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**Schedule 1****Conditions of Contract for the Purchase of Consultancy Services**

As amended (January 2016)

These Conditions may only be varied with the written agreement of the Commission. No terms or conditions put forward at any time by the Supplier/Contractor shall form part of the Contract unless specifically referred to in the Contract.

**1 Definitions**

1.1 In these Conditions the following expressions shall have the meanings set out opposite them, unless the context requires otherwise:

**Authorised Access Routes** the roads which may be used by the Supplier/Contractor pursuant to the Contract (if any) as may be identified in the Contract.

**Business Day** means any day on which clearing banks are open for general banking business in that part of the United Kingdom in which the Services are being performed;

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

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

**Commission** the Forestry Commissioners, acting in exercise of the powers contained in the Forestry Act 1967 and having a principal place of business at 231 Corstorphine Road, Edinburgh, EH12 7AT;

**Contract** the contract between the Commission and the Supplier/Contractor incorporating these Conditions;

**Environmental Law** all applicable European, national or local laws or regulations (and any codes of practice, circulars or guidance notes issued pursuant thereto) which relate to the treatment of man or any other living organisms or welfare or the environment or the conditions of the workplace or the generation, transportation, storage, treatment or disposal of dangerous substances and all judicial and administrative interpretations of any of the foregoing;

**Force Majeure** in relation to either party, any circumstances beyond the reasonable control of that party (including without limitation any fire (other than fire damage caused by the Supplier/Contractor), explosion, flood, wind throw, Act of God, strike, lock-out or other industrial action).

**Health and Safety Law** all applicable European, national or local laws or regulations (and any codes of practice, circulars or guidance notes issued pursuant thereto (including any issued or approved by the Health & Safety Executive or any equivalent body)) which relate to health and safety or the conduct of forestry operations or such other operations or processes as may be included in the Services and all judicial and administrative interpretations of any of the foregoing;

**Premises** the location where the Services are to be performed, as specified in the Contract;

**Services** the services to be provided and performed by the Supplier/Contractor as described in the Contract;

**Successor Body** has the meaning given in Cause 17.4;

**Supplier/Contractor** the Supplier/Contractor named in the Contract.

**Supplier/Contractor Personnel** all employees, agents, consultants and contractors of the Supplier/Contractor and/or of any sub-contractor;

- 1.2 references to a statute or statutory provision shall be construed as a reference to that statute or provision as respectively amended, consolidated, modified, extended, re-enacted or replaced from time to time and shall include the corresponding provisions of any earlier legislation and any orders, regulations, instruments or other subordinate legislation made from time to time under the relevant statute;
- 1.3 unless the context otherwise requires, any reference to a Condition followed by a number shall be a reference to the condition bearing that number in this Contract;
- 1.4 expressions in the singular shall include the plural and vice versa and one gender shall include all other genders and reference to a person shall include a reference to a firm, body corporate or an unincorporated association and vice versa;
- 1.5 references to any legal term of any action, remedy, proceeding, legal document, legal status, court official or any other legal concept or thing in any jurisdiction shall be deemed to include the legal terms most nearly approximating or analogous thereto in other relevant jurisdictions;
- 1.6 the headings of the Conditions shall not affect their interpretation.

## **2 Services**

- 2.1 The Supplier/Contractor shall provide the Services in a diligent and professional manner to the satisfaction of the Commission, and shall at all times perform the Services dutifully, timeously and in good faith, and will observe all appropriate industry standards, best practices and appropriate Commission policy in carrying out the Services.
- 2.2 The Supplier/Contractor shall procure that its employees and representatives make themselves available to the Commission for the purposes of consultation and advice relating to the provision of the Services and, at the expense of the Supplier/Contractor, attend meetings with representatives of the Commission and such other parties as may be reasonably necessary for the performance of the Services.

- 2.3 The Commission shall be entitled to review the progress of the Services from time to time and the Supplier/Contractor shall issue such interim reports as requested by the Commission, together with all the information and data in its possession relating to the Services.
- 2.4 The Supplier/Contractor acknowledges that the Commission will be relying on the skill, expertise and experience of the Supplier/Contractor (and its employees and representatives if any) in the specific field to which the provision of the Services relates and warrants and undertakes:-
- 2.4.1 to provide the Services in the manner and to the standard specified by the Commission; and
- 2.4.2 that all advice and information given and all representations and statements made and all documents provided will be accurate.
- 2.5 The Supplier/Contractor shall begin performing the Services on the date stated in the Contract and shall complete them by the date stated in the Contract or continue to perform them for the period stated in the Contract (whichever is applicable). The time(s) and date(s) of performance of the Services shall be of the essence.

