

## Ofcom Standard Terms and Conditions of Contract for Services

*The Contractor's acceptance of the Purchase Order (or action consistent with acceptance of the Purchase Order absent explicit rejection of these General Terms) shall constitute acceptance of these terms and conditions of contract for services (the "General Terms") and shall create the Contract between the Contractor and the Ofcom.*

### 1. Definitions and Interpretation

(1) The following definitions shall be used for interpreting the Contract (including these General Terms) [unless explicitly modified within the terms of the PO]:

**"Background IPR"** means IPR not created in the course of work under this Contract;

**"Business Day"** means any day of the week which is not a Saturday, Sunday or any bank holiday in the United Kingdom;

**"Central Government Body"** means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

**"Confidential Information"** means:

- (a) all confidential information and data which is acquired from or made available (directly or indirectly) by the Disclosing Party or the Disclosing Party's representatives however conveyed or presented, including but not limited to any information or document relating to the Disclosing Party's business, affairs, operations, budgets, policies, processes, initiatives, plans, product information, pricing information, technical or

commercial know-how, trade secrets, specifications, strategies, inventions, designs, software, market opportunities, personnel, customers or suppliers (whether relating to this Contract or otherwise) either orally, in writing, or in whatever form obtained or maintained;

- (b) any information or analysis derived from the Confidential Information;
- (c) anything marked as confidential and any other information notified by or on behalf of the Disclosing Party to the Receiving Party as being confidential;
- (d) the existence and terms of this Contract and of any subsequent agreement entered into in relation to this Contract;
- (e) the fact that discussions and negotiations are taking place concerning this Contract and the status of those discussions and negotiations; and
- (f) any copy of any of the information described in (a), (b), (c), (d) or (e) above, which shall be deemed to become Confidential Information when it is made. For the purposes of this definition, a copy shall include, without limitation, any notes or recordings of the information described in (a), (b), (c), (d) or (e) above (howsoever made);

**"Contract"** means the agreement between the Contractor and the Ofcom comprising the (i) the Purchase Order; (ii) these General Terms; and (iii) any documents refer to therein;

**"Contract Price"** means the price agreed in respect of the Services, excluding expenses and any Value Added Tax set out in the Purchase Order or otherwise in writing by Ofcom;

**"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 3;

**"Contractor Foreground IPR"** means that part of the Foreground IPR which is not Ofcom Foreground IPR;

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

**“Controller”, “Processor”, “Processed”, “Data Subject(s)”, “Information Commissioner” and “Personal Data Breach”** each have the meaning given in the Data Protection Legislation;

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

**“Data Protection Legislation”** means, for the periods for which they are in force and applicable to the Parties and in each case as amended from time to time:

- (a) the Data Protection Act 2018;
- (b) UK GDPR;
- (c) any other Law otherwise relating to the protection of personal data or privacy, including the General Data Protection Regulation (EU) 2016/679, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), each as amended by the Data Protection, Privacy and Electronic Communications (Amendments) etc. (EU Exit) Regulations 2019 and forming part of Legislation; and
- (d) where applicable. the guidance and codes of practice issued by the UK Information Commissioner;

**“Deemed Employment”** means an engagement to which Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 applies;

**“Deliverable”** means the or (as the case may be) each item deliverable to Ofcom under this Contract as set out in the Purchase Order together with any information and any computer software necessary to access a Deliverable;

**“Deliverable Contractor Background IPR”** means Background IPR owned by the Contractor and incorporated in a Deliverable or required to Use a Deliverable;

**“Disclosing Party”** means a party that makes a disclosure of Confidential Information to another party;

**“Fee(s)”** means the fees payable by Ofcom to the Contractor for performance of the Services in accordance with the terms of this Contract;

**“FOIA”** means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004;

**“Force Majeure Event”** means any event, circumstance, matter or cause affecting the performance by the Contractor of its obligations arising from:

- (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Contractor which prevent or materially delay the Contractor from performing its obligations under the Contract;
- (b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- (c) acts of a Crown Body, local government or regulatory bodies;
- (d) fire, flood or any disaster; or
- (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available,

but excluding:

- (f) any industrial dispute relating to the Contractor, the Contractor’s Personnel (including any subsets of them) or any failure in the Contractor of their sub-contractors supply chain;

- (g) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Contractor; and
- (h) any failure or delay caused by a lack of funds,

and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that party;

**“Foreground IPR”** means all IPR created in the course of work under this Contract;

**“Guidance”** means any code of practice, policy or guidance (or part thereof) issued by any UK or EU regulatory or other relevant authority, in each case to the extent that it is mandatory and enforceable in the United Kingdom and applicable to the Contractor;

**“Insolvency Event”** means in respect of a person:

- (a) if that person is insolvent;
- (b) where that person is a company, LLP or partnership, if an order is made or a resolution is passed for the winding up of the person (other than voluntarily) for the purpose of solvent amalgamation or reconstruction);
- (c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the person’s assets or business;
- (d) if the person makes any composition with its creditors; or
- (e) takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction;

**“Intermediary”** means any organisation engaged by Ofcom in order to source the Contractor;

**“IPR”** means any right, title or interest in patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks, trade names and service marks, business names and domain names, rights in get-up and trade

dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, semiconductor topography rights, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**“Law”** means any:

- (a) Legislation;
- (b) applicable judgment of a relevant court of law which establishes or changes a binding precedent;
- (c) (to the extent not covered by limbs (a) and (b) above) retained EU law within the meaning of Section 6 of the European Union (Withdrawal) Act 2018; and
- (d) Guidance;

**“Lead Contractor”** means the individual that will hold primary responsibility on behalf of the Contractor to deliver the Services;

**“Legislation”** means any:

- (a) Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- (b) exercise of the Royal Prerogative;
- (c) enforceable EU right within the meaning of Section 2 of the European Communities Act 1972; and
- (d) retained EU law within the meaning of Section 6 of the European Union (Withdrawal) Act 2018, which continues to be, or forms part of, domestic law in the United Kingdom by virtue of Section 2, 3 or 4 of the European Union (Withdrawal) Act 2018;

**“Liability”** means costs, claims, demands, liabilities, expenses, damages or losses (including any direct or indirect financial loss, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses);

**“Ofcom”** means the Office of Communications established by the Office of Communications Act 2002;

**“Ofcom Background IPR”** means Background IPR owned by Ofcom;

**“Ofcom Foreground IPR”** means all Foreground IPR other than intellectual ideas, methodologies, designs, know-how and computer software provided that these are not specified to be a Deliverable;

