

## CONTRACT FOR *[Include appropriate contract description]*

(*Purchase Order Number* )

This Contract is dated *[insert date]* and is made between:-

1. **The Secretary of State for Energy and Climate Change** (the “Authority”) of 3 Whitehall place, London SW1A 2AW;  
  
and
2. *[insert name of contractor]* (the “Contractor”) whose registered office is at *[insert registered office address]*.

### INTRODUCTION

- (A) On *[insert date]* the Authority issued an invitation to tender for the provision of a Small Business Research Initiative (SBRI) *[insert brief description of phase 1 activity]*. Full details of the requirements are set out in the Specification (attached in Schedule 1).
- (B) In response, the Contractor submitted a proposal dated *[insert date]* and entitled *[insert title]* explaining how it would provide the services required, a copy of which is set out in Schedule 2 (the “Proposal”).
- (C) The Full Contract Price shall be subject to a price reduction which reflects the estimated future economic benefit of the Arising Intellectual Property (the “Reduction”). The Reduction may be negotiated by the parties. The Authority has appointed external advisers to inform these negotiations.

The parties agree as follows:-

### 1. SUPPLY OF SERVICES AND PRICE

- 1.1 In consideration of payment by the Authority to the Contractor of the sum of £ *[insert phase 1 price]* (inclusive of Value Added Tax) (the “Contract Price”) and in accordance with the Authority’s Standard Terms and Conditions of Contract for Pre-Commercial Procurement (the “Standard Terms”) (a copy of which were issued by the Authority on *[insert date]* and are attached at Schedule 3), the Contractor shall provide the Services in accordance with the Specification and the Proposal.

### 2. COMMENCEMENT AND CONTINUATION

This Contract shall commence on *[insert date]* and subject to any provisions for earlier termination contained in the Standard Terms shall be completed by *[insert date]*.

### **3. TERMS AND CONDITIONS**

- 3.1 The Standard Terms shall form part of this Contract. In the event of conflict between these clauses and the Standard Terms, these clauses shall prevail to the extent of the conflict.
- 3.2 The Contractor's Standard Terms and Conditions of business shall not apply to this Contract.
- 3.3 This Contract is formed of these clauses and the Schedules hereto. Any other attachments are provided for information purposes only and are not intended to be legally binding.

### **4. CONTRACTOR'S OBLIGATIONS**

- 4.1 The Contractor is required to provide *[insert phase 1 deliverable]* as the key deliverable stated in the Specification and Proposal by the deadline indicated in *[insert where/how]*.
- 4.2 The Contractor is required to submit *[insert description of phase 1 requirements for publication]* to *[insert name]* by the Phase 1 deadline indicated in 4.1 to be published on the Authority's designated website.
- 4.3 The Contractor, following satisfactory completion of *[insert phase 1 deliverable]*, may be invited to submit a short application to proceed to *[insert details of phase 2]* by *[insert date of phase 2 application deadline]*.

### **5. MANAGEMENT AND COMMUNICATIONS**

- 5.1 The Contractor shall perform the Services under the direction of the Authority.
- 5.2 Any direction by the Authority may be given by *[insert name]* (the "Contract Manager") who is an officer in the Authority's Innovation Delivery Team or such other person as is notified by the Authority to the Contractor in writing.
- 5.3 The Contractor appoints *[insert name & address]* to be the Contractor's first point of contact for this Contract. All queries to the Contractor from the Authority's Contract Manager shall initially be addressed to the Contractor's first point of contact.

5.4 The Contractor's first point of contact and the Contract Manager may, where necessary, meet at the Authority's request to review the Contractor's performance.

**6. INVOICES AND PAYMENT**

6.1 Subject to the Contractor providing the Services to the Authority in accordance with this Contract and submitting invoice/s to the Contract Manager in the manner reasonably required by the Contract Manager, payment will be made by the Authority to the Contractor in accordance with clause 11 of the Standard Terms.

**7. TRANSPARENCY**

7.1 The contractor is required to provide a brief description of the project to be published on the Authority's website.

7.2 Following completion of the projects, the Authority expects to publish on its website a summary of the funded activities and the outcomes achieved including the project definition, a summary of the technical details and the outputs. The Authority may also revisit projects at a later date and publish an evaluation report for the Services as a whole.

7.3 The Authority recognises the need to maintain the confidentiality of commercially sensitive information.

Signed by the parties' duly authorised representatives:-

For the Secretary of State for Energy and Climate Change

Signature: .....

Print Name: .....

Job Title: .....

Date:.....

For the Contractor

Signature: .....

Print Name: .....

Job Title: .....

Date: .....

