

**STANDARD TERMS FOR THE PROVISION OF SERVICES TO  
THE OFFICE FOR NUCLEAR REGULATION**

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## Schedule 4

### 1 Definitions and Interpretation

1.1 In this Contract, unless the context otherwise requires the following words and phrases shall have the following meanings:

- 1.1.1 “**Code**” means the Department of Constitutional Affairs’ Code of Practice on the discharge of public authorities’ functions under Part 1 of the Freedom of Information Act 2000 (issued under section 45 of that Act) (November 2004) as may be updated or re-issued from time to time and any other relevant codes of practice published by the Department of Constitutional Affairs or its successor bodies;
- 1.1.2 “**Confidential Information**” 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 information which relates to the business, affairs, finances, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, and customers of ONR or the Contractor (as the case may be) and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;
- 1.1.3 “**Contractor’s Equipment**” means any equipment, including tools, systems (including laptops), cabling or facilities provided by the Contractor or its sub-contractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to ONR;
- 1.1.4 “**Contractor’s Team**” means all employees, consultants, agents and sub-contractors which the Contractor engages in any way in relation to the supply of the Services;
- 1.1.5 “**Control**” means the ability to direct the affairs of another party whether by virtue of the ownership of shares, contract or otherwise (and “**Controlled**” shall be construed accordingly);
- 1.1.6 “**Deliverables**” means the documents, data, information, devices, processes or other material to be provided by the Contractor to ONR as part of the Services;
- 1.1.7 “**Equality Legislation**” means any and all legislation, applicable guidance and statutory codes of practice relating to diversity, equality, non discrimination and human rights as may be in force from time to time in England and Wales or in any other territory in which, or in respect of which, the Contractor provides the Services;

- 1.1.8 **“Information Disclosure Requirements”** means the requirements to disclose information under:
- (a) the Code;
  - (b) the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the UK Information Commissioner in relation to such legislation; and/or
  - (c) the Environmental Information Regulations 2004;
- 1.1.9 **“Intellectual Property Rights”** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database, rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- 1.1.10 **“ONR Requirements”** means the instructions, requirements, policies, codes of conduct, guidelines, forms and other documents of ONR notified to the Contractor in writing;
- 1.1.11 **“Personnel Vetting Procedures”** means:
- (a) obtaining satisfactory employment references in respect of the relevant individual, covering the individual’s employment for the two year period up to the date of reference;
  - (b) ensuring the individual has passed suitable checks to confirm that he or she is fit for work; and
  - (c) ensuring the individual is lawfully entitled to work in the United Kingdom and that the Contractor has seen original documentation confirming such entitlement;
  - (d) Such checks shall meet the requirements of HMG Baseline Personnel Security Standard.

- 1.1.12 “**Relevant Conviction**” means any previous or pending prosecution, conviction, caution or binding-over order (excluding any spent conviction as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order), other than any minor road traffic offence, that is relevant to the nature of the Services;
- 1.1.13 “**Request for Information**” means a request for information (as defined in the Freedom of Information Act 2000) relating to or connected with this Contract or ONR more generally or any apparent request for such information under the Information Disclosure Requirements;
- 1.1.14 “**Services**” means the services to be provided by the Contractor under this Contract as set out in Schedule 2 (Services); and
- 1.1.15 “**Working Day**” means a day (other than a Saturday or Sunday) on which banks are generally open for business in London.
- 1.2 In this Contract, unless otherwise indicated:
- 1.2.1 a reference to a Schedule is a reference to a Schedule to this Contract; and
- 1.2.2 a reference in a Schedule to a clause is a reference to a clause in that Schedule.
- 1.3 Where the words “**include(s)**” or “**including**”, or words of a similar nature, are used in this Contract, they are deemed to have the words “without limitation” following them, and are illustrative and shall not limit the sense of the words preceding them.
- 1.4 A reference in this Contract to a statute or statutory provision is a reference to the relevant UK statute or statutory provision as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

## **2 Contractor’s Responsibilities**

- 2.1 The Contractor shall provide the Services, and deliver the Deliverables to ONR, with reasonable skill, care and ability in accordance with the terms of this Contract (and, in particular, Schedule 1 (Special Terms) and Schedule 2 (Services), and shall allocate sufficient resources to the Services to enable it to comply with this obligation.
- 2.2 The Contractor shall comply with, and complete and return any forms or reports from time to time required by, ONR Requirements.