### **3 Price and Payment**

- 3.1 The price payable to the Supplier/Contractor shall be as stated in the Contract and, unless otherwise so stated, shall be exclusive of any applicable VAT (which shall be payable by the Commission subject to receipt of a valid VAT invoice).
- 3.2 Subject to Condition 3.8, and unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Commission.
- 3.3 Where the Contract provides for reimbursement of expenses by the Commission, the Supplier/Contractor shall only be entitled to be reimbursed in respect of such expenses to the extent they are reasonably and properly incurred in the performance of the duties hereunder and subject to production of such evidence thereof as the Commission may reasonably require.
- 3.4 No increase in the price may be made (whether on account of increased material, labour or other costs or otherwise) without the prior written consent of the Commission.
- 3.5 The Supplier/Contractor shall pay all taxes and other outgoings or expenses payable in consequence of the Contract and the Supplier/Contractor shall indemnify the Commission in respect of any demand, costs or expense suffered by the Commission, whether during the period of the Contract or following termination of the Contract (howsoever caused) or otherwise in relation to any tax or employer's national insurance contributions or other expenses payable in respect of the Supplier/Contractor, its employees, agents or sub-contractors or in relation to the provision of the Services.
- 3.6 The Supplier/Contractor acknowledges that the Commission will not be operating PAYE or making or deducting any National Insurance contributions in respect of the provision of the Services and the sums payable under the Contract. Whilst providing the Services to the Commission, the Supplier/Contractor will be an independent contractor (and its employees, if any, shall be employed by the

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Supplier/Contractor and not the Commission) and as such will not be entitled to any pension, bonus, holiday, sickness or other fringe benefits from the Commission.

- 3.7 Without prejudice to any other right or remedy the Commission reserves the right to set off any amount owing at any time from the Supplier/Contractor to the Commission against any amount payable by the Commission to the Supplier/Contractor under the Contract.
- 3.8 The Commission reserves the right to withhold payment in respect of Services that do not meet the required standards as per the specification of the Commission, unless the prior written agreement of the Commission has been obtained.
- 3.9 Where the Supplier/Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such sub-contract which requires payment of all sums due by the Supplier/Contractor to the sub-contractor to be made within a specified period not exceeding 30 days from the receipt by the Supplier/Contractor of a valid invoice.

#### **4 Access, Premises and Materials**

- 4.1 Where the provision of the Services requires the Supplier/Contractor to enter onto Commission forest areas, the Supplier/Contractor shall use the Authorised Access Routes only and shall take every reasonable precaution to minimise damage to such Authorised Access Routes and restore all actual damage occasioned thereto. The use of such routes shall be at the Supplier/Contractor's own risk and (save to the extent occasioned by the negligence of the Commission or its employees) the Commission shall not be liable for any damage or injury arising out of the Supplier/Contractor's use of such routes. The Commission gives no warranty that any such Authorised Access Routes will be useable by vehicles at any specified time.
- 4.2 The Commission's policy is to allow public access to all Commission forests where possible (subject to the Commission's Byelaws, where applicable). However, access is not allowed where this would infringe upon any agreements, covenants or undertakings and is controlled where it conflicts with the management and protection of the forest. The Supplier/Contractor shall observe the Commission's policy on public access at all times and shall be responsible for informing all employees and subcontractors of the same. In particular, the Supplier/Contractor shall observe any specific permissions and consents relating to other activities occurring on or near any location where the Services are being performed and shall obey the written or verbal instructions of any Commission officer.
- 4.3 The Supplier/Contractor is deemed to have inspected the Premises so as to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and Premises. The Commission shall, at the request of the Supplier/Contractor, grant such access as may be reasonable for this purpose. The Supplier/Contractor shall, except as specifically provided in the Contract, provide all materials, equipment, goods and consumables to be used when carrying out the Services. The Commission may store or hold large items of equipment on behalf of the Supplier/Contractor but such items are stored at the Supplier/Contractor's risk. The Supplier/Contractor should ensure all items are stored appropriately in the correct conditions and ensure storage of such items does not cause a hazard or health and safety risk.

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- 4.4 All vehicles and/or equipment operated by or on behalf of the Supplier/Contractor shall be in a safe and operable condition and, without prejudice to the foregoing, shall comply with and be operated in accordance with all applicable legal requirements.
- 4.5 The Supplier/Contractor shall make no delivery of materials, plant or other things nor commence any work at the Premises without obtaining the Commission's prior consent.
- 4.6 All equipment, plant and materials brought onto the Premises by or on behalf of the Supplier/Contractor shall be at the Supplier/Contractors's own risk and the Commission shall have no liability for any loss or damage to any such equipment, plant or materials unless and to the extent that the Supplier/Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence of the Commission or its employees. The Supplier/Contractor shall provide for the haulage or carriage thereof to the Premises and the removal thereof when no longer required, at its sole cost. Unless otherwise agreed, the equipment, plant and materials brought onto the Premises will remain the property of the Supplier/Contractor except where the equipment, plant or materials is deemed to have been abandoned pursuant to Condition 20.2.
- 4.7 Access to the Premises shall not be exclusive to the Supplier/Contractor but only such as shall enable them to carry out the Services concurrently with the occupation by and execution of work by others. The Supplier/Contractor shall co-operate with such others as the Commission may reasonably require and comply with all applicable regulations and Commission policies.
- 4.8 The Commission shall have the power at any time during the progress of the Services to order in writing:
- 4.8.1 the removal from the Premises of any materials which in the opinion of the Commission are either hazardous or not in accordance with the Contract, and/or
- 4.8.2 the substitution of proper and suitable materials, and/or
- 4.8.3 the removal and proper re-execution (notwithstanding any previous test thereof or interim payment therefor) of any work which, in respect of material or workmanship, is not in the opinion of the Commission in accordance with the Contract.

## **5 Health and Safety at Work**

- 5.1 The Supplier/Contractor shall ensure full compliance with all Health and Safety Law in force or issued from time to time, and shall comply with any other safety standards that may be stipulated from time to time by the Commission.

