 38.2 The Authority may request a Variation by notifying the Contractor in writing of the "Variation" and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Agreement Payments is required in order to implement the Variation. The Authority shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.
- 38.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Agreement Payments, the Authority may;
- 38.3.1 allow the Contractor to fulfil its obligations under this Agreement without the variation to the Specification;
 - 38.3.2 terminate this Agreement with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Condition 57.

39 Severability

- 39.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

40 Remedies in the event of inadequate performance

- 40.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been provided or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Agreement, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with Condition 50 (Termination on Default) of the Agreement.
- 40.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of this Agreement by the Contractor, then the Authority may, without

prejudice to its rights under Condition 50 (Termination on Default), do any of the following:

- 40.2.1 without terminating the Agreement, 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 Authority that the Contractor will once more be able to provide all or such part of the Services in accordance with the Agreement;
 - 40.2.2 without terminating the whole of the Agreement, terminate this Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Agreement Payments shall be made) and thereafter itself provide or procure a third party to provide such part of the Services; and/or
 - 40.2.3 terminate, in accordance with Condition 50 (Termination on Default), the whole of the Agreement.
- 40.3 Without prejudice to its right under Condition 19 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the provision of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 40.4 If the Contractor fails to provide any of the Services in accordance with the provisions of this Agreement and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.
- 40.5 In the event that:
- 40.5.1 the Contractor fails to comply with Condition 40.4 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
 - 40.5.2 the Contractor persistently fails to comply with Condition 40.4 above, the Authority may terminate this Agreement with immediate effect by notice in writing.

41 Remedies Cumulative

- 41.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of this Agreement 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.

42 Monitoring of Agreement Performance

- 42.1 The Contractor shall comply with the monitoring arrangements set out in the Monitoring Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Agreement.
- 42.2 The Contractor shall provide the Authority with all the information that the Authority may reasonably require for the purpose of assessing the Contractor's performance of its obligations under the Agreement. The Contractor shall operate a performance monitoring system which meets the requirements of the Authority as detailed in the Specification and as notified to the Contractor by the Authority. This includes the collection and processing of performance information.
- 42.3 The Contractor shall collect and process data that relates to the supply of the services and performance measurement. The Contractor shall ensure that the data and their data processing are accurate.
- 42.4 The Contractor shall supply reports as required within 5 Working Days of the end of the period to which they apply and the Contractor shall also produce ad-hoc reports as requested by the Authority on specific requirements. These shall be in the format requested by the Authority.
- 42.5 Performance monitoring shall be sufficient to test compliance with the provisions of the Agreement (which shall include responsibility to advise the Authority of any failure to meet the required standards).
- 42.6 The Authority may require the Contractor to attend periodic review meetings at its premises. If this is the case, the Authority shall provide an indicative meeting schedule and shall reasonably endeavour to issue an agenda at least 5 Working Days in advance of each meeting date. The Contractor shall provide all necessary performance data and information to the Authority at least 3 Working Days before the meeting date. Attendance at these meetings shall be at the Contractor's cost. The Authority shall arrange to take a written record of the meeting and provide the same to the Contractor for verification.

43 Extension of Initial Agreement Period

- 43.1 Subject to Condition 20 (Price adjustment on extension of the Initial Agreement Period), the Authority may, by giving written notice to the Contractor not less than ***** Month(s) prior to the last day of the Initial Agreement Period, extend this Agreement for a further period of up to ***** Month(s). The provisions of this Agreement will apply (subject to any Variation or adjustment to the Agreement Payments pursuant to Condition 20 (Price adjustment on extension of the Initial Agreement Period)) throughout any such extended period.

44 Entire Agreement

- 44.1 The Agreement constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Agreement supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other,

whether written or oral, except that this Condition shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

44.2 In the event of, and only to the extent of, any conflict between the Conditions of the Agreement, any document referred to in those Conditions and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

44.2.1 These Conditions of Agreement

44.2.2 Agreed Pricing Schedule

44.2.3 Tender Clarifications

44.2.4 Tender Submission

44.2.5 Scope of Work

44.2.6 All other Schedules

Unless expressly agreed, a document varied pursuant to Condition 38 (Variation) shall not take higher precedence than specified here.

45 Counterparts

45.1 This Agreement 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.

SECTION 7 - LIABILITIES

46 Liability, Indemnity and Insurance

- 46.1 Neither Party excludes or limits liability to the other Party for:
 - 46.1.1 death or personal injury caused by its negligence; or
 - 46.1.2 fraud; or
 - 46.1.3 fraudulent misrepresentation; or
 - 46.1.4 any breach of any obligations implied by Section 2 of the Provision of Goods and Services Act 1982.

- 46.2 Subject to Conditions 46.3 and 46.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under this Agreement or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

- 46.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Agreement.

- 46.4 Subject always to Condition 46.1, the liability of either Party for Defaults shall be subject to the following financial limits:
 - 46.4.1 the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with this Agreement shall in no event exceed pounds (figures); and
 - 46.4.2 the annual aggregate liability under this Agreement of either Party for all Defaults (other than a Default governed by Conditions 34.3 (Intellectual Property Rights) or 46.4.1) shall in no event exceed the greater of words (figures) per cent (figures%) of the Agreement Payments paid or payable by the Authority to the Contractor in the year in which the liability arises.