- 2.3 The Contractor shall:
- 2.3.1 observe, and ensure that, where applicable, the Contractor's Team observes, any applicable security policy or health and safety policy notified to the Contractor and any reasonable verbal or written instructions or policies issued to the Contractor at any time and shall comply with the legal requirements of any country in which the Services are being provided and, if the Contractor fails to do so, ONR reserves the right to refuse the Contractor's Team access to the ONR's premises and/or to suspend the provision of the Services until such time as the Contractor (and, where applicable, the Contractor's Team) is compliant with such policies, instructions or requirements and ONR shall not be required to pay the Charges in respect of the period of such suspension; and
  - 2.3.2 before the date on which the Services are to start, obtain and at all times maintain and comply with all licences and consents required to enable the Contractor to provide the Services in accordance with this Contract.
- 2.4 The Contractor shall not at any time during the Term do or say anything which damages or which could reasonably be expected to damage the interests or reputation of ONR or its officers, employees, agents or contractors.
- 2.5 The Contractor shall use all reasonable endeavours to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of ONR, its employees or any other contractor engaged by ONR.
- 2.6 The Contractor shall use all reasonable endeavours to ensure that it is available at all times on reasonable notice to provide such assistance or information as ONR may require.
- 2.7 The Contractor may use another person, firm, company or organisation to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that ONR will not be liable to bear the cost of such functions.
- 2.8 The Contractor warrants that the Contractor's Equipment shall be of satisfactory quality and fit for the purpose of providing the Services in accordance with this Contract.
- 2.9 The Contractor acknowledges that it:
- 2.9.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of ONR and has entered into this Contract in reliance on its own due diligence alone; and
  - 2.9.2 has received sufficient information required by it in order to determine whether it is able to provide the Goods in accordance with the terms of this Contract.
- 2.10 Nothing in clause 2.9 shall operate to exclude fraud or fraudulent misrepresentation.

- 2.11 If, as part of the Services, the Contractor procures any goods or services from third parties on behalf of ONR, then the Contractor shall do so in accordance with the Public Contracts Regulations 2006 to the extent those Regulations would be applicable if the Contractor was a “contracting authority” as defined in those Regulations.

### **3 Quality and Performance**

- 3.1 The Contractor shall comply with any quality assurance procedure and provide any feedback or other form of reporting in connection with the Services that is reasonably requested by ONR from time to time.
- 3.2 The Contractor shall meet with representatives of ONR upon request to discuss matters relating to the Services and to review the quality of the Services and Deliverables provided.
- 3.3 ONR reserves the right to reject or require re-performance (at no additional cost to the ONR) of any Services which are defective or which are otherwise not in accordance with the requirements of this Contract.
- 3.4 If at any time within 12 months following the date of provision of any aspect of the Services, any such Services (or any part thereof) is found to be defective or otherwise not in accordance with the requirements of this Contract, the Contractor shall promptly on request and without charge, remedy the deficiency by re-performing, or (where applicable) repairing, or supplying replacements for, the relevant Services.

### **4 Contractor’s Team**

- 4.1 The Contractor hereby warrants that all personnel employed or engaged by, or on behalf of, the Contractor in the provision of the Services at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Personnel Vetting Procedures and throughout the Term the Contractor shall comply with the Personnel Vetting Procedures in respect of all personnel employed or engaged in the provision of the Services.
- 4.2 The Contractor shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Contractor to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service procedures or otherwise), is employed or engaged in the provision of any part of the Services without ONR's prior and express written consent.
- 4.3 If requested by ONR, the Contractor shall provide documentary evidence of their (and/or the Contractor’s Team members’) eligibility to work in the UK. ONR shall not be held responsible for securing work permits for potential members of the Contractor’s Team who come from overseas.

- 4.4 Without relieving the Contractor of its duty to deliver the Services, ONR reserves the right to refuse any employee, consultant, agent or subcontractor of the Contractor access to ONR's premises where, in ONR's absolute discretion, such person's behaviour is unacceptable or they have not satisfied or been subject to the relevant checks referred to in this clause 4.
- 4.5 If required by ONR, the Contractor shall replace any person that has not satisfied the requirements set out in this clause 4 with another suitably qualified person and ensure that the provision of the Services continues without interruption in accordance with the terms of this Contract.