## **6 Environment**

- 6.1 The Supplier/Contractor shall comply at all times with all Environmental Law and any other regulation affecting the conduct of the Supplier/Contractor's business and with the Commission's Environmental Policy. The Supplier/Contractor will ensure that no harm to any person, property or the environment may result from the Supplier/Contractor's acts or omissions in relation to the Contract. The Supplier/Contractor will ensure that no harm to any person, property or the environment may result from the acts or omissions of the Supplier/Contractor's employees, subcontractors and agents or the employees of any of them in relation to the Contract.

7 **(Not Used)**

8 **(Not used)**

9 **(Not used)**

10 **Audit**

10.1 The Supplier/Contractor shall keep and maintain full and accurate records to the satisfaction of the Commission of all expenditure which is reimbursable by the Commission and of the hours worked and costs incurred in connection with any employees of the Supplier/Contractor paid for by the Commission on a time charge basis. The Supplier/Contractor shall on request afford the Commission, its representatives, the National Audit Office or the Commission for the European Communities such access to those records and such other documentation in its possession relating to the Contract as may be required in connection with the Contract.

11 **Liability/Indemnity**

11.1 Without prejudice to any rights or remedies of the Commission, the Supplier/Contractor shall indemnify the Commission against:

11.1.1 any loss, costs, liability, injury, damage or expense ("Losses") occasioned by the act, default or omission of the Supplier/Contractor or the Supplier/Contractor Personnel or the employees of any of them, in the performance of the Contract or arising out of any breach of the Contract by the Supplier/Contractor or out of any claim by a third party based on any facts which, if substantiated, would constitute such a breach; and

11.1.2 any Losses which the Commission may suffer or incur as a result of or in connection with the Supplier/Contractor or any employee or representative of the Supplier/Contractor claiming they are an employee of the Commission.

11.2 The Supplier/Contractor shall cause no damage or injury to the property of the Commission or third parties, or injury to the Commission's employees or third parties. Without prejudice to any other rights or remedies of the Commission, the Supplier/Contractor shall be liable for any wilful, reckless or negligent damage due to any act or default of the Supplier/Contractor or the Supplier/Contractor Personnel, or the employees of any of them, arising in any way in connection with the performance of the Contract and shall make good the same to the satisfaction of the Commission within 14 Business Days of its occurrence.

12 **Force Majeure**

12.1 Where either party is unable to perform all or any of their obligations under the Contract by reason of Force Majeure, then the affected party shall give written notice to the other. The notice must be given within 7 Business Days of the event or circumstances giving rise to Force Majeure. The affected party shall use all reasonable endeavours to mitigate the effect of the Force Majeure, to carry out its obligations under the Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible. Subject to compliance with the terms of this Condition, the affected party shall not be in breach of the Contract as a result of a failure to perform its obligations by reason of Force Majeure.

- 12.2 If the event or circumstances giving rise to Force Majeure prevails for a continued period of more than 6 months, either party may terminate the Contract by giving 14 Business Days' written notice to the other party. On the expiry of the notice period, the Contract will terminate, without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.

### **13 Equality/Non Discrimination**

The Supplier/Contractor shall comply (and shall procure that the Supplier/Contractor Personnel shall comply) with the provisions of the Equality Act 2010 and shall not discriminate or victimise or harass because of the Protected Characteristics (as defined in the Equality Act 2010 (currently being age, disability, gender (or sex), gender reassignment, marital or civil partnership, pregnancy and maternity, race, religion or belief and sexual orientation) or as otherwise set out in such Act from time to time)).

### **14 Prevention of Corruption**

- 14.1 The Supplier/Contractor shall not offer or give, or agree to give, to the Commission or any other public body or any person employed by or on behalf of the Commission or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Commission or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- 14.2 The Supplier/Contractor warrants that it has not paid any commission, gift or inducement or agreed to pay any of the foregoing to the Commission or any other public body or any person employed by or on behalf of the Commission or any other public body in connection with the Contract.
- 14.3 If the Supplier/Contractor, its employees, agents or contractors or anyone acting on the Supplier/Contractor's behalf, engages in conduct prohibited by Conditions 14.1 or 14.2, the Commission may:
- 14.3.1 terminate the Contract and recover from the Supplier/Contractor the amount of any loss suffered by the Commission resulting from the termination, including the cost reasonably incurred by the Commission of making other arrangements for the supply of the Services and any additional expenditure incurred by the Commission throughout the remainder of the term of the Contract; or
- 14.3.2 recover in full from the Supplier/Contractor any other loss sustained by the Commission in consequence of any breach of those Conditions.

### **15 Prevention of Fraud**

- 15.1 The Supplier/Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Supplier/Contractor Personnel and the Supplier/Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Commission.
- 15.2 The Supplier/Contractor shall notify the Commission immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

15.3 If the Supplier/Contractor or the Supplier/Contractor Personnel commits fraud in relation to this or any other contract with the Crown (including the Commission) the Commission may:

15.3.1 terminate the Contract and recover from the Supplier/Contractor the amount of any loss suffered by the Commission resulting from the termination, including the cost reasonably incurred by the Commission of making other arrangements for the supply of the Services and any additional expenditure incurred by the Commission throughout the remainder of the term of the Contract; or

15.3.2 recover in full from the Supplier/Contractor any other loss sustained by the Commission in consequence of any breach of this Condition.