**The following Schedules form part of this Contract:**

- |            |  |
|------------|--|
| Schedule 1 | The Authority's Specification (Guidance notes)   |
| Schedule 2 | The Contractor's Proposal  |
| Schedule 3 | the Authority's Standard Terms & Conditions of Contract for Pre-Commercial Procurement |

### **Schedule 3: DECC TERMS AND CONDITIONS OF CONTRACT FOR PRE-COMMERCIAL PROCUREMENT**

#### **1. Definitions and Interpretation**

(1) In these terms and conditions of contract for services (“Conditions”):

“Arising Intellectual Property” means the Intellectual Property Rights which are created as a result of the Contractor’s performance of the Services (“Arising Intellectual Property”)

“Authority” means the Secretary of State for Energy and Climate Change;

“Authority’s Premises” means land or buildings owned or occupied by the Authority;

“Background Intellectual Property” means Intellectual Property Rights owned, controlled or used by either of the Parties at the date of this Contract or which shall at any time thereafter become so owned, controlled or used otherwise than as a result of the performance of the Services under this Contract;

“Confidential Information”:

- a) means all information obtained by the Contractor from the Authority or any other department or office of Her Majesty's Government relating to and connected with the Contract and the Services; but
- b) does not include the Contract itself and the provisions of the Contract where, or to the extent that, the Authority publishes them by virtue of Condition 40;

the “Contract” means the agreement concluded between the Authority and the Contractor for the supply of Services, including without limitation these Conditions (to the extent that they are not expressly excluded or modified), all specifications, plans, drawings and other documents which are incorporated into the agreement;

the “Contractor” means the person who agrees to supply the Services and includes any person to whom all or part of the Contractor’s obligations are assigned pursuant to Condition 4;

“the Charges” means the price agreed in respect of the Services, excluding Value Added Tax;

“Data” means information collected or used for the purposes of performing the Services, which can be processed manually, electronically or by other means;

“DECC” means the Department of Energy and Climate Change;

“Full Contract Price” means the price quoted by the Contractor for all phases within the Proposal;

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

“Intellectual Property Rights” means patents, trade marks, service marks, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, trade or business names and other similar rights or obligations, whether registrable or not, in any country, including but not limited to, the United Kingdom;

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

“Proposal” means the response to the Authority’s invitation to tender for the provision of a Small Business Research Initiative (SBRI) *[insert description of all activities]*, submitted by the Contractor on *[insert date]* and entitled *[insert title]* explaining how it would provide the services required, a copy of which is set out in Schedule 2;

“Reports” means reports provided to the Authority by the Contractor in performing the Services and in accordance with the Specification;

the “Services” means the services to be supplied under the Contract, namely delivery of the Phase 1 activities described in the Specification and the Proposal.

(2) The interpretation and construction of the Contract shall be subject to the following provisions:

- (a) a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- (b) the headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (c) references to “person”, where the context allows, includes a corporation or an unincorporated association.

the “Specification” means the guidance notes attached at Annex 1, and any further guidance published by the Authority in accordance with that document.

## **2. Acts by the Authority**

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

## **3. Service of Notices and Communications**

Any notice or other communication that either party gives under the Contract shall be made in writing and given either by hand, first class recorded postal delivery, facsimile

transmission or via e-mail to *[insert e-mail address]*. Notice given by hand shall be effective immediately, notice given by recorded postal delivery shall be effective two working days after the date of posting, notice given by facsimile transmission shall be effective the working day after receipt by the notifying party of a transmission slip showing that the transmission has succeeded.

#### **4. Assignment and Sub-contracting**

- (1) The Contractor shall not give, bargain, sell, assign, sub-contract or otherwise dispose of the Contract or any part thereof without the previous agreement in writing of the Authority.
- (2) The Contractor shall not use the services of self-employed individuals in connection with the Contract without the previous agreement in writing of the Authority.
- (3) If the Contractor uses a sub-contractor for the purpose of performing the Services or any part of it, the Contractor shall include in the relevant contract a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a correct invoice from the sub-contractor.
- (4) The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.
- (5) The Authority shall be entitled to assign any or all of its rights under the Contract to any contracting authority as defined in Regulation 2(1) of the Public Services Contracts Regulations 2006, provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.

#### **5. Entire Agreement**

The Contract constitutes the entire agreement and understanding between the parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Contract provided that neither party excludes liability for fraudulent misrepresentations upon which the other party has relied.

#### **6. Waiver**

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

#### **7. Severability**

If any Condition, clause or provision of the Contract not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court or tribunal in any proceedings

relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected. If the court finds invalid a provision so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

## **8. Confidentiality**

(1) The Contractor agrees not to disclose any Confidential Information to any third party without the prior written consent of the Authority. To the extent that it is necessary for the Contractor to disclose Confidential Information to its staff, agents and sub-contractors, the Contractor shall ensure that such staff, agents and sub-contractors are subject to the same obligations as the Contractor in respect of all Confidential Information.

(2) Condition 8(1) shall not apply to information which:

- (a) is or becomes public knowledge (otherwise than by breach of these Conditions or a breach of an obligation of confidentiality);
- (b) is in the possession of the Contractor, without restriction as to its disclosure, before receiving it from the Authority or any other department or office of Her Majesty's Government;
- (c) is required by law to be disclosed;
- (d) was independently developed by the Contractor without access to the Confidential Information.