**“Ofcom Premises”** means any land or buildings or premises owned or occupied by Ofcom;

**“Ofcom Property”** means anything issued or otherwise furnished in connection with the Contract by or on behalf of Ofcom, including but not limited to information, schedules, documents, papers and other materials provided in whatever form;

**“Ofcom Purposes”** means each and every purpose for which Ofcom was established as amended from time to time to enable Ofcom to carry out additional responsibilities assigned to it;

**“Parties”** means the Contractor and Ofcom, and Party shall be construed accordingly;

**“Personal Data”** means the personal data (as defined in the Data Protection Legislation) which relates to or originates from Ofcom, or any of Ofcom’s employees, contractors or customers and which is processed by or on behalf of the Contractor under this Contract;

**“Purchase Order”** means the purchase order issued by Ofcom to the Contractor relating to the order for Services to be supplied by the Contractor to Ofcom in accordance with the terms of this Contract;

**“Receiving Party”** means a party to which a disclosure of Confidential Information is made by another party;

**“Relevant Claim”** means a claim against, or notification of an intention to make a claim against, either the Contractor or Ofcom which may reasonably be considered as likely to give rise to a liability under the indemnity in Condition 25.8;

**“SDS”** means Status Determination Statement;

**“Services”** means the services to be supplied under the Contract as detailed in the Purchase Order;

**“Specified Purpose”** means for the purpose of providing the Services as set out in this Contract and as more specifically detailed in Schedule 1 ;

**“Substitute”** means a third party selected by the Contractor to provide the Services;

**“Term”** means the period for which the Contract remains in force and for which the Contractor shall provide the Services to Ofcom, as detailed within the PO;

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

**“Use”** means to use, sub licence, transfer, exploit, transfer physically and/or disclose to the public free of charge and without time limit.

**“Worker”** means any worker engaged by the Contractor or the Substitute for the purposes of providing the Services;

(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 General Terms 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 an individual, firm,

company corporation or an unincorporated association;

- (d) a reference to writing or written does not include fax or email.

## **2. Acts by Ofcom**

(1) Any decision, act or thing which Ofcom is required or authorised to take or do under the Contract may be taken or done by any person so authorised, either generally or specifically, by Ofcom.

(2) Nothing in this Contract shall have the effect of making the Contractor the agent or employee of Ofcom.

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

(1) The Contractor shall not give, bargain, sell, deal, mortgage, charge, declare a trust over transfer, assign, sub-contract or otherwise dispose of the Contract or any part thereof (or purport to do any of the foregoing) without the previous agreement in writing of Ofcom.

(2) The Contractor shall not use the services of self-employed individuals in connection with the Contract without the previous agreement in writing of Ofcom.

(3) Subject to Conditions 3(1) and 3(2) 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) 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; and

(b) provisions having the same effect as Condition 6.

(4) The Contractor shall be responsible for the acts and omissions of any sub-contractors as if they were its own.

(5) Ofcom may at any time give, bargain, sell, deal, mortgage, charge, declare a trust over transfer, assign, sub-contract or deal in any other manner with any or all of its rights under this Contract.

## **4. Ofcom Property**

(1) All Ofcom Property shall remain the property of Ofcom and shall be provided and used by the Contractor solely for the purpose of performing its obligations under the Contract and for no other purpose whatsoever except with the prior agreement in writing of Ofcom.

(2) All Ofcom Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless it notifies Ofcom 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 Ofcom Property upon the Contract ending (howsoever terminated) or on any earlier request by Ofcom.

(4) Subject to Condition 4(5), the Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of Ofcom, pay compensation for all loss, destruction or damage occurring to any Ofcom Property caused by the acts or omissions of the Contractor, or by its employees, agents or sub-contractors, whether or not arising from their performance of the Contract and wherever occurring.

(5) Condition 4(4) shall not apply where the Contractor is able to show that any such loss, destruction or damage was not caused or contributed to by its negligence or default or the neglect or default of its employees, agents, or sub-contractors.

## **5. Severability**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

## **6. Confidentiality**

(1) Subject to Condition 6(2), each Party shall:

- (a) treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the Disclosing Party; and
- (b) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under the Contract.

(2) Notwithstanding Condition 6(1), a Receiving Party may disclose Confidential Information:

- (a) where disclosure is required by applicable law or by a court of competent jurisdiction;
- (b) to its auditors or for the purposes of regulatory requirements;
- (c) on a confidential basis, to its professional advisers;
- (d) to the Serious Fraud Office where the Receiving Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- (e) where the Receiving Party is the Contractor, to its employees on a need to know basis to enable performance of the Contractor's obligations under the Contract provided that the Contractor shall procure that any employees to whom it discloses Confidential Information shall observe the Contractor's confidentiality obligations under the Contract; and
- (f) where the Receiving Party is Ofcom:
  - (i) on a confidential basis to the employees, agents, consultants and contractors of Ofcom;
  - (ii) on a confidential basis to any Central Government Body, any successor body to a Central Government Body or any company to which Ofcom transfers or proposes to transfer all or any part of its business;

- (iii) to the extent that Ofcom (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (iv) in accordance with FOIA,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on Ofcom under this Condition 6.

(3) Condition 6(1) shall not apply to information which is:

- (a) or becomes public knowledge (otherwise than by breach of the Contract or these General Terms);
- (b) in the possession of the Contractor, without restriction as to its disclosure, before receiving it from Ofcom; or
- (c) required by Law to be disclosed.

(4) The obligations contained in this Condition shall continue to apply for a period of 6 years after the expiry or termination of the Contract.

(5) The Contractor shall not handle or examine or use or remove from Ofcom Premises any Ofcom Property or any other document or thing which relates to Ofcom's functions or activities without the prior written consent of Ofcom.

(6) Where Ofcom is the Disclosing Party, the Contractor shall not make use of the Contract or any Confidential Information otherwise than for the purpose of the Services or its obligations under this Contract without the prior written consent of Ofcom.

(7) All Confidential Information shall be the property of the Disclosing Party and on termination of the Contract or at the Disclosing Party's request at any time, the Receiving Party shall:

- (a) hand back all Confidential Information to the Disclosing Party;

- (b) irretrievably delete any Confidential Information stored on its computer systems (to the extent possible);
- (c) require its personnel, agents and/or sub-contractors to irretrievably delete any Confidential Information stored on any magnetic or optical disk or memory, personal computer networks, personal e-mail accounts or personal accounts on website, and all matter derived from such sources which is in their possession (to the extent possible); and
- (d) provide a signed statement that it has complied fully with its obligations under this Condition 6(7).

