

## OFCOM STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SERVICES

### 1. Definitions

(1) The following definitions shall apply:

**Background IPR** means all IPR belonging to a Party prior to the date of the Contract or otherwise unrelated to the subject matter of the Contract;

**Conditions** means these terms and conditions for the supply of Services;

**Confidential Information** means all information in whatever form obtained by either Party from the other relating to and connected with the Contract and/or the Services concerning the business, policies or operations of the other Party or which is otherwise of its nature confidential;

**Contract** means these Terms and Conditions together with the relevant Purchase Order and any other document, plan or specification referred to in the Purchase Order;

**Contractor** means the person named as the Contractor in the Purchase Order;

**Deliverable** means the deliverables to be supplied by the Contractor under the Contract;

**Good Industry Practice** means the exercise of reasonable skill, care, prudence, efficiency, foresight and timeliness which would be expected from a reasonably and suitably skilled, trained and experienced person providing services similar to the Services to a customer similar to Ofcom;

**IPR** means:

- (a) copyright, patents, database rights and rights in trade marks, designs, know-how and confidential information (whether registered or unregistered);
- (b) applications for, and the right to apply for, registration for any of these rights; and
- (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;

**Key Personnel** means any person named in the Purchase Order as key personnel of the Contractor.

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

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

**Ofcom Property** means all material or equipment issued or otherwise furnished in connection with the

Contract by or on behalf of Ofcom, including but not limited to information, documents, papers and other materials provided in whatever form;

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

**Parties** means Ofcom and the Contractor;

**Price** means the price or rate agreed for the Services set out in the Purchase Order;

**Purchase Order** means an order for services issued by Ofcom to the Contractor, which shall include a description of the Services, the Price and any particular terms applying to the Services in addition to these Conditions; and

**Services** means the services described in the Purchase Order to be supplied under the Contract;

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

- (a) reference to any statute, enactment, order, regulation or similar instrument shall be construed as reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted; and
- (b) reference to a **person**, where the context allows, includes an individual, firm, company corporation or unincorporated association.

### 2. General

(1) If there is a conflict between these Conditions and the Purchase Order, the Purchase Order shall prevail.

(2) The Contract constitutes the entire agreement between the Parties relating to the Services and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. Nothing in the Contract limits or excludes any liability for fraud.

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

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

### 3. The Services

(1) The Contractor shall provide the Services set out in the Purchase Order to the satisfaction of Ofcom and in accordance with the Contract.

(2) The Contractor shall perform the Services:

- (a) in accordance with applicable law and Good Industry Practice; and
- (b) using the necessary number of staff with appropriate skills, qualifications and experience.

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

(4) Where stated in the Contract, timely provision of the Services shall be of the essence of the Contract, including in relation to commencing the provision of the Services within the time agreed or on a date specified by Ofcom.

#### **4. Time of Performance**

(1) The Contractor shall carry out the Services for the period and/or in accordance with the timescales set out in the Purchase Order. If the Purchase Order does not specify any timescales, the Contractor shall comply with any reasonable timescales notified by Ofcom.

(2) Ofcom may by written notice require the Contractor to execute the Services in such order as Ofcom may reasonably decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as Ofcom may from time to time require.

(3) The Contractor shall notify Ofcom immediately if it becomes aware of any event that it believes is likely to delay or impede the performance of the Services.

(4) If the Contractor fails to meet a date or dates set out in the Purchase Order it shall, on the request of Ofcom, and without prejudice to Ofcom's other rights and remedies, arrange to provide all such additional resources as are necessary to fulfil its obligations at no additional cost to Ofcom.

#### **5. Contractor's Personnel**

(1) The Contractor shall make the Key Personnel available for a sufficient amount of time and effort to the provision of the Services.

(2) The Contractor shall take all reasonable steps to ensure it retains the services of the Key Personnel.

(3) If requested by Ofcom, the Contractor shall provide Ofcom with a list of the names of all persons who may require admission in connection with the

performance of the Services at Ofcom Premises and such other particulars as Ofcom may reasonably require.

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

(5) If the Contractor fails to comply with Condition 5(1) and if Ofcom decides (acting reasonably) that such failure is materially adverse to the provision of the Services, Ofcom may immediately terminate the Contract by notice in writing to the Contractor.