(3) The obligations contained in this Condition shall continue to apply after the expiry or termination of the Contract.

(4) The Contractor shall not handle or examine any document or thing bearing a Government security classification of "Confidential", "Secret" or "Top Secret" other than in a Government establishment and the Contractor shall not remove any such document or thing from such Government establishment without the prior written consent of the Authority.

(5) The Contractor shall not communicate with representatives of the general or technical press, radio, television or other communications media, with regard to the Contract, unless previously agreed in writing with the Authority.

(6) Except with the prior consent in writing of the Authority, the Contractor shall not make use of the Contract or any Confidential Information otherwise than for the purposes of carrying out the Services.

## **9 Freedom of Information**

(1) The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations SI 2004 No. 3391 ("EIR") and shall assist and cooperate with the Authority, at the Contractor's expense, to enable the Authority to comply with these information disclosure requirements.

- (2) In this Condition:-  
“Information” has the meaning ascribed to it in section 84 of the FOIA;  
“Request for Information” has the meaning ascribed to it in section 8 of the FOIA, or any apparent request for information under the FOIA or EIR.
- (3) The Contractor shall (and shall procure that its subcontractors shall):-  
(a) Transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within two working days;  
(b) Provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five working days (or such other period as the Authority may specify) of the Authority requesting that Information;  
(c) Provide all necessary assistance as reasonably requested by the Authority to enable it to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- (4) The Authority shall be responsible for determining, at its absolute discretion, whether any Information:-  
(a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;  
(b) is to be disclosed in response to a Request for Information.
- In no event shall the Contractor respond directly to a Request of Information unless expressly authorised to do so in writing by the Authority.
- (5) The Contractor acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the discharge of public authorities’ functions under Part 1 of the FOIA (issued under section 45 of the FOIA in November 2004), be obliged under the FOIA or the EIR to disclose Information unless an exemption applies. The Authority may at its discretion consult the Contractor with regard to whether the FOIA applies to the Information and whether an exemption applies.
- (6) The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- (7) The Contractor acknowledges that any lists or schedules provided by it outlining information it deems confidential or commercially sensitive are of indicative value only and that the Authority may nevertheless be obliged to disclose information which the Contractor considers confidential in accordance with Conditions 9(4) and (5).

## **10. Amendments and Variations**

Subject to Condition 18(7) no amendment or variation to the terms of the Contract shall be valid unless previously agreed in writing between the Authority and the Contractor.

## **11. Invoices and Payment**

(1) The Contractor shall submit invoices at times or intervals agreed by the Authority in the Contract or otherwise. The Contractor shall ensure that any invoice it submits sets out the Authority's Purchase Order or contract number, the Charges and, where not all of the Services have been completed, the relevant part of the Charges with an appropriate breakdown of time worked, the part of the Services (if all the Services have not been completed) and period to which the invoice relates, and its confirmation that the Services (or relevant part of the Services referred to on the invoice) have been fully performed.

(2) In consideration of the provision of the Services by the Contractor, the Authority shall pay the Charges after receiving a correctly submitted invoice as set out in Condition 11(1). Such payment shall normally be made within 30 days of receipt of the correctly submitted invoice.

(3) The Contractor shall not be entitled to charge for the provision of any services that are not part of the Services agreed within the Contract, unless the Contract has been properly varied in advance in accordance with Condition 10.

(4) The Authority may reduce payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.

(5) If the Contractor believes that payment for a correctly submitted invoice is overdue, he should, in the first instance, speak to the named contact on the face of the Contract. In the event that the problem is not resolved to his satisfaction, he should write to the Head of Procurement at the Department of Energy and Climate Change setting out his case. The Head of Procurement shall ensure that the complaint is dealt with by an official who is independent of the main contact and that the Contractor is not treated adversely in future for having made a complaint.

(6) For the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last day of a period of 30 days commencing on the day when the Authority received the invoice, or, if the Contractor had not completed the Services (or the part of the Services to which the invoice relates) before submitting the invoice, the last day of a period of 30 days commencing on the day when the Contractor completed the Services, (or the part of the Services to which the invoice relates).

## **12. Accounts**

(1) The Contractor shall keep full and proper accounts, records and vouchers relating to all expenditure reimbursed by the Authority and all payments made by the Authority in respect of the Services.

(2) The Contractor shall permit the Authority acting by its officers, servants and agents or independent auditor on request and at all reasonable times to examine all

accounts, records and vouchers at the offices of the Contractor or at such other places as the Authority shall direct, and to take copies of such accounts, records and vouchers and the Contractor shall provide the Authority or its independent auditor with such explanations relating to that expenditure as the Authority may request.

(3) The Contractor shall ensure that the said accounts, records and vouchers are available for a period of six years after termination or expiry of the Contract.

