
**NORTH WEST AEROSPACE ALLIANCE
STANDARD TERMS AND CONDITIONS OF
CONTRACT FOR SERVICES**

**(Including Hire, Lease and Facilities
Management)**

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1. Interpretation

(1) In these Conditions:

(a) "NWAA" means the North West Aerospace Alliance;

(b) "NWAA Property" means anything issued or otherwise furnished in connection with the Contract by or on behalf of the NWAA or its authorised representative(s), including but not limited to documents, papers and other materials;

(c) "the Condition(s)" means the NWAA's standard terms and conditions of contract for Services as set out in this document;

(d) "Confidential Information" means all information (of whatever nature and however recorded or preserved) disclosed by one party to the other, which is marked as or has been otherwise indicated to be confidential; or derives value to a party from being confidential; or would be regarded as confidential by a reasonable business person; except to the extent that such information is already in the public domain at the time of disclosure or enters the public domain otherwise than by a breach of any obligation of confidentiality.

(e) "the Contract" means the agreement concluded between the NWAA and the Contractor for the supply of Services, including without limitation the Conditions (to the extent that they are not expressly excluded or modified), all specifications, purchase orders, plans, drawings and other documents which are incorporated into the Contract Documents;

(f) "the Contract Price" means the price exclusive of Value Added Tax, agreed in respect of the Services and payable to the Contractor by the NWAA under the Contract for the full and proper performance by the Contractor of the Services under the Contract;

(g) "the Contractor" means the person who agrees and undertakes to supply the Services under and in accordance with the Contract and, includes any person to whom all or part of the Contractor's obligations are assigned to in accordance with Condition 4 (with the consent of the NWAA);

(h) "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation

(i) "Intellectual Property Rights" means patents, trade marks, service marks, design rights (whether capable of registration or not), applications for any of the foregoing rights, copyright, database rights, domain names, trade or business names and other similar rights or obligations, whether capable of registration or not, in any country, (including but not limited to, the United Kingdom) and the right to sue for passing off;

(j) "Loss" includes destruction;

(k) "Month" means calendar month;

(l) "Purchase Order" means the document so described by the NWAA to purchase the Services which makes reference to the Conditions;

(m) "the Services" means the services to be supplied under the Contract.

(n) "TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 1981

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

(a) a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;

(b) the headings in these Conditions are for ease of reference only and shall not affect the interpretation or construction of the Contract;

(c) references to "person", where the context allows, includes a corporation or an unincorporated association.

(d) reference to "working days" means any day other than a Saturday, Sunday or Bank Holiday in England and Wales.

(e) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

2. Acts by the NWAA

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

3. Service of Notices and Communications

Any notice or other communication that either party gives under the Contract shall be made in writing and given to the NWAA Contract Manager or the Contract Representative (as appropriate) either by hand, first class recorded postal delivery or facsimile transmission. Notice given by hand shall be effective immediately, notice given by recorded delivery shall be effective two working days after the date of posting, notice given by facsimile transmission shall be effective the working day after receipt by the notifying party of a transmission slip showing that the transmission has succeeded.

4. Assignments and Sub-contracting

(1) The Contractor shall not give, bargain, sell, assign, sub-contract or otherwise dispose of the Contract or any part thereof without the previous consent in writing of the NWAA. Any such consent if given may be made subject to any conditions which the NWAA considers appropriate. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.

(2) If the Contractor uses a sub-contractor with the NWAA's consent, for the purpose of performing the Services or any part of it, the Contractor shall include in the relevant contract with the sub-contractor a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a valid invoice from the sub-contractor.

(3) Without prejudice to Condition 4(1) the Contractor shall use all reasonable endeavours to ensure that any contract entered into with a sub-contractor shall include the same or materially similar contractual obligations as in this contract.

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

(5) Where the NWAA has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the NWAA within 2 working days of issue.

5. NWAA Property

(1) All NWAA Property shall remain the property of the NWAA and shall be used in the execution of the Contract and for no other purpose whatsoever save with the prior approval in writing of the NWAA.