## 16 **Official Secrets Acts 1911 to 1989, S182 of the Finance Act 1989**

16.1 The Supplier/Contractor shall comply with, and shall ensure that the Supplier/Contractor Personnel comply with, the provisions of:

16.1.1 the Official Secrets Acts 1911 to 1989; and

16.1.2 Section 182 of the Finance Act 1989.

16.2 In the event that the Supplier/Contractor or the Supplier/Contractor Personnel fail to comply with this Condition, the Commission reserves the right to terminate the Contract by giving notice in writing to the Supplier/Contractor.

## 17 **Assignment and Novation**

17.1.1 The Supplier/Contractor shall not assign, transfer sub-contract, sub-let, novate or otherwise dispose of or create or declare a trust over or deal in any or all of its rights or obligations under this Contract except with the prior written consent of the Commission and upon such terms as the Commission may require.

17.2 The Commission may at any time assign, transfer, sub-contract, novate or otherwise dispose of or create or declare a trust over or deal in any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:

17.2.1 any Central Government Body; or

17.2.2 to a body other than a Central Government Body, including without limitation any private sector body, which performs any of the functions or duties that previously had been performed by the Commission,

and the Supplier/Contractor shall, at the Commission's request, enter into a written novation agreement with the Commission and the Central Government Body or third party, in such form as the Commission shall reasonably specify in order to enable the Commission to exercise its rights pursuant to this Clause 17.2.

17.3 A change in the legal status of the Commission such that it ceases to be a Central Government Body shall not (subject to clause 17.4) affect the validity of this Contract and this Contract shall be binding on any successor body to the Commission.

17.4 If the Commission assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a body which is not a Central



Government Body or if a body which is not a Central Government Body succeeds the Commission (any such body a "Successor Body"), the Supplier/Contractor shall have the right to terminate by notice to the Commission with immediate effect provided that such notice of termination is served within 28 days of the Supplier/Contractor being notified of such assignment, novation or disposal.

- 17.5 If the Commission notifies the Supplier/Contractor that it intends to assign, novate or otherwise dispose of this Contract in part and the Supplier/Contractor acting reasonably, believes that the effect of such partial assignment, novation or disposal of its rights renders the remaining Services incapable of meeting a significant part of the Commission's requirements, then the Supplier/Contractor shall be entitled to terminate the remaining part of this Contract by serving notice to terminate to the Commission provided that such notice of termination is served within 28 days of the Supplier/Contractor being notified of such assignment, novation or disposal. For the purposes of this Clause 17.5 in assessing the significance of any part of the Commission's requirements, regard shall be had not only to the proportion of that part to the Commission's requirements as a whole, but also to the importance of the relevant part to the Supplier/Contractor.
- 17.6 The parties agree the effect on the price payable for the Services of any change necessitated by a partial assignment, novation or disposal provided that any adjustment to the price (if any) will be calculated in accordance with [Schedule 4] and must be reasonable.
- 17.7 If the Commission assigns, novates or otherwise disposes of rights, obligations or liabilities under this Contract pursuant to Clause 17.2 and such events materially alter the balance of risks and rewards in this Contract or has a material effect on the Services, either party may give notice to the other party requiring the parties to commence [good faith] negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the parties' original commercial intention.

## **18 Termination**

- 18.1 The Supplier/Contractor shall notify the Commission in writing immediately upon the occurrence of any of the following events:
- 18.1.1 where the Supplier/Contractor is an individual: if a petition is presented for the Supplier/Contractor's bankruptcy or the sequestration of their estate or a criminal bankruptcy order is made against the Supplier/Contractor, or they are apparently insolvent, or they make any composition or arrangement with or for the benefit of creditors, or make any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage their affairs; or
- 18.1.2 where the Supplier/Contractor is not an individual but is a firm, or a number of persons acting together in any capacity: if any event in 18.1.1 or 18.1.3 of this Condition occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Supplier/Contractor to be wound up as an unregistered company; or
- 18.1.3 where the Supplier/Contractor is a corporate body, if such body passes a resolution for winding-up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding-up order, or such body makes a composition or arrangement with its creditors, or an administrator, 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.
- 18.2 The Commission may terminate the Contract by notice to the Supplier/Contractor with immediate effect:-
- 18.2.1 on the occurrence of any of the events described in Condition 18.1; or
- 18.2.2 if any of the circumstances set out in Conditions 12.2, 14.3.1, 15.3.1, 16.2, 19.2, 19.5 or 35.4.2 apply;
- 18.2.3 if the Supplier/Contractor commits a material breach of the Contract and (if such breach is capable of remedy) fails to remedy such breach within 30 days of being required by the Commission in writing to do so; or
- 18.2.4 the Supplier/Contractor ceases to carry on business; or
- 18.2.5 the Supplier/Contractor or the Supplier/Contractor Personnel or the employees of any of them, does or fails to do anything which brings or might reasonably be expected to bring into disrepute the Commission, its officers, employees, clients or suppliers (including, but not limited to, committing an act of fraud or dishonesty or violence whether or not connected with the provision of the Services).
- 18.3 Upon termination pursuant to Condition 18.2, without prejudice to any other of its rights, the Commission may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier/Contractor) all materials, plant and equipment on the Premises belonging to the Supplier/Contractor, and the Commission shall not be liable to make any further payment to the Supplier/Contractor until the Services have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier/Contractor the costs thereof incurred by the Commission (including the Commission's own costs). If the total cost to the Commission exceeds the amount (if any) due to the Supplier/Contractor, the difference shall be recoverable by the Commission from the Supplier/Contractor.
- 18.4 Without prejudice to the preceding provisions of this Condition and without prejudice to the Commission's other rights or remedies under this Contract, in the event that the Commission becomes aware of any breach of Health and Safety Law by the Supplier/Contractor or any of its employees, or by any of the Supplier/Contractor's sub-contractors or agents or any of their respective employees, the Commission may by notice in writing to the Supplier/Contractor suspend the further performance of this Contract until such time as it has investigated such breach. Following such investigation, and without prejudice to the Commission's other rights and remedies under this Contract, the Commission may (if applicable) exercise its rights to terminate this Contract pursuant to this Condition 18 or may, by a further notice in writing, require the Supplier/Contractor to perform the Contract insofar as then remaining unperformed.
- 18.5 In addition to the rights of termination under Condition 18.2, the Commission may terminate this Contract by giving to the Supplier/Contractor not less than 90 days notice in writing to that effect.