### **13. Recovery of Sums Due**

(1) Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any amount then due, or which at any time thereafter may become due, to the Contractor under this Contract or any other agreement or arrangement with the Authority or with any other department or office of Her Majesty's Government.

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

### **14. Value Added Tax**

(1) Value Added Tax is included in the value of the Services provided in accordance with the Contract.

(2) Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Value Added Tax Act 1994.

(3) The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority relating to the amount of Value Added Tax chargeable on the Services.

### **15. Provision of Services**

(1) The Contractor shall provide the Services in accordance with and as specified in the Contract to the satisfaction of the Authority whose decision shall be final and conclusive. The Authority shall have the power to inspect and examine the performance of the Services at the Authority's Premises at any reasonable time or, provided that the Authority gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

(2) If the Authority informs the Contractor that the Authority considers any part of the Services to be inadequate or in any way differing from the Contract, and this is other than as a result of default or negligence on the part of the Authority, the Contractor shall at his own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the Authority.

(3) The Authority may at any time demand that the Contractor suspend the provision of the Services. If the Authority exercises such right to suspend the provision of the Services or any part of them, or if the Contractor is delayed in proceeding with the provision of the Services by the Authority (otherwise than as a consequence of a breach of the Contract, or a breach of duty or fault or negligence on the part of the Contractor), the Authority shall be responsible for loss incurred by the Contractor as a result of such suspension or delay. Subject to the Contractor taking reasonable steps to mitigate its loss, the Contractor will be able to recover from the Authority under this Condition only for those losses which:

(a) were reasonably foreseeable by the Authority as arising as a direct result of the suspension or delay; and

(b) relate to the cost of any commitments entered into by the Contractor which cannot be met as a result of the suspension or delay and in respect of which the Contractor cannot obtain a refund (where the Contractor has already paid in relation to the commitment) or is obliged to pay (where the Contractor has not already paid in relation to the commitment).

The provisions of this Condition shall not apply where the reason for the suspension of the Services arises from circumstances beyond the control of the Authority.

(4) If the performance of the Contract by the Contractor is delayed by reason of any act on the part of the Authority or by industrial dispute (other than by an industrial dispute occurring within the Contractor's or its sub-contractor's organisation) or any other cause which the Contractor could not have prevented then the Contractor shall be allowed a reasonable extension of time for completion. For the purposes of this Condition, the Contractor shall be deemed to have been able to prevent causes of delay that are within the reasonable control of the Contractor's staff, agents and sub-contractors.

(5) Timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services within the time agreed or on a specified date.

(6) The Contractor warrants that it shall provide the Services with all due skill, care and diligence, and in accordance with good industry practice and legal requirements.

(7) Without prejudice to the provision of Condition 13(1), the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a direct consequence of the Contractor's delay in the performance of the Contract which the Contractor had failed to remedy after being given reasonable notice by the Authority.

## **16. Progress Report**

(1) Where formal progress reports are required by the Contract, the Contractor shall render such reports at such time and in such form as may be specified by the Authority, or as otherwise agreed between the Contractor and the Authority.

(2) The submission and acceptance of progress reports shall not prejudice any rights of the Authority under the Contract.

(3) Any Reports to which this clause relates shall be owned by the Authority.

(4) To the extent that any Reports to which this clause relates contain Arising Intellectual Property, the Authority shall consult the Contractor as to the version of the relevant report it decides to publish on its website.

### **17. Contractor's Personnel**

(1) The Authority reserves the right to refuse to admit to the Authority's Premises any person employed by the Contractor or its sub-contractors, whose admission would be undesirable in the opinion of the Authority.

(2) If and when requested by the Authority, the Contractor shall provide a list of the names and addresses of all persons who may at any time require admission in connection with the performance of the Services to the Authority's Premises, specifying the role in which each such person is concerned with the Contractor and giving such other particulars as the Authority may require.

(3) If and when requested by the Authority, the Contractor shall procure from each person identified by the request, a signed statement that he understands that the Official Secrets Acts 1911 to 1989 applies to him both during the carrying out and after expiry or termination of the Contract and that he will comply with the provisions of those Acts in so far as they apply to the work he is performing under the Contract.

(4) If and when requested by the Authority the Contractor agrees that it will submit any person employed by the Contractor or its sub contractors to the Authority's security vetting procedure. The Contractor further agrees that any individual who refuses to submit to such vetting procedure or does not attain the clearance it affords will not carry out any work on the Contract which the Authority certifies as suitable only for people who have passed its security vetting procedure.

(5) If the Contractor fails to comply with paragraph (2) (3) or (4) of this Condition and the Authority decides that such failure is prejudicial to its interests, the Authority may immediately terminate the Contract by notice in writing to the Contractor, provided that such termination shall be without prejudice to any accrued rights of, or to any rights that shall accrue thereafter to, the Authority.

