

## OFCOM STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SUPPLIES

### 1. Definitions and Interpretation

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

"Anti-Bribery and Corruption Module" means Ofcom's anti-bribery and corruption e-learning module;

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

"the Contract" means the main body of the contract and includes the Contract Price, Specification of Service and the Contractor Proposal as annexed to the main body of the contract;

"the Contract Price" means the price exclusive of any Value Added Tax, payable to the Contractor by Ofcom under the main body of the Contract for the full and proper performance by the Contractor of the Contract;

"Contract Number" means the reference number on the front page of the main body of the Contract, if applicable;

"the Contractor" means the person who agrees to supply the Goods and includes any person to whom all or part of the Contractor's obligations are assigned pursuant to Condition 3;

"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", "Data Subject", "Personal Data Breach", "Data Protection Officer" has the meaning given in the Data Protection Act 2018;

"Data Protection Legislation" means, for the periods for which they are in force, the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679, or otherwise relating to data protection, including 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) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time;

"the Goods" mean the goods to be supplied under the Contract;

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

"Ofcom" means the Office of Communications established by the Office of Communications Act 2002;

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

"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 Agreement and as set out in Schedule 1;

"Specified Purpose" means for the purpose of providing the Goods as set out in this Contract and as more specifically detailed in Schedule 1.

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

## **2. Terms Applicable**

(1) These Conditions shall apply to all contracts for the purchase of Goods by Ofcom to the exclusion of all other terms and conditions including any terms or conditions which the Contractor may purport to apply under any sales offer, standard terms of sale, acknowledgement of order or similar documentation.

(2) Ofcom will not be liable for any orders for goods or amendments thereto other than those issued or confirmed in the main body of the Contract and signed by a representative of Ofcom with authority to enter into contracts on behalf 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) Subject to Condition 3(1) if the Contractor uses a sub-contractor for the purpose of performing the Contract 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.

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

(4) 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 the 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. 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) The Contractor undertakes to treat as confidential all information which may be derived from or obtained in the course of performing the Contract, or in connection with it, in whatever form and howsoever provided, and to take all necessary precautions to ensure that all such information is strictly treated as confidential by the Contractor, its staff, agents and sub-contractors.

(2) Except with the prior consent in writing of Ofcom, the Contractor shall not:

- (a) disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in carrying out the Contract or any sub-contractor, supplier or other person concerned with the same. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purposes of the Contract;
- (b) make use of the Contract or any information issued or furnished by or on behalf of Ofcom otherwise than for the purposes of the Contract; or
- (c) handle or examine or use or remove from Ofcom's premises any Ofcom Property or any other document or information which relates to Ofcom's functions or activities without the prior written consent of Ofcom.

(3) Any samples or patterns or any specifications, plans, drawings, or other documents issued by or on behalf of Ofcom for the purposes of the Contract remain the property of Ofcom and must be returned on completion or earlier termination of the Contract.

(4) To the extent that any information contained in Condition 6(1) is not returned in accordance with Condition 6(3) then the Contractor shall destroy or erase Ofcom's confidential information as set out in Condition 6(1) from its computer systems (to the extent possible).

## 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) Notwithstanding any other provision of this Contract, Ofcom shall not be liable to pay for Goods or consignments of Goods which it has not been included in the main body of the Contract or which are not otherwise in accordance with the terms of the Contract.

(2) Invoices may only be submitted by the Contractor after delivery of the Goods.

(3) Invoices shall quote the purchase order number, Contract Number, if applicable, and set out the Contract Price, the quantity of Goods, the number of consignments of Goods, the date of delivery to Ofcom and any supporting documentation that Ofcom may reasonably require.

(4) Subject to Condition 8(1), after receiving a correctly submitted invoice, including the Contract Number, if applicable, Ofcom shall pay the Contract Price to the Contractor and such payment shall normally be made within 30 days of receipt by Ofcom of the invoice. Payment shall be made to the bank account nominated in writing by the Contractor.

(5) All invoices must be sent to via email to [payables@ofcom.org.uk](mailto:payables@ofcom.org.uk). If sending a paper invoice, it must be sent to Finance Operations, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

## 9. Accounts

(1) The Contractor shall keep full and proper accounts, records and vouchers relating to any expenditure which the parties agree in writing shall be reimbursed by Ofcom and all payments made by Ofcom in respect of the Goods.