- 18.6 Termination under Conditions 18.2 or 18.5 shall not prejudice or affect any right of action or remedy which have accrued or shall thereupon accrue to the Commission and shall not affect the continued operation of Conditions 3.4, 3.5, 4.6, 5, 6, 10, 11, 18.3, 18.6, 18.7, 19, 20, 23, 24, 25, 26, 28, 29, 30, 31, 32, 37 and 38.
- 18.7 On the termination of the Contract for any reason, the Supplier/Contractor shall:-
- 18.7.1 immediately return to the Commission all confidential information, personal data and any materials related to intellectual property which are in its possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;
- 18.7.2 immediately deliver to the Commission all property (including materials, documents, information and access keys) provided to the Supplier/Contractor. Such property shall be handed back in good working order (allowances shall be made for reasonable wear and tear);
- 18.7.3 assist and co-operate with the Commission to ensure an orderly transition of the provision of the service to the replacement supplier/contractor and/or the completion of any work in progress;
- 18.7.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Commission for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Commission or replacement supplier/contractor to conduct due diligence.

## **19 Remedies in the event of inadequate performance**

- 19.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier/Contractor's obligations under the Contract, then the Commission shall notify the Supplier/Contractor, and where considered appropriate by the Commission, investigate the complaint. The Commission may, in its sole discretion, uphold the complaint and take further action in accordance with Condition 18 above.
- 19.2 In the event that the Commission is of the reasonable opinion that there has been a material breach of the Contract by the Supplier/Contractor, then the Commission may, without prejudice to its rights under Condition 18, do any of the following:
- 19.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier/Contractor shall have demonstrated to the reasonable satisfaction of the Commission that the Supplier/Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
- 19.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the contract price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- 19.2.3 terminate, in accordance with Condition 18, the whole of the Contract.

- 19.3 Without prejudice to its right under any other provision of the Contract, the Commission may charge the Supplier/Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Commission or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier/Contractor for such part of the Services and provided that the Commission uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 19.4 If the Supplier/Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Commission shall instruct the Supplier/Contractor to remedy the failure and the Supplier/Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Business Days or such other period of time as the Commission may direct.
- 19.5 In the event that:
- 19.5.1 the Supplier/Contractor fails to comply with Condition 19.4 above and the failure is materially adverse to the interests of the Commission or prevents the Commission from discharging a statutory duty; or
- 19.5.2 the Supplier/Contractor persistently fails to comply with Condition 19.4 above, the Commission may terminate the Contract with immediate effect by notice in writing.

## **20 Removal from Site**

- 20.1 The Supplier/Contractor shall within one month of the termination of the Contract or completion of the Services, whichever is the earlier, remove their plant, equipment, erections and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition.
- 20.2 Should the Supplier/Contractor fail to remove such plant, equipment, erections or unused materials within the time specified, it shall be regarded as having abandoned such items (but so that the Supplier/Contractor shall remain liable for all injury or damage caused by such items) and the Commission shall be entitled to retain or remove them as it thinks fit. The Supplier/Contractor shall on demand reimburse the Commission for all costs incurred in removing or disposing of any such items so abandoned and making good any damage resulting therefrom.

## **21 Compliance Regulations**

- 21.1 The Supplier/Contractor shall ensure that, in the course of and in connection with the performance of the Contract, it and the Supplier/Contractor Personnel, and their respective employees, comply with all applicable requirements of European Community, national and local laws, regulations, statutory instruments, orders or legislative provisions in force from time to time and all codes of practice, circulars and guidance notes relevant to the provision of the Services or the Supplier/Contractor's role as an employer.

## **22 Insurance**

- 22.1 Throughout the term of the Contract, the Supplier/Contractor shall have in force and shall require any sub-contractor to have in force:

- 22.1.1 employer's liability insurance in accordance with any legal requirements for the time being in force, and
- 22.1.2 public liability insurance for such sum and range of cover as the Supplier/Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these Conditions in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Commission in writing.
- 22.2 The policy or policies of insurance referred to in Condition 22.1 shall be shown to the Commission whenever requested, together with satisfactory evidence of payment of premiums.