## **5 Status**

- 5.1 The relationship of the Contractor to ONR will be that of independent contractor and nothing in this Contract shall render the Contractor or any of the Contractor's Team an employee, worker, agent or partner of ONR and the Contractor shall not hold itself out as such.
- 5.2 The Contractor shall be fully responsible for and shall indemnify ONR for and in respect of any liability for any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Contractor (or, where applicable, any member of the Contractor's Team) against ONR arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of ONR.
- 5.3 ONR may at its option satisfy the indemnity set out in clause 5.2 above (in whole or in part) by way of deduction from any outstanding Charges or other payments due to the Contractor.
- 5.4 Where applicable (and subject to anything to the contrary in Schedule 1 (Special Terms)), the Contractor:
- 5.4.1 acknowledges and agrees that it is intended that all employees of the Contractor (if any) shall remain employees of the Contractor and that termination of this Contract (or any part of it) shall not operate to transfer the contracts of employment of any employees to ONR or any third party; and
  - 5.4.2 shall use all reasonable endeavours to ensure that no member of its staff is deployed in the delivery of the Services to such an extent that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (or any applicable equivalent legislation in any relevant jurisdiction, including in the European Union the Acquired Rights Directive (Council Directive 77/187 as amended) and any national legislation enacting to such Directive) may operate to transfer the employment of such member of staff to the ONR or any successor service provider upon termination of this Contract.



## **6 Price and Payment**

- 6.1 Unless stated otherwise, the Charges are exclusive of value added tax (VAT) or any equivalent sales tax in any applicable jurisdiction, which, if properly chargeable, ONR shall pay at the prevailing rate subject to receipt from the Contractor of a valid and accurate tax invoice. In the event that ONR is required by the laws or regulations of any applicable jurisdiction to deduct any withholding tax or similar taxes from the Charges, ONR shall deduct and account for such taxes before paying the remainder of the Charges to the Contractor and shall notify the Contractor in writing of all such sums properly deducted.
- 6.2 Unless stated otherwise in Schedule 3 (Charges), the Contractor shall invoice for the Charges monthly in arrears and all such invoices shall be accompanied by a statement setting out the Services supplied in the relevant month in sufficient detail to justify the Charges charged (including any timesheets or other information required by, and to be provided in the format set out in, ONR Requirements).
- 6.3 Subject to clauses 6.4 to 6.6 below, ONR shall, unless agreed otherwise by the parties in writing, pay each of the Contractor's valid and accurate invoices by automated transfer into the Contractor's nominated bank account no later than 30 days after the invoice is received.
- 6.4 Provided that it notifies the Contractor in writing in advance, and works in good faith to resolve any issues or disputes within 30 days, ONR shall be entitled to withhold payment of any sums in respect of any Services or Deliverables which have not been provided by the Contractor to ONR's satisfaction and in accordance with the terms of this Contract.
- 6.5 In the event that ONR makes any overpayment in connection with this Contract (or any other agreement between the parties), ONR may, upon written notice to the Contractor, deduct the amount of such overpayment from any future invoice or require repayment of such sum within 30 days after the date on which it serves written notice on the Contractor.
- 6.6 Without prejudice to the other rights and remedies available to ONR under this Contract, ONR shall be entitled (but not obliged) at any time or times without notice to the Contractor to set off any liability of the Contractor to ONR against any liability of ONR to the Contractor (in any case howsoever arising and whether any such liability is present or future) and may for such purpose convert or exchange any currency.
- 6.7 The Contractor shall be solely responsible for all taxes, national insurance or other withholdings or contributions which may be payable out of, or as a result of the receipt of, any Charges or other monies paid or payable in respect of the Services. The Contractor shall indemnify ONR against all costs, claims, expenses (including legal expenses) and/or proceedings arising out of or in connection with the Contractor's non-payment (or underpayment) of such taxes, national insurance or other withholdings or contributions.
- 6.8 Any requirement under applicable law to account for the Services in Euro (€) (or to prepare such accounting), instead of and/or in addition to Sterling (£), shall be implemented by the Contractor at no additional cost to ONR.