## **7. Amendments and Variations**

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

## **8. Invoices and Payment**

- (1) The Contractor shall submit invoices at times or intervals specified by Ofcom in the Purchase Order or otherwise by agreement in writing between the Parties. The Contractor shall ensure that any invoice it submits sets out the Ofcom Purchase Order number, the Contract Price and, where not all of the Services have been completed, the relevant part of the Contract Price with an appropriate breakdown of time worked, the part of the Services completed (if all the Services have not been completed) and period to which the invoice relates, its confirmation that the Services (or relevant part of the Services referred to on the invoice) have been fully performed and any additional supporting documentation that Ofcom reasonably require.
- (2) In consideration for the provision of the Services by the Contractor, Ofcom shall pay the Contract Price after receiving a correctly submitted invoice as required by Conditions 8(1) and 8(6). Such payment shall be made within 30 days of receipt of the correctly submitted invoice. Payment shall be made to the bank account nominated in writing by the Contractor.
- (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 7.

(4) Ofcom may reduce, set-off, deduct or withhold 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 Ofcom.

(5) Ofcom shall accept and process for payment an electronic invoice submitted for payment by the Contractor where the invoice is undisputed and where it complies with requirements of this Condition 8.

(6) All invoices must be submitted in accordance with the Purchase Order.

(7) In the event of a dispute between the parties as to the amounts to be invoiced, Ofcom shall pay any undisputed amount in accordance with Condition 8(2). The Contractor shall not be entitled to suspend the provision of Services in connection with a dispute and any disputed invoice amounts shall be resolved through the dispute resolution procedure set out in Condition 24.

## **9. Accounts**

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

(2) The Contractor shall permit Ofcom by its officers, employees, agents, advisers, independent auditor or other person duly authorised by Ofcom 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 Ofcom shall direct, and to take copies of such accounts, records and vouchers and the Contractor shall provide Ofcom or its independent auditor with such explanations relating to that expenditure as Ofcom may request.

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

## 10. 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 from Ofcom, or which at any time thereafter may become due, to the Contractor under the Contract or any other written agreement or arrangement with Ofcom.

(2) Any over-payment by Ofcom to the Contractor whether in respect of the Contract Price or Value Added Tax shall be a sum of money recoverable from the Contractor pursuant to Condition 10(1) above or otherwise.

## 11. Consents, Duty and Tax Arrangements (inc. Value Added Tax)

(1) The Contractor shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to perform its obligations under this Contract.

(2) The Contractor shall comply with all applicable Laws relating to packing, packaging, marking, storage, handline and delivery of any Deliverables to be delivered to Ofcom under this Contract.

(3) Without prejudice to Condition 11(1), if, in the performance of the Contract, the Contractor needs to import into the UK or export out of the UK anything not supplied by or on behalf of Ofcom and for which a UK import or export licence is required, the responsibility for applying for the licence shall rest with the Contractor. Ofcom shall provide the Contractor with such information, certification, documentation or other assistance as is reasonably required in obtaining any necessary UK import or export licence.

(4) Subject to Condition 11(5), unless otherwise explicitly stated in this Contract, the Contract Price is inclusive of the costs of packaging, insurance, carriage, taxes or duties as well as any licences, permission, authorisation, consents and permits needed to perform its obligations under this Contract.

(5) Ofcom shall pay to the Contractor, in addition to the Contract Price, a sum equal to any Value Added Tax chargeable on the value of the Services in accordance with the Contract.

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

(7) Where either the Contractor, any Substitute and/or any Worker is liable to be taxed in any jurisdiction in respect of consideration received under this Contract and/or is liable for any income tax and/or social security contributions in respect of that consideration, the Contractor, Substitute and/or Worker (as applicable) shall at all times comply with all statutes and regulations relating to income tax and/or social security (as may be amended from time to time) in respect of that consideration.

(8) The Contractor shall indemnify Ofcom against all costs, expenses, penalties, fines or interest incurred or payable by the Contractor in connection with or in consequence of any such liability, deduction, contribution, assessment or claim including any failure to make an appropriate withholding of tax and or social security by an Intermediary in accordance with Condition 11(14) and 11(15) below.

(9) If the Contractor is registered as a corporate entity in the UK, Ofcom will review the Services provided under this Contract to determine the employment status of the Lead Contractor, Substitute and/or Worker (as applicable) to see if the off-payroll working rules apply. Ofcom will issue the Contractor with a SDS setting out its decision as to whether it considers the Services provided by the Lead Contractor, Substitute or Worker are considered to be Deemed Employment, or conversely the Services are not considered to be Deemed Employment.

(10) If Ofcom concludes that the position is:

(a) one of Deemed Employment, and the Contractor has been sourced directly by Ofcom or is paid directly by Ofcom where sourced by an Intermediary, then Ofcom shall make an appropriate withholding of tax and social security from any payments of the Fees due under this Contract; or

(b) not one of Deemed Employment, no deductions will be made.



(11) Ofcom reserves the right to revisit this review if it considers the nature of the Services provided under this Contract (or the circumstances surrounding the delivery of the Services) has or may change.

(12) Where the Contractor disagrees with the decision reached by Ofcom, the Contractor may appeal to Ofcom within 45 days of the issue of the SDS. On receipt of an appeal Ofcom will review its decision and advise the Lead Contractor accordingly. For the avoidance of doubt, Ofcom will not accept an appeal from a Substitute or Worker, but the Lead Contractor may submit an appeal on their behalf. Please note if Ofcom considered the position is one of Deemed Employment, the withholding requirements set out in Condition 11(10) will continue to apply to any payments whilst the appeal is being considered.

(13) If Ofcom has sourced the Contractor via an Intermediary and makes payment of the Fees via that Intermediary, a copy of the SDS will also be issued to the Intermediary, as well as providing a copy of the SDS to the Contractor. If there is more than one Intermediary in a payment chain between Ofcom and the Contractor, then the SDS should be passed down the payment chain to the Intermediary that is the last connection in the payment chain to the Contractor.

(14) Where Ofcom has concluded that the position is one of Deemed Employment and the Contractor has been sourced via an Intermediary and Ofcom makes payment of the Fees via that Intermediary then Ofcom will make payment of the Fees to the first (or only) Intermediary on a gross basis. The Intermediary, or if there is more than one Intermediary in the payment chain, the last Intermediary in the payment chain to the Contractor, shall be responsible for making an appropriate withholding of tax and social security from any payments of the Fees it receives, before that payment is passed to the Contractor.