### **23 Settlement of Disputes**

If any dispute or difference of any kind shall arise out of any of the provisions of the Contract upon which agreement cannot be reached between the Commission and the Supplier/Contractor, the dispute or difference shall be referred, in the first instance to the relevant Unit Manager of the Commission and the relevant Contract Manager of the Supplier/Contractor, who shall attempt to resolve the matter in good faith. If no such resolution can be reached within 14 Business Days of the matter being referred to them, the matter shall be further escalated to the relevant Country Head of the Commission and a Senior Executive of the Supplier/Contractor, who shall again attempt to resolve the matter in good faith. If no such resolution can be reached within 20 Business Days of the matter being further escalated, the parties may pursue their usual legal remedies in accordance with the terms of the Contract. For the avoidance of doubt, nothing in this Clause shall prevent the Commission from seeking injunctive relief in any court of competent jurisdiction in respect of a breach or threatened breach of Clause 28 (Confidentiality).

**24 Waiver**

The failure by the Commission to enforce at any time or for any period any one or more of the terms and conditions of the Contract shall not be a waiver of its rights at any time subsequently to enforce all terms and conditions of the Contract.

**25 Supplier/Contractor's Status and Personnel**

25.1 In carrying out the Services the Supplier/Contractor shall be acting as principal and not as the agent of the Commission. Accordingly:-

25.1.1 the Supplier/Contractor shall not (and shall procure that the Supplier/Contractor Personnel do not) say or do anything that might lead any other person to believe that the Supplier/Contractor is acting as the agent of the Commission, and

25.1.2 nothing in this Contract shall impose any liability on the Commission in respect of any liability incurred by the Supplier/Contractor to any other person but this shall not be taken to exclude or limit any liability on the Commission to the Supplier/Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Commission, its employees or agents.

25.2 Nothing in the Contract shall have the effect of making the Supplier/Contractor (or any of its employees or representatives) an employee of the Commission or the Crown.

25.3 The Supplier/Contractor shall:

25.3.1 only provide personnel who are employees of the Supplier/Contractor and who possess the appropriate experience, skills and qualifications necessary for the Services to be performed in accordance with the Contract; and

25.3.2 be responsible for ensuring that such personnel are legally entitled to work in the United Kingdom and to provide services of the nature of the Services, and shall act as a responsible employer in its recruitment policies and comply with all current employer good practice, including in relation to equality and diversity.

25.4 The Supplier/Contractor shall take the steps reasonably required by the Commission to prevent unauthorised persons being admitted to the Premises. If the Commission gives the Supplier/Contractor notice that any person is not to be admitted to or is to be removed from the Premises or is to be removed from involvement in the performance of the Contract, the Supplier/Contractor shall take all reasonable steps to comply with such notice and if required by the Commission the Supplier/Contractor shall replace any person removed under this Condition with another suitably qualified person in accordance with Condition 25.3 and procure that any pass issued to the person removed is surrendered.

25.5 The decision of the Commission as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Supplier/Contractor has furnished the information or taken the steps required of them by this Condition shall be final and conclusive.

**26 Sub-Contractors**

- 26.1 The Supplier/Contractor shall remain liable for the performance of all its obligations under the Contract notwithstanding its employment of any authorised sub-contractor. Any act or omission of any sub-contractor (or agent or employee of the Supplier/Contractor or of any such sub-contractor or employee) shall be deemed to be the act or omission of the Supplier/Contractor, who shall be responsible therefor.
- 26.2 The Commission shall be entitled upon giving 24 hours notice, save in emergencies where its entitlement will have immediate effect, to veto the use by the Supplier/Contractor of any sub-contractor that the Commission does not consider suitable to carry out the obligations in the Contract. The Supplier/Contractor shall ensure that such contractor or sub-contractor shall immediately cease any activities and vacate the Premises and Authorised Access Routes. For the avoidance of doubt, the prior approval of such sub-contractor by the Commission pursuant to Condition 17 shall not prejudice the rights of the Commission under this Condition 26.2.

**27 Notices**

- 27.1 Any notice given under the Contract may be given by hand or sent by first class recorded delivery post or sent by email to the other party at the address stated in the Contract such other address as may from time to time be notified in writing to the party giving such notice by the party to whom such notice is given.
- 27.2 Any notice given or served by post will be deemed given on the second Business Day after the date of posting and in proving that any notice was so given, it will be necessary only to prove that the same was properly addressed and posted. Any notice given by email shall be deemed to have been received at 9am on the Business Day after sending, provided that no failed delivery notice is received.