- 46.5 Subject always to Condition 46.1, in no event shall either Party be liable to the other for any:
 - 46.5.1 loss of profits, business, revenue or goodwill; and/or
 - 46.5.2 loss of savings (whether anticipated or otherwise); and/or
 - 46.5.3 indirect or consequential loss or damage.

- 46.6 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- 46.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Agreement Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.
- 46.8 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 46.9 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this Condition or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 46.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of this Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 46.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Condition 46.2.
- 46.12 Nothing in these Conditions nor in any part of the Agreement shall impose any liability on any member of the staff of the Authority, or its representatives in their personal capacity.

47 Professional Indemnity

- 47.1 The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Agreement Period and shall ensure that all agents, professional consultants and sub-contractors involved in the provision of the Services do the same. To comply with its obligations under this Condition and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the provision of the Services has a limit of indemnity of not less than ***** for each individual claim or such higher limit as the Authority may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.

48 Warranties and Representations

48.1 The Contractor warrants and represents that:

- 48.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Agreement and that this Agreement is executed by a duly authorised representative of the Contractor;
- 48.1.2 it shall discharge its obligations under the Agreement with all due skill, care and diligence including but not limited to Good Industry Practice;
- 48.1.3 all obligations of the Contractor pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 48.1.4 in entering this Agreement it has not committed any Fraud;
- 48.1.5 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Agreement;
- 48.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Agreement;
- 48.1.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Agreement;
- 48.1.8 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 48.1.9 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 Agreement;
- 48.1.10 in the three 3 years prior to the date of the Agreement:
 - 48.1.10.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

- 48.1.10.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- 48.1.10.3 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Agreement.

SECTION 8 - DEFAULT, DISRUPTION AND TERMINATION

49 Termination on insolvency and change of control

49.1 The Authority may terminate this Agreement with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- 49.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- 49.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- 49.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- 49.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 49.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 49.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 49.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 49.1.8 any event similar to those listed in 49.1.1 to 49.1.7 occurs under the law of any other jurisdiction.

49.2 The Authority may terminate this Agreement with immediate effect by notice in writing where the Contractor is an individual and:

- 49.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- 49.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
- 49.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

- 49.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
 - 49.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days; or
 - 49.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
 - 49.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 49.3 The Authority may terminate the Agreement with immediate effect by notice in writing where the Contractor is a partnership and:
- 49.3.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvency Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement or assignment with, or for the benefit of, its creditors; or
 - 49.3.2 it is for any reason dissolved; or
 - 49.3.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
 - 49.3.4 a receiver, or similar officer is appointed over the whole or any part of its assets; or
 - 49.3.5 the partnership is deemed unable to pay its debts within the meaning of Section 222 or Section 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
 - 49.3.6 any of the following occurs in relation to any of its partners:
 - 49.3.6.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition, scheme or arrangement with, or for the benefit of, his creditors; or
 - 49.3.6.2 a petition is presented for his bankruptcy; or
 - 49.3.6.3 a receiver or similar officer is appointed over the whole or any part of his assets.
- 49.4 The Authority may terminate the Agreement with immediate effect by notice in writing where the Contractor is a limited liability partnership and:
- 49.4.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition,

scheme or arrangement with, or assignment for the benefits of, its creditors; or

- 49.4.2 it is for any reason dissolved; or
- 49.4.3 an application is made either for the appointment of an administrator or an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986; or
- 49.4.4 any step is taken with a view to it being determined that it would be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or
- 49.4.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
- 49.4.6 a receiver or similar officer is appointed over the whole or any part of its assets; or
- 49.4.7 it is or becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
- 49.4.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

References to the Insolvency Act 1986 in Sub-Clauses H1.4(a) – H1.4(h) shall be construed as being references to the Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

49.5 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“change of control”). The Authority may terminate this Agreement by notice in writing with immediate effect within six months of:

- 49.5.1 being notified that a change of control has occurred; or
- 49.5.2 where no notification has been made, the date that the Authority becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

50 Termination on Default

50.1 The Authority may terminate this Agreement by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- 50.1.1 the Contractor has not remedied the Default to the satisfaction of the Authority within 5 Working Days, or such other period as may be

specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or

50.1.2 the Default is not, in the opinion of the Authority, capable of remedy; or

50.1.3 the Default is a material breach of the Agreement.

50.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with this Agreement is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

50.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate this Agreement in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Conditions 19.1 (Recovery of Sums Due).

51 Break

51.1 The Authority shall have the right to terminate this Agreement at any time by giving 3 Months' written notice to the Contractor.

52 Consequences of Expiry or Termination

52.1 Where the Authority terminates this Agreement under Condition 50 (Termination on Default) and then makes other arrangements for the provision of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Agreement Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where this Agreement is terminated under Condition 50 (Termination on Default), no further payments shall be payable by the Authority to the Contractor (for Services provided by the Contractor prior to termination and in accordance with this Agreement but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this Condition.