#### **6. Ofcom Premises**

(1) Where the Services are being carried out at Ofcom Premises:

(a) the Contractor shall comply, and shall ensure that its staff, sub-contractors and agents comply, with any rules or regulations applied by Ofcom in relation to access to the Ofcom Premises and Ofcom's automated systems, security and health and safety;

(b) the Contractor shall keep the Ofcom Premises reasonably clean and tidy while the Services are being performed and shall leave them clean and tidy on completion;

(c) the Contractor shall pay the costs of making good any damage to the Ofcom Premises (and any fixtures and fittings of the Ofcom Premises) done by its employees, agents or sub-contractors other than fair wear and tear;

(d) the Contractor shall occupy the Ofcom Premises as a licensee; and

(e) the Contractor shall co-operate with any other person, firm or company which is providing services to Ofcom the same time as the Contractor.

(2) The Contractor acknowledges that it has been supplied with a copy of Ofcom's rules regarding access to the Ofcom Premises and Ofcom's automated systems, security and health and safety. The Contractor agrees to comply with these rules, and any additional rules made known to the Contractor from time to time by Ofcom.

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

(4) Ofcom shall have the power to inspect and examine the performance of the Services (including the power to inspect any records that are required to

be kept by the Contractor pursuant to Condition 10) on Ofcom Premises or at the Contractor's premises at any reasonable time or, provided that Ofcom gives reasonable notice to the Contractor, at any other premises where all or any part of the Services are being performed. The Contractor grants, and shall procure any relevant third party grants, Ofcom and its authorised agents a right of reasonable access to carry out such inspections and examinations.

## **7. Ofcom Property**

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

(2) All Ofcom Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless it notifies Ofcom to the contrary within 14 days of receipt.

(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 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 any act or omission of the Contractor or of its employees, agents or sub-contractors, whether or not arising from their performance of the Contract and wherever occurring.

(5) Condition 7(4) shall not apply where the Contractor is able to show that any such loss, destruction or damage was not caused by its negligence or default or the negligence or default of its employees, agents or sub-contractors.

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

## **8. Payment and Invoicing**

(1) In consideration for the provision of the Services, Ofcom shall pay the Contractor the Price.

(2) The Contractor shall submit invoices at times or intervals specified in the Purchase Order or otherwise with the prior written agreement of Ofcom. The Contractor shall submit invoices to Ofcom's address for invoices given in the Purchase Order.

(3) Each invoice shall contain the order number stated on the Purchase Order, a description of the Services carried out, the Price payable [and

reasonable expenses payable in accordance with Condition 8(5) provided they are appropriately detailed and evidenced].

(4) Ofcom shall normally pay the Contractor within 30 days of receipt of a correctly submitted invoice.

(5) [In addition to the Price, Ofcom shall pay such reasonable expenses incurred by the Contractor's personnel in accordance with Ofcom's expenses policies (as notified to the Contractor from time to time).]

(6) Ofcom may reduce, set-off, deduct or withhold payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of Ofcom.

(7) Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any amount then due, or which at any time thereafter may become due, from Ofcom to the Contractor under the Contract or any other agreement or arrangement with Ofcom.

## **9. VAT**

(1) If any VAT is properly chargeable in respect of any supply made by the Contractor under the Contract, Ofcom shall pay the amount of that VAT to the Contractor against issue of a proper VAT invoice by the Contractor.

(2) Each amount stated as payable by the Contractor under the Contract is exclusive of VAT (if any) and is to be construed as a reference to that amount plus any VAT in respect of it.

## **10. Records and Audit**

The Contractor shall keep and maintain until two years after the termination or expiry of the Contract complete and accurate records of, and supporting documentations for, all payments made by Ofcom in respect of the Services.

## **11. Intellectual Property Rights**

(1) All Background IPR are vested and shall remain vested in the Party to which they belong prior to the date of the Contract.

(2) Subject to Condition 11(1), all IPR in or to the Deliverables shall vest in Ofcom unconditionally and immediately on their creation. Accordingly, the Contractor assigns to Ofcom with full title guarantee (including by way of an assignment of future IPR) all IPR in or to the Deliverables including the right to take action for any past, present and future damages and other remedies in respect of any infringement. The Contractor shall take all steps and sign all deeds and documents necessary to give effect to this

Condition 11(2).

(3) Ofcom grants to the Contractor a royalty-free, non-exclusive, non-transferable licence to use (i) Ofcom's Background IPR and (ii) any IPR in or to the Deliverables, in each case solely to the extent necessary to perform the Services.

(4) The Contractor grants to Ofcom a royalty-free, non-exclusive, sublicenseable, transferable, perpetual and irrevocable worldwide licence to use and exploit the Contractor's Background IPR solely to the extent necessary to receive the Services or use the Deliverables in connection with the Ofcom Purposes.