**28 Confidentiality**

- 28.1 For the purposes of the Contract, "Confidential Information" shall mean any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of either party, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential (and shall, in the case of the Commission, include Personal Data (as defined in the Data Protection Act 1998)). Except to the extent set out in this Condition or where disclosure is expressly permitted elsewhere in the Contract, each of the Commission and the Supplier/Contractor shall:
- 28.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- 28.1.2 not disclose the other party's Confidential Information to any other person without the other party's prior written consent.
- 28.2 Condition 28.1 shall not apply to the extent that:
- 28.2.1 such disclosure is a legal requirement placed upon the party making the disclosure, including any requirements for disclosure under the FOIA (as defined

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- in Condition 30) or the Environmental Information Regulations pursuant to Condition 30;
- 28.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 28.2.3 such information was obtained from a third party without obligation of confidentiality;
- 28.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- 28.2.5 it is independently developed without access to the other party's Confidential Information.
- 28.3 The Supplier/Contractor shall not, and shall procure that the Supplier/Contractor Personnel do not, use any of the Commission's Confidential Information received otherwise than for the purposes of the Contract.
- 28.4 The Supplier/Contractor may only disclose the Commission's Confidential Information to the Supplier/Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier/Contractor Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Supplier/Contractor Personnel causes or contributes (or could cause or contribute) to the Supplier/Contractor breaching its obligations as to confidentiality under or in connection with the Contract, the Supplier/Contractor shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Supplier/Contractor Personnel, the Supplier/Contractor shall provide such evidence to the Commission as the Commission may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Supplier/Contractor is taking appropriate steps to comply with this Condition, including copies of any written communications to and/or from Supplier/Contractor Personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Supplier/Contractor Personnel in connection with obligations as to confidentiality.
- 28.5 Nothing in the Contract shall prevent the Commission from disclosing the Supplier/Contractor's Confidential Information:
- 28.5.1 to any Crown body or any other Contracting Authority (as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000). All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;
- 28.5.2 to any consultant, contractor or other person engaged by the Commission or any person conducting an Office of Government Commerce gateway review;
- 28.5.3 for the purpose of the examination and certification of the Commission's accounts; or



- 28.5.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Commission has used its resources.
- 28.6 The Commission shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Supplier/Contractor's Confidential Information is disclosed pursuant to Condition 28.5 is made aware of the Commission's obligations of confidentiality.
- 28.7 Nothing in this Condition 28 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of the intellectual property rights of the other party.

## **29 Intellectual Property**

- 29.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Commission that nothing done by the Supplier/Contractor in the performance of the Services shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property ("Intellectual Property") of any third party and the Supplier/Contractor shall indemnify the Commission against all actions, claims, demands, costs and expenses which the Commission may suffer or incur as a result of or in connection with any breach of this Condition.
- 29.2 All rights (including ownership and Intellectual Property) in any discoveries, inventions, processes, reports, documents, specifications, software, instructions, plans, drawings, patents, models or designs, or other materials, whether in writing or on magnetic or other media ("materials"):
- 29.2.1 furnished to or made available to the Supplier/Contractor by the Commission shall remain vested in the Commission or the Crown (as the case may be);
- 29.2.2 prepared by or for the Supplier/Contractor for use, or intended use, in relation to, or made in the course of, the performance of this Contract are hereby assigned to and shall vest in the Commission (or at its option, the Crown) absolutely and (without prejudice to Condition 28) the Supplier/Contractor shall not and shall procure that the Supplier/Contractor Personnel shall not (except to the extent necessary for the implementation of this Contract), without the prior written consent of the Commission, use or disclose any such materials.
- 29.3 The Supplier/Contractor shall execute any document and do any thing as may be required to ensure that all rights referred to in Condition 29.2 above are vested in the Commission (or at the Commission's option, the Crown).
- 29.4 The Supplier/Contractor hereby irrevocably waives in favour of the Commission any moral rights it may have in terms of the Copyright, Designs and Patents Act 1988, and any similar rights available in any part of the world, and shall procure that all employees, third parties and sub-contractors used in the performance of the Services shall similarly waive such moral rights.
- 29.5 The Commission shall have the sole right to publish, after discussion with the Supplier/Contractor, the results of any Services performed under the Contract with an appropriate acknowledgement of work or material contributed by the Supplier/Contractor.

**30 Freedom of Information**

- 30.1 The Supplier/Contractor acknowledges that the Commission is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 (together with any subordinate legislation made thereunder and any guidance and/or codes of practice issued in relation thereto) and shall assist and cooperate with the Commission to enable the Commission to comply with its information disclosure obligations.
- 30.2 The Supplier/Contractor shall (and shall procure that the Supplier/Contractor Personnel) shall:
- 30.2.1 transfer to the Commission all requests for information that it receives as soon as practicable and in any event within two Business Days of receiving such a request;
- 30.2.2 provide the Commission with a copy of all information in its possession or power, in the form that the Commission requires, within five Business Days (or such other period as the Commission may specify) of the Commission's request; and
- 30.2.3 provide all necessary assistance as reasonably requested by the Commission to enable the Commission to respond to the request for information within the time for compliance set out in the FOIA or the Environmental Information Regulations 2004.
- 30.3 The Commission shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations. In no event shall the Supplier/Contractor respond directly to a request for information unless expressly authorised to do so by the Commission.
- 30.4 The Supplier/Contractor acknowledges that (notwithstanding the provisions of this Condition 30) the Commission may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations 2004 to disclose information concerning the Supplier/Contractor or the Services:
- 30.4.1 in certain circumstances without consulting the Supplier/Contractor; or
- 30.4.2 following consultation with the Supplier/Contractor and having taken their views into account;
- provided always that where Condition 30.4.1 applies the Commission shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier/Contractor advanced notice, or failing that, to draw the disclosure to the Supplier/Contractor's attention after any such disclosure.
- 30.5 The Supplier/Contractor shall ensure that all information (as defined in the FOIA) is retained for disclosure and shall permit the Commission to inspect such records as requested from time to time.