### **18. Indemnities and Insurance**

(1) The Contractor shall indemnify the Authority, its officers, servants and agents fully against any liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of:

- a) any damage to property, real or personal, including any infringement of third party Intellectual Property rights whether patents, copyright, registered designs or otherwise;
  - b) any injury to persons, including injury resulting in death; and
  - c) arising out of or in the course of or in connection with the performance of the Services by the Contractor except in so far as such damages or injury shall be due to any act or neglect of the Authority.
- (2) The Contractor shall promptly notify the Authority if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of Intellectual Property which might affect its performance of the Services.
- (3) 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 the Contract.
- (4) The Contractor shall hold employer's liability insurance in respect of staff in accordance with any legal requirement for the time being in force.
- (5) The Contractor shall produce to the Authority's Representative, on request, copies of all insurance policies referred to in this condition or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.
- (6) The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. 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 23.3.
- (7) Save as expressly stated elsewhere in this Contract neither Party shall be liable to the other for consequential loss or damage.

### **19 Termination for Insolvency or Change of Control**

- (1) The Contractor shall notify the Authority in writing immediately upon the occurrence of any of the following events:
- a) where the Contractor is an individual, if a petition is presented for his bankruptcy, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or
  - b) where the Contractor is not an individual but is a firm or a number of persons acting together, if any event in Condition 19(1)(a) or (c) occurs in respect of any

partner in the firm or any of those persons, or if a petition is presented for the Contractor to be wound up as an unregistered company; or

c) where the Contractor is a company or limited liability partnership, if the company or limited liability partnership enters administration or passes a resolution to wind up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or

d) the Contractor undergoes a change of control, where “control” has the meaning given in Section 416 of the Income and Corporation Taxes Act 1988.

(2) After receipt of the notice under paragraph (1) above or earlier discovery by the Authority of the occurrence of any of the events described in that paragraph, the Authority may, by notice in writing to the Contractor, terminate the Contract with immediate effect without compensation to the Contractor and without prejudice to any right or action or remedy which may accrue to the Authority thereafter. The Authority’s right to terminate the Contract under Condition 19(1)(d) will exist until the end of a period of three months starting from receipt of the notice provided by the Contractor pursuant to Condition 19(1), or such other period as is agreed by the parties.

## **20. Termination for Breach of Contract**

If either party commits a material breach of the Contract which is either not capable of remedy, or, if it is capable of remedy, he fails to remedy such breach within 28 days of being notified by the other party in writing to do so, that other party shall be entitled to terminate the Contract with immediate effect by notice in writing to the party that committed the material breach and without prejudice to any other rights or remedies of either party in respect of the breach concerned or any other breach of the Contract.

## **21. Cancellation**

The Authority shall be entitled to terminate the Contract, or to terminate the provision of any part of the Services, by giving to the Contractor not less than 28 days' notice in writing to that effect. Once it has given such notice, the Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

## **22. Dispute Resolution**

(1) The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.

(2) If the parties cannot resolve the dispute pursuant to paragraph (1) of this Condition, the dispute may, by agreement between the parties, be referred to mediation pursuant to paragraph (4) of this Condition.

(3) The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to paragraph (2) of this Condition.

- (4) If the parties agree to refer the dispute to mediation:
- (a) in order to determine the person who shall mediate the dispute (the “Mediator”) the parties shall by agreement choose a neutral adviser or mediator from one of the dispute resolution providers listed by the Office of Government Commerce on its website or in its printed guidance on dispute resolution within 30 days after agreeing to refer the dispute to mediation;
  - (b) the parties shall within 14 days of the appointment of the Mediator meet with 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 Office of Government Commerce to provide guidance on a suitable procedure;
  - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;
  - (d) if the parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the Authority and the Contractor;
  - (e) failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.
- (5) If the parties do not agree to refer the dispute to mediation, or if the parties fail to reach agreement as to who shall mediate the dispute pursuant to Condition 22(4)(a) or if they fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

### **23. Corrupt Gifts and Payments of Commission**

- (1) The Contractor shall not:
- a) offer or give, or agree to give, to any person employed by or on behalf of the Authority any gift or consideration of any kind as an inducement or reward for doing, or having done, or not doing, any act in relation to the obtaining or execution of this Contract or any other contract with the Authority, or for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority;

b) enter into the Contract or any other contract with the Authority or any other department or office of Her Majesty's Government in connection with which commission has been paid, or agreed to be paid by him or on his behalf, or to his knowledge, unless, before the Contract is made, particulars of any such commission and the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to any person duly authorised by the Authority to act as its representative for the purpose of this Condition.

Nothing contained in this Condition shall prevent the Contractor paying such commission or bonuses to his own staff in accordance with their agreed contracts of employment.

(2) Any breach of this Condition by the Contractor, or by anyone employed by him or acting on his behalf (whether with or without his knowledge), or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts 1889-1916, in relation to this Contract or any other contract with the Authority, shall entitle the Authority to terminate the Contract with immediate effect and recover from the Contractor the amount of any loss resulting from such termination and the amount of the value of any such gift, consideration or commission as the Authority shall think fit.