(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 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. 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 Goods provided 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 Goods.

#### **12. Packaging**

(1) Unless otherwise provided by the Contract, all containers (including packing cases, boxes, tins, drums and wrappings) supplied by the Contractor shall be considered as non-returnable, and their cost as having been included in the Contract Price.

(2) The Contractor will ensure that all hazardous, toxic, noxious, fragile or similar Goods are properly labelled as such and that this is drawn to the attention of Ofcom, its employees, agents or contractors where appropriate.

(3) The Contractor shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition.

#### **13. Specifications and Quality Assurance**

(1) The Contractor warrants that:

- (a) the Goods shall be delivered in accordance with the specifications in the main body of the Contract;
- (b) the Goods shall be fit for the purpose for which they were ordered taking account of all requirements to install and integrate the Goods with or into Ofcom's existing systems and procedures (where appropriate) and be of satisfactory quality and free from defects in design, material and workmanship;
- (c) the quantity and quality of the Goods shall be as described and shall correspond to any samples, patterns, specifications, plans, drawings or other documents, individually or collectively, which may have been given in relation to the Goods; and
- (d) any installation or other work carried out in relation to the Goods shall be of the highest standards and otherwise comply with all British and European Union statutory and other legal requirements applicable to such Goods, and the Contractor agrees that it will be fully responsible to make good and repair any Ofcom Property, or fixtures or fittings into or onto which the Goods may be installed.

(2) Except in so far as may otherwise be indicated by a sample, pattern, specification, plan, drawing or other document, the Goods shall strictly adhere to the latest relevant British Standards, or equivalent, where such exist, published before the date of the Contract, and comply with all applicable statutory and regulatory requirements or otherwise shall be to the satisfaction of Ofcom.

(3) The Contractor shall, if so requested by Ofcom, furnish details of his quality management system and produce evidence, if appropriate, of certification to BS5750/EN29000/ISO9000 or equivalent.

(4) The Contractor shall comply with all applicable laws, enactments, orders, regulations and other instruments relating to the packing, packaging, marking, storage, handling and delivery of the Goods.

#### **14. Delivery, Title and Risk**

(1) The Goods shall be delivered by the Contractor at such times, at such places and in such manner as is specified in the main body of the Contract, or as otherwise advised in writing by Ofcom.

(2) Unless the Contract specifically otherwise provides, time of delivery shall be of the essence and failure to deliver within the specified time shall entitle Ofcom, at its option, and without prejudice to its other rights and remedies, to:

- (a) treat such failure as a fundamental breach of Contract so as to release Ofcom from any obligation to accept the Goods or pay for them;
- (b) entitle it to cancel by notice in writing to the Contractor all or part of any order in relation to the Goods; or
- (c) obtain substitute goods from another supplier and recover from the Contractor any costs and expenses reasonably incurred by Ofcom in obtaining such substitute goods.

(3) Title and risk in the Goods shall pass to Ofcom on delivery of the Goods to Ofcom or on payment of the Contract Price whichever is earlier.

(4) Any access to premises and any labour and equipment provided by Ofcom in connection with delivery shall be provided without acceptance by Ofcom of any liability in respect of any actions, claims, demands, costs and expenses incurred by the Contractor or any third parties (including any agent of Ofcom) for any loss or damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of Ofcom, or any employee or agent thereof.

(5) Where any access to premises owned or occupied by Ofcom is necessary in connection with delivery or installation of the Goods, the Contractor and/or his sub-contractors shall at all times comply with the reasonable requirements of Ofcom's facilities manager.

#### **15. Inspection**

(1) Ofcom may inspect or arrange for the inspection of all or any of the Goods in the course of production at the Contractor's premises, or the premises where the Goods are being produced, at any reasonable time.

(2) Without prejudice to Ofcom's right of inspection under Condition 15(1), Ofcom may inspect or arrange for the inspection of all or any of the completed Goods at the Contractor's premises or premises where the Goods have been produced, or after delivery, or as otherwise provided in the Contract.