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

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

(4) The Contractor shall notify the NWAA of any surplus NWAA Property remaining after Completion of the Contract and shall dispose of it as the NWAA may direct. Without prejudice to any other rights of the NWAA, the Contractor shall deliver up NWAA Property whether processed or not to the NWAA on demand.

(5) The Contractor shall ensure the security of all NWAA Property, whilst in the Contractor's possession either on its premises or elsewhere during the performance of the Contract, in accordance with the NWAA's reasonable security requirements as required from time to time.

(6) Without prejudice to the above provisions, the Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of the NWAA, pay compensation for all loss, destruction or damage occurring to any NWAA Property caused or sustained by the Contractor, or by his servants, agents or sub-contractors whether or not arising from his or their performance of the Contract and wherever occurring, provided that if the loss, destruction or damage occurs at the NWAA's premises, this Condition shall not apply to the extent that the Contractor is able to show that any such loss, destruction or damage was not caused or contributed by his negligence or default or the neglect or default of his servants, agents, or sub-contractors.

6. Waiver

(1) The failure of either party at any time to enforce any provision of or exercise any right or remedy under the Contract shall in no way constitute a waiver of such provision or right or remedy as appropriate.

(2) No waiver shall be effective unless it is communicated to the other party in writing.

(3) A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

7. Severability

If any Condition, clause or provision of the Contract not being of a fundamental nature is held to be unlawful 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. If the court finds invalid a provision so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

8. Confidentiality and Safeguarding of Documents

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

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

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

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

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

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

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

(7) The Contractor shall use all best endeavours to safeguard from loss or damage every document or thing supplied by or obtained from the NWAA, for the purposes of the Contract and to protect every such document or thing from unauthorised use, disclosure or copying and shall forthwith upon termination or expiry of the Contract, or earlier if the NWAA shall request, return to the NWAA in good and usable condition every such document and thing.

(8) The Contractor acknowledges that the NWAA is subject to the FOIA. The Contractor will act in accordance with the FOIA and any relevant codes of practice to the extent that they apply to the Contractor's performance under the Contract.

The Contractor agrees that:

(a) the provisions of this condition 8(8) are subject to the respective obligations and commitments of the NWAA under the FOIA.

(b) the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the NWAA

(c) where the NWAA is managing a request for information the Contractor shall co-operate with the NWAA and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

The NWAA will consult the Contractor in relation to any request for disclosure of the Contractor's Confidential Information. .

The provisions of this condition 8 shall without prejudice to the earlier termination of Contract remain in force without limit in respect of Confidential Information which comprises personal data as defined under the Data Protection Act 1998 and in respect of all other Confidential Information shall unless expressly agreed otherwise between the parties remain in force for a period of five (5) years following the termination or expiry of this Contract.

9. Amendments and Variations

No amendment or variation to the terms of the Contract shall be valid unless previously agreed in writing between the NWAA and the Contractor and without prejudice to any other provision of these Conditions and for the avoidance of doubt no payment shall be made for unauthorised services.

10. Invoices and Payment

(1) The Contractor shall submit invoices at times or intervals agreed by the NWAA in the Contract or otherwise. The Contractor must ensure that any invoice it submits sets out the NWAA's Contract Reference Number, the charges and, where not all the Services have been completed, the relevant part of the charges with an appropriate breakdown of time worked, the part of the Services (if all the Services have not been completed) and period to which the invoice relates, and its confirmation that the Services (or relevant part of the Services referred to on the invoice) have been fully performed. The NWAA reserves the right in its absolute discretion to refuse to pay an invoice without a valid Contract Reference number. All invoices must be addressed to North West Aerospace Alliance, Pendle Business Centre, Commercial Road, Nelson, Lancashire BB9 9BT for the attention of Finance Manager.

(2) In consideration of the provision of the Services by the Contractor, the NWAA shall pay the undisputed sums due to the Contractor after receiving a correctly submitted invoice as set out in Condition 10(1). Such payment shall normally be made within 30 days of receipt of the correctly submitted invoice, for services completed to the satisfaction of the NWAA.