(3) Where the Contract has been terminated under paragraph (2) of this Condition, there shall be deemed to be a failure to commence the provision of the Services, enabling the Authority to terminate the Contract with immediate effect and the Authority will not be obliged to pay the Charges.

(4) In any dispute, difference or question arising in respect of:

- a) the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under paragraph (2) of this Condition in respect of any loss resulting from such determination of the Contract); or
- b) the right of the Authority to determine the Contract; or
- c) the amount or value of any gift, consideration or commission,

the decision of the Authority shall be final and conclusive.

#### **24. Official Secrets**

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

#### **25. Special Provisions**

In the case of any conflict or inconsistency between these general Conditions and any specific terms of the Contract, the latter shall prevail.

## **26. Conflict of Interest**

(1) The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) he shall immediately notify the Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Authority may reasonably require.

(2) Where the Authority is of the opinion that the conflict of interest notified to it under paragraph (1) above is capable of being avoided or removed, the Authority may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

a) if the Contractor fails to comply with the Authority's requirements in this respect; or

b) if, in the opinion of the Authority, it is not possible to remove the conflict,

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

(3) Notwithstanding Condition 26(2), where the Authority is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Authority may terminate the Contract immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

## **27. Intellectual Property Rights**

(1) Subject to condition 27(4), all Background Intellectual Property used or supplied under this Contract in connection with the Services shall remain the property of the Party introducing the same and nothing contained in this Contract or any licence agreement pertaining or pursuant to the Contractor's performance of the Services shall affect the rights of either Party in its Background Intellectual Property.

(2) Subject to conditions 27(3) and 28(5), any Arising Intellectual Property shall belong to the Contractor.

(3) The Contractor hereby grants to the Authority a worldwide, irrevocable, royalty-free, non-exclusive licence at no cost to the Authority, together with the right to grant sub-licences, to use or publish any Arising Intellectual Property, Data, results, outcomes or conclusions which is created in performing the Services for such purposes as the Authority shall in its absolute discretion deem fit.

(4) The Contractor hereby grants to the Authority a worldwide, irrevocable, royalty-free, non-exclusive licence at no cost to the Authority, to use any Background Intellectual Property used in the performance of the Services, that is essential to the functioning and use of the Arising Intellectual Property.

(5) The Contractor shall procure for the Authority any worldwide, irrevocable, royalty-free licence, at no cost to the Authority, from any third party, to use any Intellectual Property Rights that are essential to the functioning and use of the Arising Intellectual Property, as is reasonable in the circumstances, taking into account the Full Contract Price.

## **28. Exploitation of Intellectual Property**

(1) The Contractor shall inform the Authority of any Arising Intellectual Property, Data, results, outcomes or conclusions which is created in performing the Services which are capable of exploitation whether patentable or not.

(2) The Contractor shall, as appropriate, devise, publish, implement and maintain procedures for the management of Arising Intellectual Property and in particular, but without limitation, shall use its best endeavours to ensure that:

- a) the Data which constitutes Arising Intellectual Property is identified, recorded and carefully distinguished from the outputs of other research;
- b) prior to any publication of materials created in the course of performing the Services, patentable inventions comprised within the Arising Intellectual Property are identified, duly considered for patentability and, where it is reasonable so to do, patent applications in respect thereof are filed at the British or European Patent Office; and
- c) all such patent applications are diligently executed having regard to all relevant circumstances.

(3) The Contractor shall permit the Authority to monitor the operation and effectiveness of the Contractor's procedures for the management of Intellectual Property Rights in such a way as the Authority considers reasonably necessary.

(4) Consistent with the good management of Intellectual Property Rights and the continued agreement of the Authority, the Contractor shall use its best endeavours to:

- a. promote the dissemination of the Arising Intellectual Property; and
- b. once the contractor has performed the Services to the satisfaction of the Authority, exploit commercially any Arising Intellectual Property to generate either capital or revenue or both.

(5) If, within three years of its creation, any Arising Intellectual Property has not been commercially exploited by the Contractor the Contractor shall if requested by the Authority assign the Arising Intellectual Property to the Authority.

(6) The Contractor shall not transfer ownership of the Arising Intellectual Property without the consent of the Authority.

(7) The Authority may, at its absolute discretion, require the Contractor to licence the Arising Intellectual Property to third parties nominated by the Authority. Should the Authority choose to exercise its discretion under this clause, it will notify the Contractor in accordance with clause 3.

### **29. Rights of Third Parties**

It is not intended that the Contract, either expressly or by implication, shall confer any benefit on any person who is not a party to the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

### **30. Government Property**

(1) All Government Property shall remain the property of the Authority and shall be used in the execution of the Contract and for no other purpose whatsoever except with the prior agreement in writing of the Authority.