(3) When Ofcom wishes to exercise its right of inspection under this Condition, the Contractor shall give Ofcom full and free access to the said premises as and when required for that purpose and shall provide at his own expense all such accommodation and facilities in connection with the inspection and all appliances, materials and labour required for inspection purposes as Ofcom may reasonably require.

(4) If following an inspection Ofcom considers that the Goods are not or are not likely to be as warranted under Condition 13(1), Ofcom shall inform the Contractor and the Contractor shall immediately take such action as is necessary to ensure that the Goods are or will be as warranted under Condition 13(1). Ofcom shall have the right to re-conduct inspections after the Contractor has carried out its remedial actions.

#### **16. Rejection of the Goods**

(1) Ofcom may reject any Goods which on inspection are found not to conform with the requirements of the Contract, or, in the case of a latent defect in the Goods, until a reasonable time after latent defect has become apparent.

(2) Ofcom may reject the whole of any consignment of the Goods if an inspection shows that:

- (a) such proportion or percentage of the Goods in that consignment as the Contract may specify as being appropriate for the purposes of this Condition; or
- (b) such samples taken from that consignment by Ofcom, do not conform with the requirements of the Contract.

(3) When under this Condition Ofcom rejects any Goods or consignment after delivery, the Contractor shall, subject to the provisions of Condition 16(6), at his own expense remove the rejected Goods and shall do so within such period as is provided by the Contract or, if the Contract makes no such provision, within 8 working Business Days from receipt of notification of rejection.

(4) If the Contractor fails to remove the Goods or any of them in accordance with Condition 16(3), Ofcom may dispose of the Goods as it sees fit.

(5) When under this Condition Ofcom rejects any Goods or consignment after delivery, Ofcom may in its sole discretion:

- (a) immediately cancel subsequent consignments of similar Goods that were due for delivery under the Contract; or
- (b) require the Contractor at his own expense to deliver in the place of the rejected Goods, goods which conform with the requirements of the Contract and shall do so within the period for delivery stipulated in the Contract or within such further reasonable period as Ofcom may allow.

(6) If any Goods whether completed or in the course of production are rejected on inspection by Ofcom, the same shall, if Ofcom so requires, be marked in a manner satisfactory to Ofcom to ensure their subsequent identification as rejected Goods.

#### **17. Loss of or Damage to the Goods**

(1) The Contractor is responsible for the Goods and any materials, equipment, fittings or things acquired or allocated by it for incorporation into the Goods until delivery has been effected in accordance with Condition 16 and it shall make good any loss of or damage to the Goods or any such materials, equipment, fittings or things however occasioned which may occur before such delivery.

(2) Condition 17(1) shall apply notwithstanding that the Goods concerned may have been inspected in accordance with the Contract or that the title in the Goods may have passed, in accordance with provisions specifically made in the Contract, from the Contractor to Ofcom or its agent earlier than upon delivery.

(3) Unless the Contract specifically otherwise provides, the Contractor is not responsible for the Goods after delivery save that it shall become responsible in all respects including assuming risk of damage to or loss of the Goods which under Condition 16 Ofcom rejects after delivery, and such responsibility shall take effect upon the Contractor:

- (a) removing the Goods in accordance with Condition 16(3); or
- (b) if it fails so to remove the Goods, on the expiry of the period provided by the Contract or, where no such period is provided, on the expiry of the eighth Business Day from his receipt of notification of rejection of the Goods.

#### **18. Acceptance of the Goods**

Acceptance of the Goods or a consignment of Goods shall take place when Ofcom confirms acceptance of the Goods in accordance with the procedure specified in the Contract, and if none is so specified, Ofcom shall be deemed to have accepted the Goods or a consignment of Goods without prejudice to any remedies, upon the happening of any of the following:

- (a) Ofcom takes the Goods into use;
- (b) Ofcom fails to exercise its right of rejection of the Goods under Condition 16 within any period specified for that purpose in the Contract; or
- (c) where no period for exercising the right of rejection is specified in the Contract where Ofcom fails to exercise its right of rejection within such reasonable time since delivery of the Goods was effected as may be necessary to inspect the Goods in accordance with Condition 18 or in accordance with the Contract.