(3) Each invoice shall contain all appropriate references and a detailed breakdown of the services and shall be supported by any other documentation required by the NWAA Contract Manager to substantiate the invoice.

(4) 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 9.

(5) The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under condition 19 for failure to pay undisputed charges.

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

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

(8) Unless agreed otherwise in writing, the NWAA will make all payments to the Contractor by bulk electronic clearing (BACS) and shall not be obliged to make payment by any other method.

11. Accounts

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

(2) The Contractor shall permit the NWAA acting by its officers, servants and agents or independent auditors on request and at all reasonable times to examine all accounts, records and vouchers at the offices of the Contractor or at such other places as the NWAA shall direct, and to take copies of such accounts, records and vouchers, and shall provide the NWAA or its independent auditors with such explanations relating to that expenditure as the NWAA may request.

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

12. Recovery of Sums Due

(1) Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, (including any sum which the Contractor is liable to pay to the NWAA in respect of any breach of this Contract) such sum may be unilaterally deducted from any sum then due, or which at any time thereafter may become due to the Contractor under this Contract or any other agreement or arrangement with the NWAA.

(2) Any over-payment by the NWAA to the Contractor whether in respect of the charges or Value Added Tax shall be a sum of money recoverable from the Contractor pursuant to Condition 12(1) above or otherwise.

(3) The Contractor shall make any payments due to the NWAA without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the NWAA to the Contractor.

13. Value Added Tax

(1) The NWAA shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Contract.

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

(3) The Contractor shall, if so requested by the NWAA, furnish such information as may reasonably be required by the NWAA relating to the amount of Value Added Tax chargeable on the Services in accordance with the Contract and payable by the NWAA to the Contractor in addition to the Contract Price. Any overpayments by the NWAA to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of Condition 12.

14. Performance of Services

(1) The Contractor shall provide the Services in accordance with and as specified in the Contract to the satisfaction of the NWAA, or its authorised representative, whose decision shall be final and conclusive. During the course of the Contract, the NWAA, or its authorised representative, shall have the power to inspect and examine the Services being performed either at the NWAA's premises at any reasonable time or, where any part of the work is being performed on premises other than the NWAA's premises, and provided that the NWAA gives reasonable notice to the Contractor, at those premises.

(2) In providing the Services, the Contractor shall comply with and take into account all applicable laws, enactments, orders, regulations, relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

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

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

(6) The time of performance of the Services shall be of the essence and failure to commence the provision of the Services within the time promised or specified shall entitle the NWAA (at its option) to be released from any obligation to accept and pay for the Services or to cancel all or part of the Services, in either case without prejudice to the other rights and remedies of the NWAA.

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

(8) Without prejudice to the provision of Condition 12(1), the Contractor shall reimburse the NWAA for all reasonable costs incurred by the NWAA which have arisen as a direct consequence of the Contractor's delay in the performance of the Contract which the Contractor had failed to remedy after being given reasonable notice by the NWAA.

(9) Any service(s) provided by the Contractor prior to receipt of a valid Contract Reference number will be at the Contractor's own risk

15. Progress Report

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

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

16. Contractor's Personnel

(1) The NWAA reserves the right to refuse to admit to premises occupied by or on behalf of the NWAA any person employed by the Contractor, or by a sub-contractor, whose admission would be undesirable in the opinion of the NWAA.

(2) If, and when directed by the NWAA, 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 Contract to any premises occupied by or on behalf of the NWAA, specifying the role in which each such person is concerned with the Contractor and giving such other particulars as the NWAA may require.

(3) Any person employed by the Contractor, when engaged within the boundaries of a Government establishment shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

(4) If the Contractor shall fail to comply with paragraph (2) or (3) of this Condition and if the NWAA decides that such failure is prejudicial to its interests, then the NWAA may immediately terminate the Contract by notice in writing to the Contractor, always providing that such termination shall not prejudice or affect any right of action or remedy which shall have accrued, or shall accrue thereafter, to the NWAA.