## **7 Audit**

- 7.1 The Contractor will fully co-operate with and assist ONR in meeting its audit and regulatory requirements by providing access for ONR, its internal auditors (which shall include for the purposes of this Contract ONR's internal audit, security and operational risk functions), its external auditors or any agents appointed by ONR to conduct appropriate reviews and inspections of the activities and records of the Contractor (and to take copies of records and documents and interview members of the Contractor's Team) relating to the performance of the Services and to the accuracy of the Charges. The Contractor shall maintain all records relating to this Contract (including the provision of the Services and the payment of all Charges and expenses) for a period of six (6) years following the year in which the provision of the Services under this Contract is completed or such longer period as ONR may notify to the Contractor in writing from time to time.
- 7.2 If the results of an audit demonstrate that the Contractor has claimed any sums in respect of Charges or reimbursable expenditure in excess of their entitlement under the terms of the Contract, the Contractor shall within 28 days after a written demand by ONR make reimbursement in full in respect of any such overpayment.
- 7.3 The Contractor shall bear its own cost in relation to any reasonable number of audits carried out by ONR. Where any audit reveals any breach or non-compliance by the Contractor, the Contractor shall also bear the costs of ONR carrying out such audit.

## **8 Change Control and Variation**

- 8.1 If either party wishes to change the scope or provision of the Services, it shall submit details of the requested change to the other in writing and such change shall only be implemented if agreed in accordance with the remainder of this clause.
- 8.2 If ONR requests a change to the scope or provision of the Services:
- 8.2.1 the Contractor shall, within a reasonable time (and in any event not more than 10 Working Days after receipt of ONR's request), provide a written estimate to ONR of:
- (i) the likely time required to implement the change;
  - (ii) any reasonable variations to the Charges arising directly as a result of the proposed change; and
  - (iii) any other impact of the change on the terms of this Contract;
- 8.2.2 if, following receipt of the Contractor's written estimate submitted in accordance with clause 8.2.1, ONR does not wish to proceed, there shall be no change to this Contract; and

- 8.2.3 if ONR wishes the Contractor to proceed with the change, the Contractor shall do so after agreement on the necessary variations to the Charges, the Services and any other relevant terms of this Contract to take account of the change following which this Contract shall be varied by the parties setting out in writing, and signing, the agreed changes.
- 8.3 If the Contractor requests a change to the scope or provision of the Services, it shall send such request to ONR in writing, accompanied by a written statement of the matters referred to in clause 8.2.1, and ONR shall withhold or give its consent to such change in its sole discretion. If ONR wishes the Contractor to proceed with the change, the Contractor shall do so, following a variation of this Contract in writing signed by (or on behalf of) each of the parties.

## **9 Intellectual Property Rights**

- 9.1 Where any Intellectual Property Rights owned by or licensed to ONR are required to be used in connection with the provision of the Services, the Contractor acknowledges that the Contractor shall have no right to use the same except to the extent necessary for the provision of the Services and subject to such consents and restrictions as may be specified by ONR.
- 9.2 The Contractor hereby assigns to ONR with full title guarantee by way of present and future assignment any and all Intellectual Property Rights in the Deliverables, and any other Intellectual Property Rights the Contractor creates during its performance of the Services.
- 9.3 The Contractor shall procure the waiver in favour of ONR of all moral rights arising under the Copyright, Designs and Patents Act 1988 and, so far as is legally possible, any broadly equivalent rights such authors may have in any territory of the world, relating to the Deliverables.
- 9.4 The Contractor shall execute all deeds and documents which may reasonably be required to give effect to this clause 9.
- 9.5 The Contractor warrants to ONR that:
- 9.5.1 the performance of the Services by the Contractor will not result in the infringement of any Intellectual Property Rights of any third party; and
- 9.5.2 any documents or other materials created by the Contractor in the provision of the Services for use by ONR will be original and created specifically for ONR..

9.6 The Contractor agrees to indemnify ONR, and to keep ONR indemnified, together with its officers, directors, employees and agents, against all actions, claims, proceedings and all damages, losses, costs and expenses arising out of or in connection any infringement of the Intellectual Property Rights of any third party occurring as a result of or in the course of or in connection with the performance of the Services, except to the extent that such claims arise directly from the use in accordance with ONR's instructions of any data, information or other resources provided by ONR to the Contractor.

9.7 Nothing in this Contract shall prevent the Contractor from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, to the extent that it does not result in a disclosure of ONR's Confidential Information or an infringement of Intellectual Property Rights.

## **10 Limitation of Liability**

10.1 Nothing in this Contract shall exclude or restrict the liability of either party to the other for death or personal injury resulting from negligence or for fraudulent misrepresentation or in any other circumstances where liability may not be limited under any applicable law.