52.2 Subject to Condition 46, where the Authority terminates this Agreement under Condition 51 (Break), the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Condition 51 (Break).

- 52.3 The Authority shall not be liable under Condition 52.2 to pay any sum which:
- 52.3.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
 - 52.3.2 when added to any sums paid or due to the Contractor under the Agreement, exceeds the total sum that would have been payable to the Contractor if this Agreement had not been terminated prior to the expiry of the Agreement Period; or
 - 52.3.3 is a claim by the Contractor for loss of profit, due to early termination of the Agreement.

52.4 Save as otherwise expressly provided in the Agreement:

- 52.4.1 termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 52.4.2 termination of this Agreement shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under Conditions 18 (Payment and VAT), 19 (Recovery of Sums Due), 22 (Prevention of Corruption), 28 (Data Protection Act), 29 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 30 (Confidential Information), 31 (Freedom of Information), 34 (Intellectual Property Rights), 35 (Audit), 41 Remedies Cumulative), 46 (Liability, Indemnity and Insurance), 47 (Professional Indemnity), 52 (Consequences of Expiry or Termination), 54 (Recovery upon Termination) and 56 (Governing Law and Jurisdiction).

53 Disruption

- 53.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Agreement it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 53.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.
- 53.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Agreement.
- 53.4 If the Contractor's proposals referred to in Condition 53.3 are considered insufficient or unacceptable by the Authority acting reasonably, then this Agreement may be terminated with immediate effect by the Authority by notice in writing.

53.5 If the Contractor is temporarily unable to fulfil the requirements of this Agreement owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

54 Recovery upon Termination

54.1 On the termination of this Agreement for any reason, the Contractor shall:

54.1.1 immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;

54.1.2 immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor under Condition 9. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

54.1.3 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.

54.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.

54.2 If the Contractor fails to comply with Condition 54.1.1 and 54.1.2, the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

54.3 Where the end of the Agreement Period arises due to the Contractor's Default, the Contractor shall provide whatever assistance is required free of charge. Otherwise, the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

55 Force Majeure

55.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations

under this Agreement for a period in excess of 6 Months, either Party may terminate this Agreement with immediate effect by notice in writing.

- 55.2 Any failure or delay by the Contractor in performing its obligations under this Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 55.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Condition 55.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

SECTION 9 - DISPUTES AND LAW

56 Governing Law and Jurisdiction

56.1 Subject to the provisions of Condition 57, the Authority and the Contractor accept the exclusive jurisdiction of the English courts and agree that this Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to the laws of England and Wales.

57 Dispute Resolution

57.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

57.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

57.3 If the dispute cannot be resolved by the Parties pursuant to Condition 57.1 the Parties shall refer it to mediation pursuant to the procedure set out in Condition 57.5 unless:

57.3.1 the Authority considers that the dispute is not suitable for resolution by mediation; or

57.3.2 the Contractor does not agree to mediation.

57.4 The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Contractor and its Staff shall comply fully with the requirements of this Agreement at all times.

57.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

57.5.1 a neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.

57.5.2 The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.

- 57.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - 57.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - 57.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both Parties.
 - 57.5.6 If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in Condition 57.6.
- 57.6 Subject to Condition 57.2, the Parties shall not institute court proceedings until the procedures set out in Conditions 57.1 and 57.3 have been completed.
- 57.7 If the Contractor has a dispute with the Authority they also have recourse to the Government Procurement Service through their supplier feedback service.

ATTESTATION

This Agreement is hereby executed as a Deed by the Authority acting by

Name:	
Signature:	
Position:	
A duly authorised officer	

And

This Agreement is hereby executed as a Deed by the Contractor acting by

Name:	
Signature:	
Position:	Director

Or by

Name:	
Signature:	
Position:	Director/Company Secretary

SCHEDULE 1 - Scope of Work

SCHEDULE 2 – Tender Submission (i.e. services to be provided)

SCHEDULE 3 – Agreed Pricing Schedule

SCHEDULE 4 - Agreement Management & Governance Arrangements

SCHEDULE 5 – Key Personnel

SCHEDULE 6 - Tender Clarifications

SCHEDULE 7 – Charges Indexation (if applicable)

Appendix A - Variation to Agreement Form

AGREEMENT TITLE:

FOR THE PROVISION OF:

AGREEMENT REF: VARIATION No..... DATE: / /

BETWEEN:

Ofgem (hereinafter called the Authority) and **(DN:INSERT NAME OF CONTRACTOR)** (hereinafter called the Contractor) having his main or registered office at **(DN:INSERT ADDRESS):**

1. The Agreement is varied as follows:

Scope of Work:	
The Price (ex VAT): Agreement Price: £ Variation Price (maximum): £ Revised Agreement Price: £	Effect on Programme:

2. Words and expressions in this Variation shall have the meanings given to them in the Agreement.

3. The Agreement, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

For: The Authority

Signed:
Full Name:
Job Title:
Date:

For: The Contractor

Signed:
Full Name:
Job Title:
Date:

DN: If provided with copies already signed on behalf of the Authority sign both and return one copy to the Authority. If unsigned, sign both and return both to the Authority for completion.