#### **19. Marking of Goods**

If so required by the Contract, the Contractor shall at its own expense mark or permit the representative of Ofcom to mark all approved materials, Goods or parts thereof with recognised Ofcom marks. In the case of materials, Goods or parts thereof which cannot be so marked, the same shall, if so required by Ofcom, be packed in suitable packages or cases, each of which shall be sealed and shall have the Ofcom mark placed on the seals.

## 20. Insurance

(1) During this Contract and for a period of one year afterwards the Contractor shall maintain in force a product liability insurance policy with a reputable insurance company for not less than £5,000,000 for claims arising from any single event.

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

(3) On taking out and renewing each policy, the Contractor shall promptly send a copy of the receipt for the premium to Ofcom. On Ofcom's written request, the Contractor shall provide Ofcom with copies of the insurance policy certificates and details of the cover provided.

(4) The Contractor shall ensure that any subcontractors also maintain adequate insurance having regard to the obligations under this Contract which they are contracted to fulfil.

(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's liabilities under this Contract shall not be deemed to be released or limited by the Contractor taking out the insurance policy referred to in Condition 20(1).

## 21. Limitation of liability

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

- (a) death or person injury resulting from negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) breach of section 2 of the Consumer Protection Act 1987; 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 this agreement, 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 Goods purchased, to the amount unpaid; or
- (b) for any other type of liability, to a sum equal to five (5) times the total revenue paid by Ofcom under this Contract.

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

## 22. Indemnities

(1) The Contractor shall hold harmless and indemnify Ofcom on demand from and against all claims, demands, proceedings, actions, damages, costs (including legal costs), losses, charges, expenses and any other liabilities arising from claims made by Ofcom's staff or agents, or by third parties, in respect of any death or personal injury, or loss or destruction of or damage to property, or any other loss, destruction or damage, including but not limited to financial losses which are caused, whether directly or indirectly, by the Goods or their use following delivery or by the Contractor's, its employee's, agent's or subcontractor's, breach of contract or breach of duty (whether arising in negligence, tort, statute or otherwise).

(2) The Contractor shall hold harmless and indemnify Ofcom on demand from and against any loss, damage, destruction, injury or expense, whether direct or indirect, (and including but not limited to loss or destruction of or damage to Ofcom's property (which includes data) caused, whether directly or indirectly, by the Goods or their use following delivery or by the Contractor's breach of contract or breach of duty (whether arising in negligence, tort, statute or otherwise).

(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:

- (a) any infringement or alleged infringement of any third party's Intellectual Property Rights resulting from the use or resale of the Goods supplied by the Contractor;
- (b) any breach by the Contractor of Condition 25 or Data Protection Legislation.

(5) Nothing in these Conditions excludes Ofcom's liability for fraudulent misrepresentation or for death or personal injury resulting from its negligence.

(6) This Condition 22 shall survive termination of the Contract.

### **23. 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 laws, statutes and regulations from time to time in force, including but not limited to the Modern Slavery Act 2015; and
- (b) any anti-slavery policy adopted by Ofcom from to time.

(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 to time; 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 23.

(4) Breach of this Condition 23 by the Contractor shall be deemed a material breach for the purpose of Condition 27.

### **24. Anti-bribery**

(1) The Contractor shall:

- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and the US Foreign Corrupt Practices Act 1977 ("**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 this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and
- (d) promptly report to the Customer 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 24 ("**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) The Contractor shall undertake and successfully complete the Anti-Bribery and Corruption Module within fourteen (14) days of



the Contract coming into force. Ofcom shall provide the Contractor with access to the Anti-Bribery and Corruption Module as soon as reasonably practicable to enable the Contractor to comply with its obligation under this Condition.

(5) Breach of this Condition 24 shall be deemed a material breach under Condition 27.

## 25. Data Protection

(1) The parties acknowledge that for the purposes of Data Protection Legislation, Ofcom is the Controller and the Contractor is the Processor of any Personal Data. Consequentially, the Parties acknowledge and agree that the Contractor's obligations as set out in this Contract are to Ofcom as data 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 25(1) and 25(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 relates 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-contractors 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; or
  - (iv) becomes aware of any actual or suspected, threatened or 'near miss' incident of unauthorised or unlawful processing, loss or destruction of, or damage to, the Personal Data;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 Data Controller in respect of any Personal Data (including, without limitation, to comply with any request or notice referred to at Condition 25(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 1 and the Data Protection Legislation.