(2) All Government Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he notifies the Authority to the contrary within 14 days or such other time as is specified in the Contract.

(3) The Contractor undertakes to return any and all Government Property on completion of the Contract or on any earlier request by the Authority.

(4) The Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of the Authority, pay compensation for all loss, destruction or damage occurring to any Government Property caused or sustained by the Contractor, or by his servants, agents or sub-contractors, whether or not arising from his or their performance of the Contract and wherever occurring, provided that if the loss, destruction or damage occurs at the Authority's Premises or any other Government premises, this Condition shall not apply to the extent that the Contractor is able to show that any such loss, destruction or damage was not caused or contributed to by his negligence or default or the neglect or default of his servants, agents, or sub-contractors.

(5) Where the Government Property comprises data issued in electronic form to the Contractor (including personal data as defined in Condition 31(1) below) the Contractor shall not store, copy, disclose or use such electronic data except as necessary for the performance by the Contractor of its obligations under the Contract (including its obligation to back up electronic data as provided in Condition 30(6) below) or as otherwise expressly authorised in writing by the Authority.

(6) The Contractor shall perform secure back ups of all such electronic data in its possession and shall ensure that an up to date back up copy is securely stored at a site other than that where any original copies of such electronic data are being stored.

(7) The Contractor shall, and shall procure that its sub-contractors, agents and personnel, shall observe best practice when handling or in possession of any such electronic data. By way of example if the Contractor removes any such data or information from a Government establishment, or is sent such data or information by the Authority it shall ensure that the data and any equipment on which it is stored or is otherwise being processed is kept secure at all times. The Contractor shall impress on any of its sub-contractors, agents and personnel who are required to handle or have possession of such electronic data that they must safeguard it all times, and shall not place it in jeopardy for example by leaving it unattended in a vehicle or on public transport or by transmitting or posting it by insecure means.

(8) If at any time the Contractor suspects or has reason to believe that such electronic data has or may become corrupted, lost, destroyed, altered (other than to the extent that the Contractor alters it by lawful processing in accordance with its obligations under this contract) or so degraded as a result of the Contractor's default so as to be unusable then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

(9) The Contractor shall indemnify the Authority against all claims and proceedings, and all costs and expenses incurred in connection therewith arising from the corruption, loss, destruction, alteration (other than by lawful processing permitted by this Contract) or degradation of electronic data which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor or sub-contractors, agents and personnel and hold it harmless against all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Contract which results in such corruption, loss or degradation.

### **31. Data Protection**

(1) In this condition references to "personal data", "data subjects" and "data processor" are to be interpreted as defined in the Data Protection Act 1998 ("the Act"). The Contractor shall comply with all relevant provisions of the Act and do nothing which causes, or may cause, the Authority to be in breach of its obligations under the Act. In particular, to the extent that the Contractor acts as a data processor in respect of any personal data pursuant to the Contract, the Contractor shall only process such personal data as is necessary to enable it to fulfil its obligations under this Contract.

(2) The Contractor warrants that it has appropriate technical and organisational measures in place to protect any personal data it is processing on the Authority's behalf against any unauthorised or unlawful processing and against any accidental loss, destruction or damage and undertakes to maintain such measures during the course of this

Contract. The Contractor shall also take all reasonable steps to ensure the reliability of its staff having access to any such personal data.

(3) Upon reasonable notice the Contractor shall allow the Authority access to any relevant premises owned or controlled by it to enable the Authority to inspect its procedures described at Condition 31(2) above and will upon the Authority's request from time to time prepare a report for it on the technical and organisational measures it has in place to protect the personal data it is processing on the Authority's behalf.

(4) The Contractor shall at its own cost, at the Authority's request, assist the Authority to comply with any requests for access to personal data under Section 7 of the Act and in particular shall respond to any such request promptly to enable the Authority to comply with its obligations under the Act. When requested by the Authority the Contractor shall at its own cost promptly provide it with any personal data relating to this Contract.

(5) If the Contractor fails to comply with any provision of this condition, the Authority may terminate the Contract immediately in which event the provisions of Condition 20 shall apply.

(6) The Contractor shall indemnify the Authority against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Authority by any person in respect of the Act or equivalent applicable legislation in any other country which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor or its sub-contractors and hold it harmless against all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Contract which results in the Authority being in breach of its obligations under the Act or equivalent applicable legislation in any other country.

(7) The Contractor warrants that it has submitted, pursuant to Section 18(1) of the Act, a notification to the Information Commissioner and shall keep that notification up to date.

(8) The Contractor shall not transfer any personal data outside the European Economic Area unless authorised in writing to do so by the Authority.

(9) Upon the termination of this Contract for whatever reason the Contractor shall, unless notified otherwise by the Authority or required by law, immediately cease any processing of the personal data on the Authority's behalf and as requested by the Authority destroy or provide the Authority with a copy on suitable media.