**31 Data Protection**

- 31.1 With respect to the parties' rights and obligations under the Contract, the parties agree that the Commission is the Data Controller and that the Supplier/Contractor is the Data Processor. For the purposes of this Condition 31, the terms "Data Processor", "Data Controller", "Personal Data" and "Processing" shall have the meanings given to them by the Data Protection Act 1998. The "Data Protection Legislation" shall mean the Data Protection Act 1998 and all other 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.
- 31.2 The Supplier/Contractor shall:
- 31.2.1 process the Personal Data only in accordance with instructions from the Commission (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Commission to the Supplier/Contractor during the term of the Contract);
  - 31.2.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body;
  - 31.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - 31.2.4 take reasonable steps to ensure the reliability of any Supplier/Contractor Personnel who have access to the Personal Data;
  - 31.2.5 obtain prior written consent from the Commission in order to transfer the Personal Data to any sub-contractors or affiliates for the provision of the Services;
  - 31.2.6 ensure that all Supplier/Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition 31;
  - 31.2.7 ensure that none of Supplier/Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Commission;
  - 31.2.8 notify the Commission (within five Business Days) if it receives a request from a Data Subject to have access to that person's Personal Data; or a complaint or request relating to the Commission's obligations under the Data Protection Legislation;
    - 13.2.8.1 provide the Commission with full cooperation and assistance in relation to any complaint or request made, including by:
    - 13.2.8.2 providing the Commission with full details of the complaint or request;

- 31.2.8.3 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Commission's instructions;
- 31.2.8.4 providing the Commission with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Commission); and
- 31.2.8.5 providing the Commission with any information requested by the Commission;
- 31.2.9 permit the Commission or its representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier/Contractor's data Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Commission to enable the Commission to verify and/or procure that the Supplier/Contractor is in full compliance with its obligations under the Contract; and
- 31.2.10 provide a written description of the technical and organisational methods employed by the Supplier/Contractor for processing Personal Data (within the timescales required by the Commission).
- 31.2.11 The Supplier/Contractor warrants that it shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Commission to breach any of its applicable obligations under the Data Protection Legislation.

## **32 Severance**

- 32.1 If a court or an appropriate authority decide that any part of the Contract is invalid or unenforceable the remaining parts will still apply.

## **33 Entire Agreement and Amendment**

- 33.1 The Contract contains the whole agreement between the parties in respect of the subject matter and supersedes and replaces all prior proposals, agreements, representations and negotiations relating thereto, whether written or oral or implied between the parties or their respective advisers, unless otherwise provided herein. No modification or alteration of the Contract shall be validly made unless in writing and signed by or on behalf of both parties hereto.

## **34 Warranties**

- 34.1 The Supplier/Contractor warrants and undertakes that:
- 34.1.1 the Supplier/Contractor has full capacity and authority and all necessary licences, permits and consents to enter into and to perform the Contract;
- 34.1.2 the Services shall be performed in compliance with all applicable laws, orders, regulations, codes of practice and other similar instruments; and
- 34.1.3 the Services shall be performed and delivered in accordance with the Contract.
- 34.2 Each of the parties warrants and undertakes that:
- 34.2.1 it has power and authority to enter into the Contract; and

34.2.2 it is not aware, as at the date of the Contract, of anything within its reasonable control that might or would adversely affect its ability to fulfil its obligations under the Contract.

### **35 Variation**

35.1 The Supplier/Contractor must not change the specification of the Services, or the material or equipment being supplied without the prior written agreement of the Commission.

35.2 Subject to the provisions of this Condition 35.2, the Commission may request a variation to the specification provided that such variation does not amount to a material change to the specification. Such a change is hereinafter called a "Variation".

35.3 The Commission may request a Variation by notifying the Supplier/Contractor in writing of the Variation and giving the Supplier/Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract price is required in order to implement the Variation. The Commission shall specify a time limit within which the Supplier/Contractor shall respond to the request for a Variation. Such time limit shall be reasonable having regard to the nature of the Variation. If the Supplier/Contractor accepts the Variation it shall confirm the same to the Commission in writing.

35.4 In the event that the Supplier/Contractor is unable to accept the Variation to the specification of the Services or where the parties are unable to agree a change to the Contract price, the Commission may:

35.4.1 allow the Supplier/Contractor to fulfil its obligations under the Contract without the Variation to the specification; or

35.4.2 terminate the Contract with immediate effect, except where the Supplier/Contractor has already delivered all or part of the Services or where the Supplier/Contractor can show evidence of substantial work being carried out to fulfil the requirements of the specification; and in such cases the parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the dispute resolution procedure detailed at Condition 23.

### **36 Contracts (Rights of Third Parties) Act 1999**

36.1 A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on them, without the prior written agreement of the Commission and the Supplier/Contractor. This Condition does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown. This Condition shall not apply in the event that the Contract is governed by Scots law.

### **37 Remedies Cumulative**

37.1 Except as otherwise expressly provided by the Contract, all remedies available to either the Commission or the Supplier/Contractor for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**38 Publicity, Media and Official Enquiries**

- 38.1 Without prejudice to the Commission's obligations under the FOIA, neither the Supplier/Contractor nor the Commission shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other party.
- 38.2 Both the Supplier/Contractor and the Commission shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with Condition 38.1.