(15) If the Contractor is not registered as a corporate entity in the UK, Ofcom will review the Services provided under this Contract to determine the employment status of the Lead Contractor, Substitute and/or Worker (as applicable) to see whether any withholding for tax or social security is required. If this is the case, Ofcom will advise the Lead Contractor accordingly.

(16) Ofcom may, at any time during the Term, require the Lead Contractor, any Substitute and/or Worker (as applicable) to provide information which demonstrates how the Lead Contractor, Substitute and/or Worker complies with Condition 11(7) or why Condition 11(7) does not apply to it. Where Ofcom requires such information, the Contractor, Substitute and/or Worker shall provide the requested information within the period specified by Ofcom.

(17) Ofcom may terminate this Contract by written notice with immediate effect if:

- (a) the Contractor and/or Substitute or Worker fails to provide information in response to the request at Condition 11(9): (i) within a reasonable time, or; (ii) where the request specified a time period within which information was to be provided, within that specified time period;
- (b) the Contractor and/or Substitute or Worker provides information which is inadequate to demonstrate either how the Contractor and/or Substitute or Worker complies with Condition 11(7) or why those conditions do not apply to it; or
- (c) it receives information which demonstrates that, at any time when Condition 11(7) applies to the Contractor and/or Substitute or Worker, the Contractor and/or Substitute or Worker is not complying with that Clause.

(18) Ofcom may supply any information which it receives under Condition 11(9) to the Commissioners of His Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

(19) The Contractor shall, and shall procure that the Lead Contractor shall, promptly give to Ofcom all such information and documentation as it may reasonably require from time to time in order for Ofcom to determine whether the engagement is or will be Deemed Employment and, if Ofcom does so determine, in order to comply with any obligation on it to deduct tax or national insurance contributions from the Fees. The Contractor shall, and shall procure that the Lead Contractor shall, promptly inform Ofcom of

any material change to any information or documentation previously provided in compliance with this clause and shall also promptly provide any other information or documentation that it considers (or ought reasonably to consider) to be materially relevant to determining whether the engagement is Deemed Employment.

## 12. Provision of the Services

(1) The Contractor shall provide the Services in accordance with and as specified in the Contract to the satisfaction of Ofcom. Any Deliverables delivered by the Contractor to Ofcom under this Contract shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and be fit for any purpose held out by the Contractor or made known to the Contractor by Ofcom.

(2) Ofcom shall have the power to inspect and examine the performance of the Services on Ofcom Premises and at the Contractor's premises at any reasonable time or, provided that Ofcom gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

(3) The Contractor warrants and represents that:

- (a) it has full capacity and authority to enter into and perform the Contract;
- (b) the Contract is entered into by its authorised representative;
- (c) it is a legally valid and existing organisation incorporated in the place it was formed;
- (d) there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform the Contract;
- (e) it is not under any contractual obligations which are likely to have a material adverse effect on its ability to perform the Contract; and
- (f) it is not impacted by an Insolvency Event,

and if the Contractor becomes aware of a representation or warranty made in relation to the

Contract that becomes untrue or misleading, it shall immediately notify Ofcom.

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

(5) If the performance of the Contract by the Contractor is delayed by reason of:

- (a) any act on the part of Ofcom; or
- (b) a Force Majeure Event,

then the Contractor shall notify Ofcom as soon as reasonably practicable after becoming aware of such delay (detailing the reasons for and the likely length of such delay) and, provided that such notice has been given, Ofcom shall grant the Contractor a reasonable extension of time for completion to be determined by Ofcom. For the purposes of this Condition, the Contractor will be deemed to have been able to prevent causes of delay that are within the reasonable control of the Contractor's personnel, agents and sub-contractors.

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

(8) The Contractor shall ensure that all goods, materials, standards and techniques in providing the Services are of the best quality and are free from defects in workmanship, installation and design.

(9) The Contractor shall co-operate with Ofcom in all matters relating to the Services, and comply with Ofcom's instructions and shall not do or allow anything to be done that would, or would be likely to, bring Ofcom into disrepute or adversely affect its reputation in any way.

(10) The Contractor shall observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of Ofcom Premises from time to time to the

extent that such requirements have been communicated to the Contractor in advance of admission to any of Ofcom Premises.

(11) Without prejudice to the provisions of Condition 10, the Contractor shall reimburse Ofcom for all reasonable costs incurred by Ofcom which have arisen as a direct consequence of the Contractor's failure or delay in the performance of the Contract (which the Contractor had failed to remedy after being given reasonable notice by Ofcom), provided always that Ofcom shall take all reasonable steps to minimise the need to incur such costs.

(12) The decision of Ofcom regarding anything in Condition 12 shall be final, binding and conclusive.

### **13. Contract Management and Progress Reports**

(1) The Contractor shall attend progress meetings with Ofcom at such frequency as specified in this Contract or as otherwise agreed between the parties in writing from time to time. Absent explicit agreement to the contrary, such progress meeting shall be held on a monthly basis.

(2) Progress meetings shall provide an opportunity to formally review performance of obligations under the Contract including progress against delivery of Deliverables and any agreed service levels or milestones. Progress meetings shall also provide a point of escalation for any previously unresolved issues prior to escalation as a dispute pursuant to Condition 24 (including underperformance) and enable both parties to consider opportunities for continuous improvement where appropriate.

(3) Progress meetings shall be held in such format and location (or electronically) as reasonably requested by Ofcom from time to time. The Contractor shall ensure that suitably qualified representative(s) attend progress meetings.

(4) Where formal progress reports are required by Ofcom, the Contractor shall render such reports at such time and in such form as may be specified by Ofcom.

(5) Any discussion at progress meetings and/or the submission and acceptance of progress

reports shall not prejudice any rights of Ofcom under the Contract.

### **14. Contractor's Personnel**

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

(2) If and when requested by Ofcom, 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 Ofcom Premises, specifying the capabilities in which each such person is concerned with the Contractor and giving such other particulars as Ofcom may require.

(3) If the Contractor fails to comply with Condition 14(2) and if Ofcom decides that such failure is prejudicial to its interests, then Ofcom 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 Ofcom.

(4) The Contractor shall ensure that all Contractor Personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such Contractor Personnel are in sufficient number to enable the Contractor to fulfil its obligations under this Contract.

### **15. Indemnities and Insurance**

(1) The Contractor shall indemnify and hold Ofcom harmless on demand against the Contractor's breach of contract or duty (whether arising in negligence, tort, statute or otherwise and whether direct or indirect) or of its employees, agents or sub-contractors in respect of:

(a) any losses incurred due to death or personal injury;

(b) any loss, damage, destruction, injury or expense suffered by Ofcom (including but not limited to loss or destruction of or

damage to Ofcom Premises or Ofcom Property, including data);

- (c) all claims, demands, proceedings, actions, damages, costs (including legal costs), losses, charges, expenses suffered by or brought against Ofcom including claims made by Ofcom's personnel or agents or by third parties; and
- (d) any other loss, destruction or damage, including but not limited to financial losses arising.