10.2 Nothing in this Contract shall exclude or restrict the liability of the Contractor to ONR for any breach by the Contractor of clause 11 (Confidentiality and Freedom of Information) or clause 12 (Data Protection) or under clause 9.6 (Intellectual Property Rights).

10.3 Subject to clauses 10.1 and 10.2:

10.3.1 neither party shall be liable to the other whether in contract, tort, negligence, breach of statutory duty or otherwise for any indirect loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with this Contract; and

10.3.2 the liability of each party to the other, whether in contract, tort, negligence, breach of statutory duty or otherwise, in respect of any one claim or series of linked claims under or in connection with this Contract shall be limited to the sum equal to the Charges properly paid and payable (plus any late payment interest properly chargeable thereon) during the period of 12 months immediately preceding the relevant claim.

10.4 Except where otherwise expressly stated in this Contract, all remedies available to either party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

10.5 The provisions of this clause 10 shall survive the termination of this Contract, however arising.

## 11 Confidentiality and Freedom of Information

11.1 For the purposes of this clause 11:

11.1.1 the “**Disclosing Party**” is the party which discloses Confidential Information to, or in respect of which Confidential Information comes to the knowledge of, the other party; and

11.1.2 the “**Receiving Party**” is the party which receives Confidential Information relating to the other party.

11.2 The Receiving Party shall take all necessary precautions to ensure that all Confidential Information it receives under or in connection with this Contract:

11.2.1 is given only to such of its staff (or, in the case of the Contractor, the Contractor’s Team) and professional advisors or consultants engaged to advise it in connection with this Contract as is strictly necessary for the performance of this Contract and only to the extent necessary for the performance of this Contract; and

11.2.2 is treated as confidential and not disclosed (without the prior written consent of the Disclosing Party) or used by the Receiving Party or any member of its staff (or, in the case of the Contractor, the Contractor’s Team) or its professional advisors or consultants otherwise than for the purposes of this Contract.

11.3 The Contractor shall ensure that all members of the Contractor’s Team or professional advisors or consultants are aware of the Contractor’s confidentiality obligations under this Contract and shall immediately notify ONR if the Contractor becomes aware of any unauthorised disclosure of any Confidential Information. The Contractor shall co-operate with ONR in any investigation that ONR considers necessary to undertake as a result of any such unauthorised disclosure of Confidential Information.

11.4 The provisions of clauses 11.2 and 11.3 shall not apply to any Confidential Information which:

11.4.1 is or becomes public knowledge (otherwise than by breach of this clause 11);

11.4.2 was in the possession of the Receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party;

11.4.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

11.4.4 is independently developed without access to the Confidential Information; or

- 11.4.5 is required to be disclosed by any applicable law or regulation, or any court, or governmental or administrative or regulatory authority competent to require such disclosure, provided that the Receiving Party has given the Disclosing Party reasonable notice (where legally permissible to do so) in writing of such required disclosure so that the Disclosing Party has had an opportunity to defend or apply to limit or protect such Confidential Information from disclosure and the provisions of this clause 11 shall not apply to that Confidential Information to the extent only that it is so required to be produced or disclosed.
- 11.5 The provisions under this clause 11 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information. To the extent such legislation is applicable to the Contractor, the Contractor shall comply with, and shall ensure that each member of the Contractor's Team complies with, the provisions of the Official Secrets Act 1911 to 1989.
- 11.6 The Contractor acknowledges that ONR is subject to the Information Disclosure Requirements and shall assist and co-operate with ONR to enable ONR to comply with those requirements.
- 11.7 Where ONR receives a Request for Information in relation to information that the Contractor or any of its sub-contractors is holding on behalf of ONR and which ONR does not hold itself, ONR shall as soon as reasonably practicable after receipt and in any event within five Working Days of receipt, forward the Request for Information to the Contractor and the Contractor shall:
- 11.7.1 provide ONR with a copy of all such information in the form that ONR requires as soon as practicable and in any event within 10 Working Days (or such other period as ONR acting reasonably may specify) of ONR's request; and
- 11.7.2 provide all necessary assistance as reasonably requested by ONR to enable ONR 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, as applicable.
- 11.8 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that ONR may nevertheless be obliged to disclose the Contractor's Confidential Information in accordance with the Information Disclosure Requirements:
- 11.8.1 in certain circumstances without consulting the Contractor; or

11.8.2 following consultation with the Contractor and having taken its views into account,

provided always that where clause 11.8.1 above applies, ONR shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any of the Contractor's Confidential Information.