(5) To the extent any IPR belonging to a third party are required by Ofcom to receive the Services, the Contractor shall (at its own cost) procure that such third party shall grant Ofcom a licence to use such IPR on the same terms as those set out in Condition 11(4).

## 12. Confidentiality

(1) Subject to Condition 12(3), each Party agrees not to disclose any Confidential Information of the other to any third party without the prior written consent of the disclosing Party, except as expressly permitted by the Contract. To the extent that it is necessary for the receiving Party to disclose Confidential Information to its employees, agents, advisers and sub-contractors in connection with the Contract, it may make such disclosures provided that it shall ensure that such employees, agents, advisers and sub-contractors are subject to the same obligations as the receiving Party in respect of all Confidential Information.

(2) Information shall not be, or shall cease to be, Confidential Information where:

- (a) it is or becomes public knowledge (otherwise than by breach of the Contract); or
- (b) it is in the possession of a Party, without restriction as to its disclosure, before receiving it from the disclosing Party.

(3) The recipient of Confidential Information (and any of its permitted users pursuant to Condition 12(1)) may disclose Confidential Information where it is required to do so by law.

(4) Ofcom is obliged to meet its statutory obligations relating to the disclosure of information under the Freedom of Information Act 2000. Information provided to Ofcom under the Contract may need to be disclosed by Ofcom in response to a request for information under that Act. Prior to Ofcom disclosing any information under this Condition 12(4), it shall (to the extent permitted by law) use reasonable endeavours to inform the Contractor of any request as soon as reasonably possible, explain the circumstances of the request

and take into account the reasonable comments and concerns of the Contractor before taking any decision or disclosing the information. Nothing in the Contract prevents Ofcom from complying with its statutory obligations under that Act.

(5) This Condition 12 shall not apply in respect of Ofcom's receipt of and use of the Deliverables from the Contractor but shall apply in respect of the Contractor's use of the Deliverables, which shall be deemed to be Ofcom's Confidential Information for the purposes of this Condition 12.

## 13. Data Protection

(1) In this Condition 13, references to **personal data**, **data subjects** and **data processor** are to be interpreted as they are defined in the Data Protection Act 1998 (the **DP Act**).

(2) The Contractor shall comply with all relevant provisions of the DP Act and do nothing which causes, or may cause, Ofcom to be in breach of its obligations under the DP 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 the Contract.

(3) The Contractor warrants that it has appropriate technical and organisational measures in place to protect any personal data it is processing on Ofcom'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 the Contract. The Contractor shall also take all reasonable steps to ensure the reliability of its staff having access to any such personal data.

(4) Upon reasonable notice the Contractor shall allow Ofcom access to any relevant premises owned or controlled by it to enable Ofcom to inspect its procedures described at Condition 13(3) above and will upon Ofcom'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 Ofcom's behalf.

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

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

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

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

(9) Where the Contractor is required to collect any personal data on behalf of Ofcom, 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 Ofcom.

#### **14. Indemnities and Insurance**

(1) The Contractor shall indemnify Ofcom on demand against all losses, costs (including reasonable legal costs), damages, fines, charges, expenses or other liabilities incurred by Ofcom and arising from or incurred by reason of:

- (a) death of or personal injury to any person where such death or personal injury is caused by the Contractor;
- (b) damage to or destruction of Ofcom Premises or property (including data and the Ofcom Property);
- (c) any claim or action against Ofcom by any third party that the use or provision by Ofcom of any of the Deliverables or Ofcom's receipt of the Services infringes the IPR of that third party; and
- (d) any other claim or action brought against Ofcom by third parties arising out of or in connection with the provision or receipt of the Services.

(2) The Contractor shall maintain with a reputable insurance company at all times a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in respect of the indemnities provided under this Condition 14, [which in any event shall not be less than £1,000,000 per incident or series of related incidents,] and shall at the request of Ofcom produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due thereunder.

#### **15. Conflicts of interest**

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

of any such conflict of interest during the performance of the Contract (whether the conflict existed before the commencement 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.

(2) Ofcom and the Contractor shall discuss with each other promptly and in good faith any steps which the Contractor may take which will avoid or remove the conflict in a manner which preserves the interests of the Contractor as well as the interests, duties and reputation of Ofcom.

(3) Where the conflict of interest notified to Ofcom under Condition 15(1) is capable of being avoided or removed, Ofcom may require the Contractor to take such reasonable steps as will, in Ofcom's reasonable opinion, avoid, or as the case may be, remove the conflict and:

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

Ofcom may terminate the Contract immediately on written notice to the Contractor.

#### **16. 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.

#### **17. Assignment and Sub-Contracting**

(1) The Contractor shall not assign or sub-contract any part of the Services without the written consent of Ofcom.