(2) The Contractor shall effect and maintain in force with a reputable insurance company such policies as may be necessary to insure the Contractor against all manner of risks which might arise out of or in connection with the Contract (including any such insurances as is required to maintain by Law), which in any event shall include a policy or policies of insurance providing an adequate level of cover in respect of:

- (a) public and employer's liability;
- (b) professional indemnity; and
- (c) cyber insurance,

and in each case such insurance cover shall be for a value of not less than £1,000,000 per incident or series of related incidents. The Contractor shall, at Ofcom's request, provide Ofcom with a copy of the relevant policy or policies, together with receipt or other evidence of payment of the latest premium due thereunder.

(3) The Contractor shall ensure that Ofcom's interest is noted on the insurance policy, or that a generic interest clause has been included.

(4) Nothing in these General Terms nor in any part of the Contract shall impose any liability on any member of the staff of Ofcom or its representatives in their personal capacity.

(5) The Contractor shall:

- (a) do nothing to invalidate any insurance policy or to prejudice Ofcom's entitlement under it; and

- (b) notify Ofcom if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

(6) The Contractor shall procure that the Substitute and any Worker shall comply with all terms and conditions of any insurance policies at all times. If cover under any insurance policies shall lapse or not be renewed or be changed in any material way or if the Contractor is aware of any reason why the cover under any insurance policies may lapse or not be renewed or changed in any material way, the Contractor shall notify Ofcom without delay.]

(7) The Contractor's liabilities under this Contract shall not be deemed to be released or limited by the Contractor taking out the insurance(s) referred to in Condition 15(2).

(8) The Contractor shall indemnify Ofcom against all claims, demands, proceedings, actions, damages, costs (including legal costs), losses, charges, expenses and any other liabilities arising from or incurred by reason of:

- (a) any infringement or alleged infringement of any third party's IPR used by or on behalf of the Contractor for the purpose of the Contract, provided that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of Ofcom; and
- (b) any breach by the Contractor of Condition 19 or Data Protection Legislation.

(9) Ofcom shall provide the Contractor with prompt written notice of any claim known to it that will be made or is threatened or is being brought against it in respect of the indemnities provided under the Contract, and shall take all reasonable steps to mitigate the amount of its loss and its consequent claim under such indemnities.

(10) This Condition 15 shall survive termination of the Contract.

## **16. Limitation of liability**

- (1) Nothing in this Contract shall limit or exclude the liability of either party for:

- (a) death or personal injury resulting from negligence, or the negligence of its personnel, agents or subcontractors; or
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) any other liability which cannot be limited or excluded by applicable law; or
- (d) the indemnities contained in Condition 15 and Condition 26(7); or
- (e) the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors.

(2) Ofcom's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited as follows:

- (a) for non-payment of invoices for Services purchased, to the amount unpaid; or
- (b) for any other type of liability, to the Contract Price.

[(3) The Contractor's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited as follows:

- (a) for any indemnities given by the Contractor to Ofcom no limit shall apply; or
- (b) for any other type of liability, to a sum equal to £5,000,000 in aggregate in each calendar year.

(4) Ofcom's rights under this Contract are in addition to, and not exclusive of, any rights or remedies provided by the common law.

## 17. Compliance with laws and policy

(1) In performing its obligations under this Contract, the Contractor shall and shall ensure

that any permitted sub-contractors shall comply with:

- (a) all applicable Law, including but not limited to the Equality Act 2010 and the Modern Slavery Act 2015; and
- (b) any anti-slavery policy adopted by Ofcom from time to time or, where agreed with Ofcom in writing, the Contractor's own anti-slavery policy.

(2) The Contractor shall notify Ofcom as soon as it becomes aware of:

- (a) any breach, or potential breach, of any anti-slavery policy adopted by Ofcom from time to time or, where it has been agreed that the Contractor's own anti-slavery policy will apply pursuant to Condition 17(1)(b), any breach of the Contractor's own anti-slavery policy; or
- (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

(3) The Contractor shall permit Ofcom, and any person nominated by it for this purpose, to have such access on demand to the Contractor's premises, personnel, systems, books and records as Ofcom may require to verify the Contractor's compliance with this Condition 17.

(4) Breach of this Condition 17 by the Contractor shall be deemed a material breach for the purpose of Condition 21.

(5) The Contractor shall have regard to Ofcom's Supplier Code of Conduct. Whilst this code of conduct is not legally binding and shall not take precedence over or otherwise vary the terms of this Contract, the Contractor shall, where reasonably practicable, perform its obligations under this Contract in a manner that aligns with the principles of this code of conduct.

## 18. Anti-bribery

(1) The Contractor shall:

- (a) comply with all applicable Law relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");

- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
- (d) promptly report to Ofcom any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Contract.

(2) The Contractor shall ensure that any person associated with the Contractor who is performing services in connection with this Contract and including, without limitation, employees, agents, subsidiaries, representatives and sub-contractors (“**Associated Persons**”) does so only on the basis of a written contract which imposes on and secures from such Associated Persons terms equivalent to those imposed on the Contractor in this Condition 18 (“**Relevant Terms**”). The Contractor shall be responsible for the observance and performance by such Associated Persons of the Relevant Terms, and shall be directly liable to Ofcom for any breach by such persons of any of the Relevant Terms.

(3) The Contractor warrants and represents that, in connection with this Contract, no financial or other advantage has been, will be or is agreed to be given to any person (whether working for or engaged by it or any third party) by or on behalf of the Contractor or any Associated Persons.

(4) Breach of this Condition 18 shall be deemed a material breach under Condition 21.

## 19. Data Protection

(1) The parties acknowledge that for the purposes of the Data Protection Legislation, Ofcom is the Controller and the Contractor is the Processor of any Personal Data. Consequently, the parties acknowledge and agree that the

Contractor’s obligations as set out in this Contract are to Ofcom as Controller.

(2) The Contractor shall and shall procure that the Contractor Personnel shall comply with all Data Protection Legislation in relation to any Personal Data processed by it and shall not put Ofcom in breach of Data Protection Legislation.

