

OFCOM STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SERVICES

1. Definitions and Interpretation

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

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

"Confidential Information" means all information in whatever form obtained by the Contractor from Ofcom relating to and connected with the Contract and the Services, including but not limited to the Contract itself and the provisions of the Contract;

the "Contract" has the meaning set out in the main body of the contract concluded between Ofcom and the Contractor for the supply of Services and incorporates these Conditions;

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 3;

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

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

"Deliverable" means the or (as the case may be) each item deliverable to Ofcom under this Contract together with any information and any computer software necessary to access a Deliverable;

"Deliverable Contractor Background" means Background owned by the Contractor and incorporated in a Deliverable or required to Use a Deliverable;

"Foreground" means all IP created in the course of work under this Contract;

"IP" means intellectual property and comprises inventions, models, prototypes and other articles, know-how, information, trade secrets, designs, reports and other written material, drawings, semiconductor mask works, database material, computer software and associated documentation and information;

"IPR" means intellectual property rights and comprises legal protection for and rights in IP under laws relating to patents, petty patents design rights (whether registrable or not) trade marks, service marks, copyright, database right and semi-conductor chip protection, semi conductor topography right, together with other legal rights associated therewith arising under

common law, trade secret law and competition law in any country, including but not limited to, the United Kingdom;

"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" means Background owned by Ofcom

"Ofcom Foreground" means all Foreground 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;

"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 22.8;

the "Services" means the services to be supplied under the Contract;

"Third Party Background" means Background not owned by Ofcom or the Contractor;

"Use" means use, sub licence, transfer, exploit, transfer physically, disclose to the public free of charge and without time limit.

(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 an individual, firm, company, corporation or an unincorporated association.

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, charge, 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 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 any sub-contractors as if they were its own.

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 he 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) 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. Waiver

(1) The failure or delay by either party to exercise any right or remedy under the Contract or these Conditions 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.

6. 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 in any proceedings relating to the Contract, the validity or enforceability of the remainder of the Contract shall not be affected.

7. Confidentiality

(1) The Contractor agrees not to disclose any Confidential Information to any third party without the prior written consent of Ofcom. 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 7(1) shall not apply to information which:

(a) is or becomes public knowledge (otherwise than by breach of the Contract or these Conditions);

(b) is in the possession of the Contractor, without restriction as to its disclosure, before receiving it from Ofcom;

(c) is required by law to be disclosed.

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

(4) The Contractor shall not handle or examine or use or remove from Ofcom's 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.

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

8. 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.

9. Invoices and Payment

(1) The Contractor shall submit invoices at times or intervals specified by Ofcom in the Contract or otherwise. The Contractor shall ensure that any invoice it submits sets out the Ofcom contract 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, and its confirmation that the Services (or relevant part of the Services referred to on the invoice) have been fully performed.

(2) In consideration for the provision of the Services by the Contractor, Ofcom shall pay the Contract Price and reasonable expenses after receiving a correctly submitted invoice as set out in Condition 9(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 8.

(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.

10. 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.

11. 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 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 11(1) above or otherwise.

12. Value Added Tax

(1) 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.

(2) 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.

13. 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. Ofcom shall have the power to inspect and examine the performance of the Services on Ofcom's 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.

(2) 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.

(3) If the performance of the Contract by the Contractor is delayed by reason of any act on the part of Ofcom or by industrial dispute (other than by an industrial dispute occurring within the Contractor's or its sub-contractor's organisations) or any other cause which the Contractor could not have prevented because they were events beyond its reasonable control then the Contractor shall be allowed 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 staff, agents and sub-contractors.

(4) Where stated in the Contract 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 date specified by Ofcom.

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

(6) Without prejudice to the provisions of Condition 11, 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.

(7) The decision of Ofcom regarding anything in Conditions 13(1)-(4) shall be final, binding and conclusive.

(8) In performing the Services, the Contractor shall comply with all relevant legislation, including but not limited to the Data Protection Act 1998 and the Regulation of Investigatory Powers Act 2000.

14. Progress Report

(1) 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.

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

15 Contractor's Personnel

(1) Ofcom reserves the right to refuse to admit to Ofcom's 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's 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 15(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.

16. 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's Premises or Ofcom's 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 staff 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 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 in respect of the indemnities provided under the Contract, which in any event

shall not be less than £1,000,000 per incident or series of related incidents, and shall at the request of Ofcom produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due thereunder.

(3) Nothing in these Conditions 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.

(4) 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 any infringement or alleged infringement of any third party's Intellectual Property Rights 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.

(5) Ofcom agrees to give the Contractor prompt notice in writing 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 these conditions, and take all reasonable steps to mitigate the amount of its loss and its consequent claim under such indemnities

17 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 17(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 416 of the Income and Corporation Taxes Act 1998.

(2) After receipt of the notice under Condition 17(1) or on earlier discovery by Ofcom of the occurrence of any of the events described in Condition 17(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 17(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 17(1), or such other period as is agreed by the parties.

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

19. Cancellation

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. Once it has given such notice, Ofcom 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.

20. 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 20(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 20(4).

(3) The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Condition 20(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 him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from the Centre for Effective Dispute Resolution 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 20(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 20(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.

21. 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 21(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 21(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.

22. Intellectual Property Rights

(1) The Contractor with full title guarantee assigns to Ofcom absolutely all Ofcom

Foreground, and grants Ofcom a royalty-free, irrevocable licence to Use the Contractor Foreground and Deliverable Contractor Background for Ofcom Purposes.

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

(3) The Contractor shall not incorporate any Third Party Background 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 other than as stated in this condition 22.

(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 and Deliverable Contractor Background;

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

(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;

to do all in its power to protect and preserve the IPR in the Deliverable Contractor Background.

(6) Ofcom grants to the Contractor a royalty-free, revocable licence to Use the Ofcom Background 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 and Deliverable Contractor Background.

(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.

23. 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.

24. 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.

25. Freedom of Information Act 2000

Ofcom are obliged to meet their statutory obligations relating to the disclosure of information under the Freedom of Information Act 2000. All information provided to Ofcom under this Contract may need to be disclosed by Ofcom in response to a request for information under that Act. Therefore, nothing in this Contract prevents Ofcom from complying with its statutory obligations under that Act.

26. 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.