(5) The decision of the NWAA as to whether any person is to be refused admission to official premises and as to whether the Contractor has failed to comply with clauses (2) or (3) of this Condition shall be final and conclusive.

(6) The Contractor shall bear the costs of any notice, instruction or decision of the NWAA under this Condition.

17. Indemnities and Insurance

(1) The Contractor shall hold harmless and indemnify the NWAA on demand from and against all claims, demands, proceedings, actions, damages, costs (including legal costs), expenses and any other liabilities arising from claims made by the NWAA's staff or agents, or by third parties, in respect of any death or personal injury, or loss or destruction of or

damage, including but not limited to financial losses which are caused, whether directly or indirectly, by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Contractor, its employees, agents or sub-contractors.

(2) The Contractor shall be liable to the NWAA for any loss, damage, destruction, injury or expense, whether direct or indirect, (and including but not limited to loss or destruction of or damage to the Agency's property, which includes data) arising from the Contractor's breach of contract or duty (whether arising in negligence, tort, statute or otherwise.)

(3) The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing adequate level of cover in respect of all risks which may be incurred by the Contractor arising out of the Contractor's performance of the Contract, including, death or personal injury, loss of or damage to property or any other loss in respect of the indemnities provided under the Contract. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor and in any event shall not be less than £5,000,000. At the request of the NWAA the Contractor shall produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due there under.

(4) Without prejudice to the provision of Condition 13, the Contractor shall reimburse the NWAA for all reasonable payments or additional payments made by the NWAA to third parties which have become necessary as a direct consequence of delay in the performance of the Contract which the Contractor had failed to remedy after being given reasonable notice thereof by the NWAA.

(5) In addition to any other liability which the Contractor shall incur, and without prejudice to the foregoing provisions, the Contractor shall be liable to the NWAA for any loss, damage, injury or expense (whether direct, consequential or otherwise) arising out of or in connection with the performance of the Contract, including the operation of any computer software contained in or contributing to the performance of the Contract, where such loss, damage, injury or expense arises from the breach of contract or the breach of duty or fault or negligence of the Contractor, his employees or his agents.

(6) Nothing in these Conditions nor in any part of the Contract shall impose any liability on any member of the staff of the NWAA or its representatives in their personal capacity.

(7) The Contractor shall indemnify the NWAA against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and 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, providing that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of the NWAA.

(8) Except in relation to death or personal injury as referred to in Condition 17(1), or any fraud or misrepresentation and subject to Conditions 17(5) , 30(6) and 34(3) the amount of the Contractor's liability under this Condition shall be limited to a sum of £5,000,000 or twice the contract value, whichever is the greater, or such other sum as may be agreed in writing between the Chief Executive Officer on behalf of the NWAA and the Contractor.

18 Termination due to Insolvency or on Change of Control.

(1) The Contractor shall notify the NWAA in writing immediately upon the occurrence of any of the following events:

a) where the Contractor is an individual and if a petition is presented for his bankruptcy, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or

b) where the Contractor is not an individual but is a firm or a number of persons acting together in any event in Condition 18 (1) (a) or (c) occurs in respect of any partner in the firms or any of those persons, or a petition is presented for the Contractor to be wound up as an unregistered company; or

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

d) or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

(2) On receipt of the notice under paragraph (1) above or earlier discovery by the NWAA of the occurrence of any of the events described in that paragraph, the NWAA may, by notice in writing to the Contractor, summarily terminate the Contract with immediate effect and without compensation to the Contractor and without any prejudice to any right or action or remedy which may accrue to the NWAA thereafter.

(3) If the Contractor being an individual shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983 the NWAA shall be entitled to terminate this Contract by notice to the Contractor or the Contractor's Representative with immediate effect.