11.9 This clause 11 shall remain in full force and effect in the event of any termination of this Contract.

## **12 Data Protection**

12.1 In this clause 12, "**Data Subject**", "**Personal Data**", "**Process**", "**Processed**" and "**Processing**" shall have meanings ascribed to them in the Data Protection Act 1998.

12.2 The Contractor acknowledges and agrees that Personal Data provided to ONR by, or on behalf of, the Contractor will be Processed by and on behalf of ONR in connection with this Contract and warrants that all relevant Data Subjects have given their informed consent for such Personal Data to be Processed by and on behalf of ONR for such purposes.

12.3 If any Personal Data belonging to ONR personnel or any third parties are disclosed to the Contractor pursuant to this Contract, the Contractor shall, in relation to such Personal Data:

12.3.1 Process the Personal Data only in accordance with instructions from the ONR;

12.3.2 Process the Personal Data only to the extent, and in such a manner, as is necessary for the performance of the Contractor's obligations under this Contract or as is required by law;

12.3.3 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;

12.3.4 not transfer the Personal Data to any country or territory outside the European Economic Area without the prior written consent of ONR;

12.3.5 take reasonable steps to ensure that such Personal Data are not unlawfully disclosed or Processed as a result of the Contractor's access to such Personal Data; and

- 12.3.6 provide to ONR such information regarding the Contractor's compliance with clauses 12.3.1 to 12.3.5 as ONR may from time to time reasonably require to enable it to comply with its obligations as a data controller and, more generally, to ensure that Personal Data relating to ONR personnel are appropriately protected.
- 12.4 The Contractor shall not perform its obligations under this Contract in such a way as to cause ONR to breach any of its applicable obligations under the Data Protection Act 1998.

### **13 Force Majeure**

- 13.1 Neither party shall be in breach of this Contract if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control ("**force majeure**") including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, volcanic ash, earthquake, explosion, terrorist act, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of consultants or sub-contractors (save that the Contractor shall be liable for, and shall not be excused non-performance of this Contract due to, any breach by its sub-contractors).

### **14 Termination**

- 14.1 Without prejudice to any other rights or remedies which ONR may have, ONR may terminate this Contract without liability to the Contractor immediately on giving notice to the Contractor if:
  - 14.1.1 the performance of the Services is delayed, hindered or prevented by circumstances of force majeure (as described in clause 13) for a period in excess of 28 days; or
  - 14.1.2 where the Contractor is a company, there is a change of Control of the Contractor.
- 14.2 Either party may give notice to the other terminating this Contract with immediate effect if:
  - 14.2.1 the other party commits any material breach of any of the terms of this Contract and that breach (if capable of remedy) is not remedied within 30 days after notice being given requiring it to be remedied (and where such breach is not capable of remedy, the terminating party shall be entitled to terminate the Contract with immediate effect);



- 14.2.2 an order is made or a resolution is passed for the winding-up of the other party or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the other party or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/ or manage or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action (in any jurisdiction) in consequence of debt; or
- 14.2.3 the other party ceases, or threatens to cease, to carry on business.
- 14.3 ONR may at any time by notice terminate this Contract with immediate effect if the Contractor is in persistent breach of any of its obligations under this Contract, whether or not such breach is capable of remedy. For the purposes of this clause 14.3, three or more non-material breaches of the terms of this Contract may together constitute a persistent breach.
- 14.4 In any circumstances where ONR has the right to terminate this Contract it may instead, by serving notice on the Contractor, opt to suspend the provision of the Services for a reasonable period and ONR shall not be required to pay any Charges in respect of such period of suspension.
- 14.5 On termination of this Contract for any reason the Contractor shall immediately return to ONR, at ONR's request, all documents, materials, information and other resources provided by ONR to the Contractor for the purposes of or in connection with this Contract (except that, where expressly agreed in writing by ONR, the Contractor shall be entitled to retain one copy of such documents, materials, information and other resources for audit purposes only, subject to the confidentiality obligations in clause 11).
- 14.6 If the Contractor fails to fulfil its obligations under clause 14.5, ONR may enter the Contractor's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Contractor shall be solely responsible for their safe keeping.
- 14.7 During the period between service of a notice of termination and the effective date of termination, the Contractor shall provide ONR with all reasonable assistance and information to enable an efficient handover to a new service provider (or to ONR).
- 14.8 Termination of this Contract, however it arises, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 14.9 Upon the termination of this Contract, ONR shall pay the Charges (or such percentage of the Charges) properly incurred but previously unpaid up to the effective date of termination.