(3) Without limiting Conditions 19(1) and 19(2), the Contractor shall at all times (and shall ensure that at all times its staff):

(a) have in place appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data comprised in the Personal Data and any other personal data provided to the Contractor by or on behalf of Ofcom and against accidental loss or destruction of, or damage to, such Personal Data including by:

(i) taking reasonable steps to ensure the reliability of any personnel who have access to any Personal Data;

(ii) ensuring that only authorised personnel have access to Personal Data and that any persons authorised to have access to Personal Data will respect and maintain all due confidentiality and be bound by appropriate duties of confidentiality;

(iii) ensuring a level of security that reflects the level of harm, damage and/or distress that might be suffered by the Data Subject to whom the Personal Data related in the event of a breach of the measures as set out herein,

and provide, on Ofcom’s request, a written description of the technical and organisational methods employed by the Contractor for processing of Personal Data (within the timescales reasonably required by Ofcom);

(b) restore the Personal Data at its own expense if any Personal Data is lost or corrupted as a result of any act or omission of the Contractor or any of its sub-contractor and reimburse Ofcom in full in respect of any time and expenses

incurred or accrued by Ofcom in restoring or assisting in the restoration of the Personal Data;

(c) process the Personal Data only on behalf of Ofcom, only for the Specified Purpose and only in accordance with written instructions received from Ofcom from time to time. The Contractor shall immediately notify Ofcom if the Contractor believes that any such instruction infringes any applicable law;

(d) promptly notify Ofcom if it:

(i) receives from a Data Subject to whom Personal Data relates a request for, or notice of, the exercise of that person's rights under the Data Protection Legislation to access such Personal Data or prevent certain processing; or

(ii) receives any complaint from, or request for or notice of, any investigation or assessment by the Information Commissioner in respect of any processing of Personal Data (including without limitation, any information, enforcement, assessment or monetary penalty notice, or any warning that such a notice may be issued), save to the extent that such notification is prohibited by the Data Protection Legislation or the Information Commissioner; or

(iii) receives any other communication relating directly or indirectly to the processing of any Personal Data in connection with this Contract,

and together with such notice, provide to Ofcom a copy of any such request or notice and reasonable details of the circumstances giving rise to that request or notice or the unauthorised or unlawful processing, loss or destruction of, or damage to, the Personal Data (as the case may be);

(e) promptly provide to Ofcom such information, co-operation and assistance as Ofcom may from time to time reasonably require to enable Ofcom to

comply with its obligations under the Data Protection Legislation as a Controller in respect of any Personal Data (including, without limitation, to comply with any request or notice referred to at Condition 19(d)(i)); and

(f) provide Ofcom and its representative(s) on reasonable notice, and the Information Commissioner on such notice as may be requested by the Information Commissioner in accordance with the Data Protection Legislation, with such access to its premises, personnel, systems and records (including, without limitation, for the purposes of making copies of those records) as Ofcom and/or the Information Commissioner may reasonably require in order to inspect the Contractor and the Contractor's activities with respect to the processing of the Personal Data and audit its compliance with this Condition 19 and the Data Protection Legislation.

(4) In addition to its obligations under Conditions 19(2) and 19(3), the Contractor undertakes to Ofcom that it shall:

(a) not allow any sub-contractors or other third parties to have access to, receive or process Personal Data without obtaining prior written consent from Ofcom (such consent to be at Ofcom's sole discretion);

(b) where Ofcom gives consent pursuant to Condition 19(4)(a), the Contractor shall ensure that each sub-contractor enters into a written agreement undertaking to the Contractor in equivalent terms to the undertakings contemplated to be given by the Contractor to Ofcom and described in this Condition 19;

(c) not, and its sub-contractors shall not, transfer any Personal Data outside the European Economic Area without obtaining prior written consent from Ofcom (such consent to be at Ofcom's sole discretion and which may entail an requirement on the recipient to enter into a separate agreement on specific terms with Ofcom);

(d) notify Ofcom without undue delay (and in any event, no later than two (2) Business Days) upon becoming aware of a Personal

Data Breach and promptly provide such information and assistance as is reasonably required by Ofcom in order for Ofcom to react and respond to that Personal Data Breach in accordance with its obligations under, and within the timeframes specified by, the Data Protection Legislation;

(e) keep full and accurate records of all elements of its processing of the Personal Data; and

(f) upon termination or expiry of this Contract:

(i) the Contractor shall as soon as reasonably practicable return or destroy (as directed in writing by Ofcom) all Personal Data, information, software, and other materials provided to it by Ofcom or in connection with this Contract; and

(ii) if Ofcom elects for destruction rather than return of the materials under Condition 19(4)(f)(i), the Contractor shall as soon as reasonably practicable ensure that all Personal Data is deleted from its systems;

(iii) and in each case the Contractor shall provide written confirmation of compliance with Conditions 19(4)(f)(i) and (ii) to Ofcom no later than ten (10) Business Days following termination or expiry of this Contract.

(5) If the Contractor is required by any law, regulation, or government or regulatory body to retain any documents or materials that it would otherwise be required to return or destroy under Condition 9(4)(f), it shall notify Ofcom in writing of that retention, giving details of the documents or materials that it must retain. The Contractor shall not be in breach of Condition 19(4)(f) with respect to Personal Data in the retained documents or materials, but its obligations under this Contract shall continue to apply to such Personal Data.

(6) The Contractor shall remain fully liable for all acts or omissions appointed pursuant to Condition 19(4).

(7) The parties agree to take account of any guidance issued by the Information Commissioner's Office. Ofcom may on not less than thirty (30) Business Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## **20. Termination for Insolvency or Change of Control**

(1) The Contractor shall notify Ofcom 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/her bankruptcy, or he/she 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/her 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 20(1)(a) or (c) occurs in respect of any partner in the firms 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, if the company ceases or threatens to cease trading or if the company passes a resolution to wind up or takes any steps to place the company into administration (including filing of papers with a court of competent jurisdiction) 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 over the whole or any part of its assets or undertaking, or possession is taken of any of its property under the terms of a floating charge;

(d) the Contractor undergoes a change of control, where "control" has the meaning given in section 450 of the Corporation Tax Act 2010.



(2) After receipt of the notice under Condition 20(1) or on earlier discovery by Ofcom of the occurrence of any of the events described in Condition 20(1), Ofcom may, by notice in writing to the Contractor, terminate the Contract with immediate effect without compensation to the Contractor and without any prejudice to any right or action or remedy which may accrue to Ofcom thereafter. Ofcom's right to terminate the Contract under Condition 20(1)(d) will exist until the end of a period of six months starting from receipt of the notice provided by the Contractor pursuant to Condition 20(1), or such other period as is agreed by the parties.