(10) The Contractor shall promptly carry out any request from the Authority requiring it to amend, transfer or delete the personal data or any part of the personal data.

(11) Where the Contractor is required to collect any personal data on behalf of the Authority, it shall ensure that it provides the data subjects from whom the personal data are collected with a data protection notice in a form to be agreed with the Authority.

### **32. Non-discrimination**

The Contractor shall not unlawfully discriminate within the meaning and scope of the anti-discrimination legislation within the UK in relation to the provision of the Services or otherwise and shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract do not unlawfully discriminate.

### **33. Disability Equality Scheme**

The Authority is subject to the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005. The Authority has published a Disability Equality Scheme, which is set out on the Authority's website. The Contractor shall, and shall procure that its sub-contractors, agents and personnel, comply with both the Disability Discrimination Act 1995 as amended by the Disability Discrimination Act 2005 and the Authority's Disability Equality Scheme. Upon the Contractor breaching either the applicable law or the Authority's Disability Equality Scheme the Authority shall be entitled to terminate the Contract with immediate effect by notice in writing to the Contractor and without prejudice to any other rights or remedies of either party in respect of the breach concerned or any other breach of the Contract.

### **34. Race Equality Scheme**

The Authority is subject to the Race Relations (Amendment) Act 2000. The Authority has published a Race Equality Scheme, which is set out on the Authority's website. The Contractor shall, and shall procure that its sub-contractors, agents and personnel, comply with both the Race Relations (Amendment) Act 2000 and the Authority's Race Equality Scheme. Upon the Contractor breaching either the applicable law or the Authority's Race Equality Scheme the Authority shall be entitled to terminate the Contract with immediate effect by notice in writing to the party Contractor and without prejudice to any other rights or remedies of either party in respect of the breach concerned or any other breach of the Contract.

### **35. Sustainable Procurement**

- (1) The Contractor shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, the Contractor shall promptly provide all such information regarding the environmental impact of the Services as may reasonably be requested by the Authority.
- (2) The Contractor shall meet all reasonable requests by the Authority for information evidencing compliance with the provisions of this Clause by the Contractor.

- (3) All written outputs, including reports, produced in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer waste and used on both sides where appropriate.

### **36. Other Legislation**

The Contractor shall, and shall procure that its sub-contractors, agents and personnel, comply with all other applicable law.

### **37. Contractor Status**

Nothing in the Contract shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Authority and the Contractor.

### **38. Transfer of Services**

(1) Where the Authority intends to continue with services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement contractor, the Contractor shall use all reasonable endeavours to ensure that the transition is undertaken with the minimum of disruption to the Authority.

(2) The contractor shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, reports and any information, whether held in electronic or written form, which the Authority considers necessary.

### **39. Law and Jurisdiction**

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

### **40. Transparency**

(1) The title and description of the project will be published on the Authority's website

(2) Where the Authority considers that any such exemption applies, the Authority will redact the relevant documents to the extent that the Authority considers the redaction is necessary to remove or obscure the relevant material, and those documents will be published on the designated web site subject to those redactions.

(3) Where the Parties later agree changes to the contract, the Authority will publish those changes, and will consider any redaction, on the same basis.

### **41. Monitoring and Management Information**

(1) Where requested by the Authority, the Contractor shall supply to the Authority and to the Office of Government Commerce (OGC) such information and advice relating to the management of the Contract as the Authority or OGC may require.

(2) The information and advice referred to in Condition 41(1) may include, but is not limited to, the following: Line Item Amount, Invoice Line Description, Invoice Line Number, Currency Code, Order Date, VAT Inclusion Flag, VAT Rate, List Price, Number of Items, Unit of Purchase Quantity, Price per Unit, Supplier Service Code, Service description and/or name, UNSPSC Code, Taxonomy Code and/or Name, Geographical, Project Code, Project description, Project Start Date, Project Delivery Date (Estimate and Actual), Total project cost and Project Stage.

(3) The information referred to in Condition 41(1) shall be supplied in such form and within such timescales as the Authority or OGC may reasonably require.

(4) The Contractor agrees that the Authority may provide OGC with information relating to the Services procured and any payments made under the Contract.

(5) Upon receipt of the information supplied by the Contractor in response to a request under Condition 41(1) or receipt of information provided by the Authority to OGC under Condition 41(4) the Authority and the Contractor hereby consent to OGC:

(a) storing and analysing the information and producing statistics; and

b) sharing the information or any statistics produced using the information, with any other Contracting Authority.

(6) In the event that OGC shares the information provided under Condition 41(1) or 41(3) in accordance with Condition 41(5) b), any Contracting Authority (as defined in regulation 3 of the Public Contracts Regulations 2006) receiving the information shall be informed of the confidential nature of that information and shall be requested not to disclose it to any body which is not a Contracting Authority (unless required by law).

(7) The Authority may make changes to the type of information which the Contractor is required to supply and shall give the Contractor at least one calendar month's written notice of any such changes.