(2) No sub-contracting of this Contract shall in any way relieve the Contractor of its obligations under the Contract.

(3) Where the Contractor enters a sub-contract for the purpose of performing this Contract it shall ensure that the sub-contract requires the Contractor to pay the sub-contractor within 30 days of receipt of a valid invoice.

#### **18. Force Majeure**

(1) Neither Party shall be liable to the other Party for any delay or non-performance of its obligations under the Contract arising directly from any cause beyond its reasonable control, including but not limited to act of God, governmental act, act of terrorism, war, fire, explosion, civil commotion, national emergencies, catastrophe, insurrection, riots, strike, lock-out or industrial disputes (save involving its own employees), **(Event of Force**

**Majeure**) provided that the affected Party:

- (a) promptly notifies the other Party in writing of the Event of Force Majeure and the likely duration of the delay or non-performance; and
- (b) uses all reasonable endeavours to limit the effect of that delay or non-performance on the other Party.

(2) In any such case, the performance of the affected Party's obligations, to the extent affected by the Event of Force Majeure, shall be suspended during the period that the Event of Force Majeure persists. If performance is not resumed within 30 days after notice from the affected Party to the other Party, the other Party may terminate the Contract immediately on written notice to the affected Party.

## 19. Termination

(1) Ofcom shall have the right to terminate the Contract immediately by written notice to the Contractor:

- (a) if the Contractor (being an individual) is presented with a petition 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;
- (b) if the Contractor (being a company) is unable to pay its debts or becomes insolvent or an order or an application is made or a resolution is passed for the administration, winding-up or dissolution of the Contractor (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any of the assets of the Contractor or an application or a filing for a moratorium is made in respect of the Contractor under schedule A1 Insolvency Act 1986 or the Contractor enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction;
- (c) if the Contractor (being a partnership) is unable to pay its debts or becomes insolvent or an order or an application is made in respect of the partnership for administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any of the assets of the partnership or the partnership enters into or proposes any

composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction; or

(d) pursuant to Condition 5(5) or 15(3).

(2) If either Party commits a material breach of the Contract which is either not capable of remedy, or, if it is capable of remedy, the Party fails to remedy such breach within 30 days of being notified 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 Party that committed the material breach.

(3) Either Party may terminate the Contract pursuant to Condition 18(2).

(4) Ofcom shall be entitled to terminate the Contract at any time by giving to the Contractor not less than 30 days' notice to that effect.

## 20. Consequences of Termination

(1) On termination or expiry of the Contract, the Contractor shall immediately deliver up to Ofcom any property or data belonging to Ofcom including any Confidential Information, any information or documents relating to Ofcom's IPR and any partially completed Deliverables, in each case in the format reasonably requested by Ofcom.

(2) The termination or expiry of the Contract for any reason shall be without prejudice to any rights or obligations which have accrued before termination or expiry and shall not destroy or diminish the binding force of any of the provisions of the Contract which are expressly provided to come into force on, or continue in force after termination or expiry, including, without limitation, Conditions 10, 11, 12, 13, 14, 17, 18, and 20-26 (inclusive).

## 21. Waiver

(1) The failure or delay by either Party to exercise any right or remedy under the Contract shall not constitute a waiver of that right or remedy.

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

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

## 22. Severability

If any term of the Contract is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of the Contract;

or

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- (b) the legality, validity or enforceability in other jurisdictions of that or any other provision of the Contract.

### 23. 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.

### 24. Notices

(1) Any notice or other communication given under or pursuant to the Contract must be given in writing and must be delivered in person or sent by post. Communications must be sent to the address for communications given in the Purchase Order (which may be altered at any time by the altering Party giving the other Party 14 days' notice of a changed address). Communications to Ofcom must be sent to its address given for the contact on the Purchase Order and not its address for invoices.

(2) A notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class delivery unless the receiving Party proves otherwise.

### 25. Dispute Resolution

(1) Before resorting to litigation, 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 are unable to resolve the dispute, either Party may, at any time, refer the dispute to mediation by a neutral advisor or mediator (the **Mediator**).

(3) If the Parties are unable to agree on a Mediator within 7 days of the request by one Party to refer the dispute to mediation, they shall apply to the Centre for Dispute Resolution (**CEDR**) to appoint a Mediator.

(4) The Parties shall seek to agree directions for how the mediation is conducted and, failing agreement, they shall seek directions from the Mediator.

(5) If the Parties reach agreement on the resolution of their dispute the agreement shall be reduced to writing and shall be binding.

### 26. Law and jurisdiction

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