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

(1) If either party commits a material breach of the Contract which is either not capable of remedy, or, if it is capable of remedy, the party 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.

(2) Notwithstanding the provisions of Condition 21(1) and any other rights of termination set out in the Contract, Ofcom may terminate the Contract with immediate effect and without any liability to make any further payment to the Contractor (other than in respect of amounts accrued before the date of termination) if at any time:

(a) the Contractor, Substitute and/or any Worker commits any gross misconduct affecting the business of Ofcom;

(b) the Contractor, Substitute and/or any Worker commits any serious or repeated breach or non-observance of any of the provisions of this Contract or refuses or neglects to comply with any reasonable and lawful directions of Ofcom;

(c) the Contractor, Substitute and/or Worker is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);

(d) the Contractor, in the reasonable opinion of the Ofcom, is negligent or incompetent in the performance of the Services;

(e) the Contractor is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of eight weeks in the term of this Contract, and a suitable Substitute or Worker cannot be found; or

(f) the Contractor, Substitute and/or any Worker commits any fraud or dishonesty or acts in any manner which in the opinion of Ofcom brings or is likely to bring the Substitute or Worker, the Contractor or Ofcom or any Group Company into disrepute or is materially adverse to the interests of Ofcom or any Group Company.

(3) The rights of Ofcom under Conditions 21(1) and 21(2) are without prejudice to any other rights that it might have at law to terminate the Contract or to accept any breach of this Contract on the part of the Contractor as having brought the Contract to an end. Any delay by Ofcom in exercising its rights to terminate shall not constitute a waiver of these rights.

## **22. Consequences of Termination**

(1) Termination of the Contract, howsoever caused, shall be without prejudice to any accrued rights or obligations of either party.

(2) Upon termination or expiry of the Contract, the Contractor shall and shall procure that any Substitute and/or Worker shall:

(a) at no cost to Ofcom, provide all reasonable assistance to Ofcom and any replacement Contractor in relation to the provision of the Services; and

(b) at Ofcom's direction, return or dispose or all requested documentation, information and property to Ofcom as soon as reasonably practicable, providing a signed statement that it or they have fully complied with any such instructions.

(3) Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 23. Cancellation

(1) Ofcom shall be entitled to cancel the Contract, or to cancel the provision of any part of the Services at any time, by giving to the Contractor not less than 28 days' notice in writing to that effect without prejudice to any rights or remedies of the Contractor for breach of contract.

(2) Once it has given notice pursuant to Condition 23(1), Ofcom may at any time prior to the expiry of the notice period specified in Condition 23(1) give written notice to the Contractor to extend the date on which the Contract will terminate, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

## 24. Dispute Resolution

(1) Subject to specific provisions within the Contract which provide for the determination of disputes, the parties shall attempt in good faith to negotiate a settlement to any other dispute arising between them out of or in connection with the subject matter of the Contract.

(2) If the parties cannot resolve the dispute pursuant to Condition 24(1), either party may at any time serve written notice on the other stating that a dispute exists and setting out the matters in dispute and the dispute may then, by agreement between the parties, be referred to mediation pursuant to Condition 24(4).

(3) The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Condition 24(2).

(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 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 the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If

considered appropriate, the parties may at any stage seek assistance from the Centre for Effective Dispute Resolution 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 Ofcom 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 within 30 days of receipt of the notice described in Condition 24(2), or if, having agreed to refer the dispute to mediation the parties fail to reach agreement as to who shall mediate the dispute pursuant to Condition 24(4)(a) within 30 days of agreeing to refer the dispute to mediation 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.

## 25. Conflict of Interest

(1) The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice its independence and objectivity in performing the Services and complying with its obligations under the Contract and undertakes that upon becoming aware of any such conflict of interest during the

performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) it shall immediately notify Ofcom 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 Ofcom may reasonably require.

(2) Where Ofcom is of the opinion that the conflict of interest notified to it under Condition 25(1) is capable of being avoided or removed, Ofcom 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 Ofcom requirements in this respect; or
- (b) if, in the opinion of Ofcom, compliance does not avoid or remove the conflict,

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

(3) Notwithstanding Condition 25(2), where Ofcom 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 the granting of the Contract to the Contractor, Ofcom may terminate the Contract immediately for breach of a fundamental condition of the Contract and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

## **26. Intellectual Property Rights**

(1) The Contractor with full title guarantee assigns to Ofcom absolutely all Ofcom Foreground IPR, and grants Ofcom a royalty-free, irrevocable licence to Use the Contractor Foreground IPR and Deliverable Contractor Background IPR for Ofcom Purposes.

(2) IPR in reports, drawings and other documentation embodied in the statement of work or (as the case may be) each Deliverable shall vest in Ofcom.

(3) The Contractor shall not incorporate any Third-Party Background IPR in any Deliverable

without ensuring that Ofcom is free to Use it for Ofcom Purposes.

(4) Ofcom shall not acquire any rights in the Foreground IPR other than as stated in this Condition 26.

(5) The Contractor warrants and undertakes as follows:

(a) that it has the right to enter into the Contract and is the sole, absolute and unencumbered legal and beneficial owner of the Contractor Foreground IPR and Deliverable Contractor Background IPR;

(b) promptly to pay all taxes, fees, licence duties, registration charges, insurance premiums and other outgoings in respect of the Deliverable Contractor Background IPR or any part of any of them that are necessary for the upkeep of the IPR in the Deliverable Contractor Background IPR;

(c) to obtain all necessary certificates, licences, permits and authorisations from time to time required for the protection of the IPR in the Deliverable Contractor Background IPR; to do all in its power to protect and preserve the IPR in the Deliverable Contractor Background IPR.

(6) Ofcom grants to the Contractor a royalty-free, revocable licence to Use the Ofcom Background IPR only where necessary for performance of the Services hence on termination or expiry of the Contract this licence shall immediately cease.

(7) The Contractor agrees to indemnify and keep indemnified Ofcom from and against all Liability incurred by Ofcom arising out of or in connection with Contractor Foreground IPR and Deliverable Contractor Background IPR.

(8) If any third party makes a Relevant Claim either the Contractor or Ofcom shall:

(a) as soon as reasonably practicable give written notice of that matter to the other, specifying in reasonable detail the nature of the relevant claim;

(b) not make any admission of liability, agreement or compromise in relation to

the relevant claim without the prior written consent of the other (such consent not to be unreasonably withheld or delayed);

- (c) give the other and its professional advisers reasonable access to the premises and personnel of the other and to any relevant documents records, software within the power or control of the other so as to enable the other and its professional advisers to examine such documents and records, and to take copies at their own expense for the purpose of assessing the merits of the Relevant Claim.