## **15 Health and Safety**

- 15.1 The Contractor shall promptly notify ONR of any health and safety hazards which may arise in connection with the performance of this Contract, take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by the performance of the Services and notify the Contractor of any incident occurring on ONR's premises or otherwise in connection with the provision of the Services of which the Contractor becomes aware and which causes or could give rise to significant personal injury.
- 15.2 The Contractor shall take all necessary measures to comply with the requirements of the Health & Safety at Work Etc Act 1974 (or any equivalent legislation in any applicable jurisdiction) and any other acts, orders, regulations and codes of practice (including any approved codes of practice) relating to health and safety, which may apply to the performance of this Contract.

## **16 Prevention of Fraud, Corruption and Bribery**

- 16.1 The Contractor undertakes and warrants that neither it nor the Contractor's staff, employees or sub-contractors have offered, given or agreed to give, nor shall offer or give or agree to give to any person, company or firm any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do anything in relation to the obtaining of this Contract or the execution of the Contractor's obligations under this Contract or for showing or forbearing to show favour or disfavour to any person, company or firm in relation to this Contract.
- 16.2 The Contractor warrants that it has in place, and undertakes that it will comply with, policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud within its organisation and in connection with its dealings with third parties.
- 16.3 The Contractor warrants that it has not colluded, and undertakes that it will not at any time collude, with any third party relating to its pricing under this Contract and further warrants and undertakes that it has complied, and will at all times comply, with the provisions of the Competition Act 1998 (or equivalent anti-trust legislation or regulations applicable in the countries in which the Contractor operates or is to provide the Services) in connection with this Contract and the provision of the Services. Nothing under this clause 16.3 is intended to prevent the Contractor from discussing the terms of this Contract and the Contractor's pricing with the Contractor's professional advisors.

## 17 Conflicts of Interest

17.1 ONR understands and accepts that the Contractor is entitled to seek, apply for, accept and perform contracts to supply goods and services to third parties. However, the Contractor undertakes not to accept contracts to supply goods or services to third parties where this could result in:

17.1.1 the Contractor providing goods or services to competitors of ONR where this could (in ONR's reasonable opinion) have a commercially harmful effect on ONR; or

17.1.2 a breach of the terms of this Contract, including the Contractor's obligations under clause 11 (Confidentiality and Freedom of Information).

## 18 Responsible Business

18.1 The Contractor shall:

18.1.1 ensure that it respects and promotes the rights set out in the International Labour Organisation's International Labour Standards and the provisions of the United Nations' Universal Declaration of Human Rights in respect of both its personnel and its suppliers;

18.1.2 demonstrate a commitment to equality and diversity, have an appropriate diversity policy approved by its board of directors and ensure that it does not, whether as employer or provider of the Services engage in any act or omission that would contravene the Equality Legislation and comply with all its obligations as an employer or provider of Services as set out in the Equality Legislation and take all reasonable endeavours to ensure its personnel do not unlawfully discriminate within the meaning of the Equality Legislation;

18.1.3 demonstrate environmental responsibility and comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the provision of the Services. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such agreements or codes of practice as if they were incorporated into English law;

18.1.4 maintain a document (or documents) setting out its policy on corporate social responsibility ("**CSR Policy**") and on the request of ONR disclose a copy of the CSR Policy to ONR and demonstrate to ONR the impact and effectiveness of the CSR Policy; and

18.1.5 impose on all its sub-contractors and suppliers, obligations substantially similar to those imposed on the Contractor by this clause 18.

18.2 The Contractor shall meet all reasonable requests by ONR for information evidencing the Contractor's compliance with the provisions of clause 18.1.

## **19 Welsh Language Scheme**

19.1 Where the Services are to be provided to Wales, the Contractor shall adhere to ONR's Welsh Language Scheme and the Welsh and English Languages shall be treated on a basis of equality in accordance with the Welsh Language Act 1993.

## **20 Publicity**

20.1 The Contractor shall not publicise the terms of this Contract or use the name of ONR or any trade name or trade mark used by ONR or refer to ONR in any other way in any press release, promotional literature, publications or advertising material, including without limitation any website, "blogs", social media or other online services, without the prior written consent of ONR.