19. Termination for breach of Contract

If either party commits a material breach of the Contract and, in the case of a breach which is capable of remedy, fails to remedy such breach within 28 days of being required by the other party in writing to do so, the other party shall be entitled to terminate the Contract with immediate effect by notice in writing to the other party that committed the material breach and without prejudice to any rights or remedies of either party in respect of the breach concerned or any other breach of the Contract.

20. Cancellation

The NWAA shall be entitled to terminate the Contract, or to terminate the provision of any part of the Services, by giving to the Contractor not less than 28 days' notice in writing to that effect without prejudice to any rights or remedies of the Contractor for breach of Contract. The NWAA shall remain liable to the Contractor for payment of all costs in relation to all services properly provided in accordance with these terms and conditions up to and including the date of termination provided that the NWAA shall have no liability in respect of any costs incurred after the expiry of the notice period. Once it has given such notice, the NWAA 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.

Without prejudice to condition 34(3) and for the avoidance of doubt the NWAA shall not be obliged to pay any cancellation charge or other compensation to the Contractor (including,

without limitation, in respect of redundancy payments for the Contractor's employees or loss of profits) by reason solely of the termination of Contract by the NWAA.

21. 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 within 30 days of either party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the Chief Executive Officer (or equivalent) of each party.

(2) Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of the component jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

(3) If the dispute cannot be resolved by the parties pursuant to paragraph (1) of this Condition, the dispute may, by agreement between the parties, be referred to mediation pursuant to paragraph (5) of this Condition.

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

(5) The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the parties from one of the dispute resolution providers listed by the Office of Government Commerce on its website or in its printed guidance on dispute resolution within 30 days after agreeing to refer the dispute to mediation;

(b) The parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from the Office of Government Commerce to provide guidance on a suitable procedure;

(c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings

(d) If the parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the NWAA and the Contractor.

(e) Failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties;

(5) If the parties do not agree to refer the dispute to mediation, or the parties fail to reach agreement as to who shall mediate the dispute pursuant to Condition 21(4)(a) or if they fail to reach agreement in the structured negotiations within 60 days of the Mediator being

appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

22. Corrupt Gifts and Payments of Commission

(1) The Contractor shall not:

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

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

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

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

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

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

a) the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under paragraph (2) of this Condition in respect of any loss resulting from such termination of the Contract); or

b) the right of the NWAA to terminate the Contract; or

c) the amount or value of any gift, consideration or commission,

the decision of the NWAA shall be final and conclusive.

23. Exploitation and Use of Information provided by Third Parties

(1) If any information is given to the Contractor by a third party under a condition that such information shall be treated as confidential to the Contractor and shall not be disclosed to the NWAA without the consent of the informant, the Contractor shall respect the confidential nature of that information, and shall provide to the NWAA the name of the informant (if not

confidential to the Contractor) and such other details as shall be necessary to enable the NWAA to seek the informant's consent to disclosure.

(2) Any information communicated to the Contractor under a condition that it shall be confidential to the Contractor and to the NWAA without disclosure to any other person shall not be disclosed by the Contractor to any such person other than the NWAA without the prior written consent of the informant and of the NWAA and such information shall be identified as such in any Contractor's reports.

(3) The Contractor may retain copies of the information produced or collected in the course of performance of the Services, but shall not disclose such information and shall not exploit such information commercially without the prior written consent of the NWAA, which may be withheld, or may be granted upon such terms and conditions as the NWAA in its absolute discretion shall see fit, and save as shall be permitted by such consent, the Contractor shall use such information only for the purposes of the Contract.

24. Special Provisions

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

25. Conflict of Interest

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

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

- a) if the Contractor fails to comply with the NWAA's requirements in this respect; or
- b) if, in the opinion of the NWAA, compliance does not avoid or remove the conflict,

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

(4) The provisions of this Condition 25 shall apply during the continuance of the Contract and indefinitely after its termination.