- (9) For the avoidance of doubt the Contractor shall not acquire any right to Use the Ofcom Foreground IPR.

## **27. Inadequacy of Damages**

Without prejudice to any other rights or remedies that Ofcom may have, the Contractor acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Contract by the Contractor. Accordingly, Ofcom shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Contract.

## **28. Special Provisions**

In the case of any conflict or inconsistency between these General Terms and any specific conditions contained within the Contract, the latter shall prevail.

## **29. Equipment**

If Ofcom reimburses the Contractor for the cost of any equipment, such equipment shall become the property of Ofcom, and the Contractor shall on request deliver such equipment to Ofcom. The Contractor shall keep an inventory of such equipment and shall deliver that inventory to Ofcom on request, and on completion of the Services.

## **30. Rights of Third Parties**

It is not intended that the Contract, either expressly or by implication, confers 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.

## **31. Entire Agreement**

(1) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(2) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

(3) Each party agrees that it shall have no claim for innocence or negligent misrepresentation based on any statement in this Contract.

(4) Save where the Contract provides otherwise, nothing in the Contract shall prejudice any condition or warranty (express or implied) or right or remedy to which Ofcom is entitled in relation to the Services under statute and/or common law.

## **32. No Partnership or Agency**

(1) Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

(2) Each party confirms that it is acting on its own behalf and not for the benefit of any other person.

## **33. Publicity and Branding**

(1) The Contractor shall not:

(a) make any press announcements or publicise this Contract, the Services or its relationship with Ofcom in any way; or

(b) use Ofcom's name or brand in any promotion or marketing or

announcement without prior written approval from Ofcom.

(2) Each party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other party and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

#### **34. Transparency obligations**

Ofcom are obliged to meet their statutory obligations relating to the disclosure of information under FOIA. All information provided to Ofcom under this Contract may need to be disclosed by Ofcom in response to a request for information under FOIA. Therefore, nothing in this Contract prevents Ofcom from complying with its statutory obligations under FOIA.

#### **35. Notices**

(1) Any notice to be given under the Contract shall be in writing and may be served by hand delivery, first class recorded post or, subject to Condition 35(3), email using the contact details for each party detailed within the Purchase Order or such other address at that party may from time to time notify to the other party in accordance with this Condition.

(2) Except where otherwise stated in the Purchase Order, all notices or other communications to Ofcom shall be sent to the address set out below or to such other address as Ofcom may notify to the Contractor from time to time:

Office of Communications:

Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

All notices shall be marked for the attention of the relevant Ofcom representative responsible for this Contract.

A copy shall be sent to the Head of Commercial, Ellie Cowell [ellie.cowell@ofcom.org.uk](mailto:ellie.cowell@ofcom.org.uk)

(3) Except as otherwise stated in the Contract, all notices or other communications to

the Contractor shall be sent to the Contractor's last known place of business, registered office or to such other address as the Contractor may notify to Ofcom from time to time.

(4) Notices served as detailed in Condition 35(1) shall be deemed served on the Business Day of delivery provided delivery is before 5pm on a Business Day. Otherwise delivery shall be deemed to occur on the next Business Day. An email shall be deemed delivered when sent unless an error message is received.

(5) Any notice relating to potential termination of this Contract may be served by email only if the original notice is then sent to the recipient by hand delivery or first class recorded post in the manner set out in Condition 35(1).

#### **36. 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.

#### **37. General**

(1) The Contractor hereby undertakes and covenants, at its own cost, to do all such further acts and execute or procure the execution of all such further documents and instruments as Ofcom may require from time to time to vest or further assure to Ofcom (and all of its licensees, assigns and successors in title) the full benefit of the rights expressed to be assigned and granted to Ofcom under this Contract.

(2) In the performance of all Services hereunder, it is mutually understood and agreed that the Contractor shall be, and at all times is, acting and performing as an independent contractor in the performance of the Services. Ofcom shall neither have nor exercise any control or direction over the methods by which the Contractor shall perform the Services required hereunder except as to the results of the Services. The Contractor shall complete the Services required hereunder according to its own means and methods of work which shall be in its exclusive charge and control.

(3) Neither the Contractor, its officers, employees or agents nor any Substitute are (nor shall they be deemed to be) employees or agents

of Ofcom in relation to the provision of the Services under the Contract and the Contractor shall represent itself only as an independent contractor.

(4) Neither the Contractor, its officers, employees or agents nor any Substitute shall be entitled to any benefits from Ofcom in relation to the Services undertaken under this Contract, including health, death, disability, or any insurance benefits.

(5) The Contractor acknowledges and agrees that, by reason of its status as an independent contractor, Ofcom shall not have any obligation or liability whatsoever to the Contractor, any Substitute or the Contractor's officers and employees or the Contractor's successors, assignees or creditors for any taxes required to be paid or any insurance or other benefits required to be provided in the United Kingdom or any other jurisdiction, including all taxes due on any monies paid to the Contractor pursuant to this agreement and all national insurance contributions. Ofcom may however be required to comply with any withholding requirement stipulated by legislation from time to time, as noted in Clause 11.

(6) This Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between Ofcom and the Contractor other than the contractual relationship expressly provided for.

(7) This Contract constitutes a contract for the provision of services and not a contract of service or employment and so the Contractor shall be fully responsible for and shall indemnify Ofcom or any Group Company for and in respect of:

a. any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim (including all costs, expenses and any penalty, fine or interest incurred or payable by Ofcom in connection with or in consequence of any such liability, deduction, contribution, assessment or claim) arising from or made in connection with either the performance of the Services or any payment or benefit received by the Contractor in respect of the Services

delivered using the Substitute provided that such recovery is not prohibited by law and has not arisen out of Ofcom's negligence or wilful default;

b. any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Substitute against Ofcom arising out of or in connection with the provision of the Services;

c. any liability arising from the employment or termination of employment of the Substitute or other employees of the Contractor or any transfer to Ofcom of the employment of the Substitute or other employees of the Contractor or liabilities arising out of their employment or its termination pursuant to or by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any claim that their employment or such claims or liabilities so transfer; and/or

d. any liability arising from a claim, demand or action by the Substitute that Ofcom or the Contractor has breached its or their obligations under the Agency Workers Regulations 2010.

(8) Ofcom may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Contractor, subject to the application of any tax withholding obligations as noted in Clause 11.

(9) No failure or delay by either Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No waiver shall be effective unless it is communicated to the other Party in writing. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy and a waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other breach of this Contract.