## **21 Assignment and Sub-Contracting**

21.1 The Contractor shall not, without the prior written consent of ONR, assign, transfer, charge, create a trust in, or deal in any other manner with all or any of its rights or obligations under this Contract.

21.2 ONR may assign or novate this Contract to: (i) any separate entity Controlled by ONR; (ii) any body or department which succeeds to those functions of ONR to which this Contract relates; or (iii) any provider of outsourcing or third party services that is employed under a service contract to provide services to ONR. The Contractor warrants and represents that it will (at ONR's reasonable expense) execute all such documents and carry out all such acts, as reasonably required to give effect to this clause 21.2.

21.3 The Contractor may not sub-contract the provision of any material part of the Services without the prior written consent of ONR, such consent not to be unreasonably withheld or delayed.

21.4 Notwithstanding any sub-contracting permitted under clause 21.3, the Contractor shall remain wholly liable and responsible for all acts and omissions (howsoever arising) of its sub-contractors in the performance of the Services.

21.5 The Contractor shall pay any valid invoice received from any of its sub-contractors within 30 days following receipt of the invoice.

21.6 ONR reserves the right to request the replacement of any approved sub-contractor on reasonable grounds.

## **22 Third Party Rights**

- 22.1 This Contract does not create any rights or benefits enforceable by any person not a party to it (within the meaning of The Contracts (Rights of Third Parties) Act 1999) except that a person who under clause 21 is a permitted successor or assignee of the rights or benefits of a party may enforce such rights or benefits.
- 22.2 The parties agree that no consent from any such permitted successor or assignee is required for the parties to vary or rescind this Contract (whether or not in a way that varies or extinguishes rights or benefits in favour of such third parties).

## **23 Entire Agreement**

- 23.1 This Contract contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing, provided that nothing in this clause 23.1 shall operate to limit or exclude either party's liability for fraudulent misrepresentation.

## **24 Waiver**

- 24.1 A waiver of any right under this Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

## **25 Severability**

- 25.1 If any provision (or part of a provision) of this Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 25.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

## **26 Governing Law**

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

## **27 Dispute Resolution Procedure**

- 27.1 If any dispute or claim (including any non-contractual dispute or claim) arises out of or in connection with this Contract, the parties shall, following service of written notice by one party on the other, attempt to resolve amicably by way of good faith negotiations and discussions any such dispute or claim as soon as reasonably practicable (and in any event within 10 Working Days after such notice or by such later date as the parties may otherwise agree in writing).

- 27.2 If the parties are unable to resolve the dispute or claim in accordance with clause 27.1, the parties shall seek settlement of that dispute or claim by mediation in accordance with the LCIA Mediation Rules (as at the date of such mediation), and those Rules are deemed to be incorporated by reference into this clause 27.
- 27.3 If the dispute or claim is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall agree in writing, the dispute or claim shall be referred to and finally resolved by arbitration under the LCIA Rules, and those Rules are deemed to be incorporated by reference into this clause 27.
- 27.4 The language to be used in the mediation and in the arbitration shall be English.
- 27.5 In any arbitration commenced pursuant to this clause 27:
- 27.5.1 the number of arbitrators shall be three; and
- 27.5.2 the seat, or legal place, of arbitration shall be London, England.
- 27.6 Nothing in this clause 27 shall prevent either party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Contract or infringement, or threatened infringement, of the applicant's Intellectual Property Rights.

## **28 Notices**

- 28.1 Notice given under this Contract shall be in writing, sent for the attention of the person, and to the address, given on the front page of this Contract (or such other address or person as the relevant party may notify to the other party) and shall be delivered either personally, by courier, or by recorded delivery. Subject to clause 28.2, a notice is deemed to have been received on signature of a delivery receipt by an individual at the correct address for notices, or at the time the notice is left at such correct address.
- 28.2 If deemed receipt under clause 28.1 is not within the hours of 09:00 to 17:00 on a Working Day the notice will be deemed to be received at 09:00 on the first subsequent Working Day.

## **29 Warranties**

- 29.1 Each party warrants to the other party that it has full power and authority to carry out the actions contemplated under this Contract, and that its entry into and performance under the terms of this Contract will not infringe the rights of any third party or cause it to be in breach of any obligations to a third party.

### **30 Transparency**

- 30.1 Notwithstanding any other term of this Contract, the Contractor consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the Information Disclosure Requirements.

### **31 Counterparts**

- 31.1 This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.