26. Intellectual Property Rights

(1) Subject to pre-existing rights of third parties and of the Contractor, the Intellectual Property Rights in all reports, documents and other materials which are generated or acquired by the Contractor (or any of its sub-contractors or agents) in the performance of the Services shall belong to and be vested automatically in the NWAA, and the Contractor warrants to the NWAA that all staff, agents and sub-contractors are and will be engaged in relation to the Contract on terms which do not entitle any of them to any Intellectual Property Rights in any such report, document or other material.

(2) If the Contractor in providing the Services uses any materials in which there are pre-existing Intellectual Property Rights owned by itself, its agents, sub-contractors or third parties, it shall itself provide, or procure from such agent, subcontractor or third party a non-exclusive licence for, or, if the Contractor is itself a licensee of those Intellectual Property Rights, it shall grant a sub-licence to, the NWAA to use, reproduce, modify, adapt and enhance the material as the NWAA sees fit. Such licence or sub-licence shall be perpetual and irrevocable and granted at no cost to the NWAA.

(3) Any information (whether or not it is Confidential Information) collected or collated pursuant to the Contract (excluding any information which in the opinion of the NWAA is confidential to the Contractor or which has been communicated to the Contractor under a condition that it shall be confidential to the Contractor) shall be the property of the NWAA, and all original documents in whatever form which contain that information, including any computer tape or disk, any voice recording and any special computer program written to give access to the information, shall on request be deposited with the NWAA.

(4) Nothing in the Contract or done under the Contract shall be taken to diminish any NWAA copyright, patent rights or rights to any other intellectual or industrial property which would apart from this Contract vest in the NWAA.

(5) Without prejudice to the generality of the foregoing, there shall be vested in the NWAA all copyright, patent rights and rights to other intellectual or industrial property in or over any information, specification, plan, drawing, pattern, sample or other material supplied by the NWAA, to the Contractor in relation to the Contract or in or over anything made or derived from or arising out of any such information, specification, plan, drawing, sample or other thing.

(6) The Contractor shall ensure that all royalties licence fees or similar expenses in respect of intellectual property used in connection with the Contract have been paid and are included in the contract price.

(7) Any right of use in or over property (including any copyright or licence to use copyright material and also including intellectual property rights of all kinds) which is acquired by the Contractor or by his staff pursuant to, or for the purposes of, the Contract, and whether acquired by transfer, assignment, licence, sub-licence, grant or by any other means whatsoever, and the costs of acquisition of which are to be reimbursed to the Contractor by the NWAA, shall be acquired by the Contractor upon terms which shall enable the Contractor upon request by the NWAA to perform at the Contractor's expense all acts and to execute all documents necessary to vest such rights of use in the NWAA to the full extent enjoyed by the Contractor without need for any or other permission, authorisation or consent.

(8) If the cost of any equipment is reimbursed to the Contractor such equipment shall be the property of the NWAA and shall on request be delivered to the NWAA. The Contractor shall

keep a proper inventory of such equipment and shall deliver that inventory to the NWAA on request and on completion of all work under the Contract.

(9) It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall on written demand indemnify and keep indemnified the NWAA against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the NWAA may suffer or incur as a result of or in connection with any breach of this Condition, except where any such claim relates to:

- a) designs furnished by the NWAA;
- b) the use of data supplied by the NWAA which is not required to be verified by the Contractor under any provision of the Contract.

(10) The NWAA shall notify the Contractor in writing of any claim or demand brought against the NWAA for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

- a) shall consult the NWAA on all substantive issues which arise during the conduct of such litigation and negotiations;
- b) shall take due and proper account of the interests of the NWAA; and
- c) shall not settle or compromise any claim without the NWAA's prior written consent (not to be unreasonably withheld or delayed).

(11) If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the NWAA (not to be unreasonably withheld or delayed) either:

- a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
- b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the NWAA and at no additional cost to the NWAA.

(12) At the termination of the Contract the Contractor shall immediately return to the NWAA all materials, work or records held, including any back-up media.

(13) The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

27. Rights of Third Parties

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

28. Law

The Contract shall be considered as a contract made in England and shall be governed by, and construed in accordance with, the provisions of English Law.