(4) In addition to its obligations under Conditions 25(2) and 25(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 25(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 25;
- (c) not and its sub-contractors shall not transfer any Personal Data outside the European Economic Area:
  - (i) without obtaining prior written consent from Ofcom (such consent to be at Ofcom's sole discretion); and
  - (ii) only to the extent and for such time as the recipient of the Personal Data has in place a set of relevant Model Clauses signed 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 25(4)(f)(i), the Contractor shall as soon as reasonably practicable ensure that all Personal Data is deleted from its systems,

and in each case, the Contractor shall provide written confirmation of compliance with Conditions 25(4)(f)(i) and (ii) to Ofcom no later than ten (10) Business Days following termination or expiry of this Contract.

- (g) 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 25(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 25(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.

(5) The Contractor shall remain fully liable for all acts or omissions of any sub-contractors appointed pursuant to Condition 25(4).

(6) The parties agree to take account of any guidance issued by the Information Commissioner's Office. Ofcom may on not less than 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.

(7) Each party shall promptly following the date of this Contract, inform the other of the name and contact details of its Data Protection Officer, or where such party does not have a Data Protection

Officer, the nominated individual with responsibility for data protection.

## **26. Termination due to Insolvency or on 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 26(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 passes a resolution to wind up or the court makes an administration order or the company takes steps to place itself into administration (including the filing of papers at a court of competent jurisdiction) or the court makes 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 26(1) or on earlier discovery by Ofcom of the occurrence of any of the events described in Condition 26(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 26(1)(d) will exist until

the end of a period of six calendar months starting from receipt of the notice provided by the Contractor pursuant to Condition 26(1), or such other period as is agreed by the parties.

## **27. 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, it 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.

(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.

## **28. Cancellation**

Ofcom shall be entitled to terminate the Contract at any time by giving to the Contractor not less than 14 days' notice in writing to that effect.

## **29. Dispute Resolution**

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

(2) If the parties cannot resolve the dispute pursuant to Condition 29(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 29(4).

(3) The performance of the Contract shall not cease or be delayed by the reference of a dispute to mediation pursuant to Condition 29(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 329(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 29(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.

### **30. 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 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.

(4) Where Ofcom is of the opinion that the conflict of interest notified to it under Condition 30(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 30(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.

### **31. Special Provisions**

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

### **32. 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.

### **33. 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.

### **34. 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.

### **35. 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.

## SCHEDULE 1

### Data

This Schedule sets out the Specified Purpose, type of Personal Data processed under the Contract and the categories of data subject to which that Personal Data relates.

1.1 The subject matter of processing, duration and nature and purposes of processing are as follows:

Subject matter of the processing	<i>[High level, short description of what the processing is about, i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[This should cover all intended purposes. Note that the nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaption or alteration, retrieval, consultant, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include, for example, employment processing, statutory obligation, recruitment assessment, etc.]</i>

1.2 The Personal Data shall include the following class of personal data:

Criminal offences (including alleged offences)	
Criminal proceedings, outcomes and sentences	
Education and training details	
Educational records and examination results	
Employment details	
Family lifestyle and social circumstances	
Financial details	
Goods and/or services provided	
Personal / contact details	
Physical or mental health and condition	
Political opinions	
Racial or ethnic origin	
Religious or other beliefs of a similar nature	
Sexual life	
Trade union membership	
Others – please specify below	

1.3 The Personal Data shall concern the following categories of data subjects:

Advisers, consultants and other professional advisers and experts	
Agents and contractors	
Business or other contacts	
Complainants, correspondents and enquirers	
Customers and clients	
Donors and lenders	
Landlords or tenants	
Members, alumni or supporters	
Offenders and suspected offenders	
Patients	
Previous and prospective employers of the staff and referees	
Relatives, guardians, other family members and associates of the data subject	
Staff including volunteers, agents, temporary and casual workers	
Students	
Suppliers	
Others – please specify below	