29. Entire Agreement

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

30. Data Protection

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

(2) The Contractor warrants that it has appropriate technical and organisational measures in place to protect any personal data it is processing on the NWAA’s behalf against any unauthorised or unlawful processing and against any accidental loss, destruction or damage and undertakes to maintain such measures during the course of this Contract. The Contractor shall also take all reasonable steps to ensure the reliability of its staff having access to any such personal data.

(3) Upon reasonable notice the Contractor shall allow the NWAA access to any relevant premises owned or controlled by it to enable the NWAA to inspect its procedures described at Condition 30(2) above and will upon the NWAA’s request from time to time prepare a report for it on the technical and organisational measures it has in place to protect the personal data it is processing on the NWAA’s behalf.

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

(5) If the Contractor fails to comply with any provision of this condition, the NWAA may terminate the Contract immediately in which event the provisions of Condition 19 shall apply.

(6) The Contractor shall indemnify the NWAA against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the NWAA by any person in respect of the Act or equivalent applicable legislation in any other country which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor or its sub-contractors and hold it harmless against

all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Contract which results in the NWAA being in breach of its obligations under the Act or equivalent applicable legislation in any other country.

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

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

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

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

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

31. Non-discrimination

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

32. Other Legislation

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

33. Contractor Status

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

(2) Accordingly: the Contractor shall not (and shall procure that its employees do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the NWAA.

34. Transfer of Services

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

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

(3) Without prejudice to the application or otherwise of TUPE in respect of the transfer of any Contract as envisaged by this Condition 34, the Contractor shall fully indemnify and keep indemnified the NWAA against all claims demands proceedings actions damages costs (including legal and other professional fees) expenses and other liabilities which the NWAA may suffer, sustain, incur, pay or be put to by reason of

(a) any failure by the Contractor to comply with its obligations under this condition 34;

(b) any claims demands proceedings actions damages costs (including legal and other professional fees) expenses and other liabilities by or on behalf of any of the employees of the Contractor arising from or in connection with their employment or its termination on or prior to the date of termination or expiry of the Contract;

(c) any claims demands proceedings actions damages costs (including legal and other professional fees) expenses and other liabilities arising from the actions of any trade union, employee representative or body of employees or their representatives in respect of any of the employees of the Contractor in connection with any failure of the Contractor in connection with the Contract on or prior to the date of termination or expiry of the Contract; or

(d) any act or omission prior to the date of termination or expiry of the Contract which, by virtue of TUPE, is deemed to be an act or omission of the NWAA.

38. Publicity

(1) The Contractor shall not make or permit any of its employees, agents or advisors to make any press or any public announcement in relation to the Provision of Services unless the appropriate details have been notified in advance to the NWAA.

(2) Without prejudice to the above, the Contractor shall at all times comply with such Solutions for Business branding guidelines as notified by the NWAA from time to time and shall liaise with the NWAA marketing department to ensure compliance with a systematic branding approach.

(3) The obligations in this clause shall continue after Contract is terminated.

38 Records

(1) The Contractor shall provide the NWAA with such information and documentation as the NWAA may require in connection with the Provision of Services from the date of the Contract to the date on which the Contractor has fulfilled all its obligations under the Contract.

(2) The Contractor must comply with the requirements of the NWAA regarding the keeping of records available on the NWAA Website (if applicable).

39 Security Requirements - Malicious Software

(1) The Contractor shall, as an enduring obligation throughout the Term of Contract, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

(2) Notwithstanding clause 38(1), if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of NWAA Data, assist each other to mitigate any losses and to restore the Provision of Services and Activities to their desired operating efficiency.

(3) Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 38(2) shall be borne by the parties as follows:

(a) by the Contractor where the Malicious Software originates from the Contractor's Software, the Third Party Software or the NWAA Data (whilst the NWAA Data was under the control of the Contractor); and

(b) by the NWAA if the Malicious Software originates from the NWAA Software or the NWAA Data (whilst the NWAA Data was under the control of the NWAA).