Schedule 4
Special Conditions

1. Compliance with Legislation and the Employer's Policies and Procedures

Definitions

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for performing the Services.

Contractor Personnel: all employees, staff, other workers, agents and consultants of the Contractor and of any sub-contractors who are engaged in performing the Services from time to time.

1.1 The Contractor shall ensure that all Necessary Consents are in place to perform the Services and the Employer shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.

1.2 Wherever there is any conflict or inconsistency between the provisions of this Contract and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Contractor has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Contractor has notified the Employer in writing.

1.3 The Contractor shall (and shall procure that the Contractor Personnel shall) perform its obligations under this Contract (including those in relation to the Services) in accordance with:

(a) all applicable law regarding health and safety; and

(b) the Employer's health and safety policies.

1.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Contractor shall instruct the Contractor Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

1.5 Without limiting the general obligation set out in Paragraph 6 on Service Standards, the Contractor shall (and shall procure that the Contractor Personnel shall):

(a) perform its obligations under this Contract (including those in relation to the Services) in accordance with:

(i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(ii) the Employer's equal opportunities policies (available from the Employer on request); and

(iii) any other requirements and instructions which the Employer reasonably imposes in connection with any equality obligations imposed on the Employer at any time under applicable equality law;

(b) take all necessary steps, and inform the Employer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and

(c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract. The Contractor shall also undertake, or refrain from undertaking, such acts as the Employer requests so as to enable the Employer to comply with its obligations under the Human Rights Act 1998.

1.6 In the performance of this Contract the Contractor shall comply with the Employer's Financial Regulations and Procurement Rules. Where the Contractor purchases goods, works or services on behalf of the Employer in the course of performing the Services under this Contract, it shall comply with the European Public Procurement Directives, the Public Contracts Regulations 2015 and the Employer's policies and procedures as though it were an employee of the Employer. The Contractor shall ensure that the Employer receives the benefit of all guarantees and warranties provided by any such suppliers of goods, works or services, either directly or through a collateral warranty agreement (as applicable).

1.7 The Contractor shall make best efforts to secure compliance with the provisions of this Paragraph 1 by its employees, agents and sub-contractors employed in the execution of this Contract.

2. Freedom of Information

2.1 Supplemental Provision 7 of Schedule 2 to the Contract concerning "Transparency" shall be deleted and replaced with this Paragraph 2 of Schedule 4.

2.2 **Definitions**

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

2.3 The Contractor acknowledges that the Employer is subject to the requirements of the FOIA and the EIRs. The Contractor shall:

(a) provide all necessary assistance and cooperation as reasonably requested by the Employer to enable the Employer to comply with its obligations under the FOIA and EIRs;

(b) transfer to the Employer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Business Days of receipt;

(c) provide the Employer with a copy of all Information belonging to the Employer requested in the Request For Information which is in its possession or control in the form that the Employer requires within 5 Business Days (or such other period as the Employer may reasonably specify) of the Employer's request for such Information; and

(d) not respond directly to a Request For Information unless authorised in writing to do so by the Employer.

2.4 The Contractor acknowledges that the Employer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Employer shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Employer shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

3. Sub-contracting and Assignment

3.1 The Employer may assign, transfer or in any other way deal in or dispose of the benefit or burden of the whole or any part of this Contract if it has a requirement to do so and shall inform the Contractor of any such dealing.

3.2 The Contractor shall not sub-contract, assign, transfer or in any other way deal in or dispose of the benefit or burden of the whole or any part of this Contract without the Employer’s prior written agreement.

3.3 Assigning or sub-contracting the whole or any part of this Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under this Contract and the Contractor shall be responsible for the acts omissions defaults and negligence of its assignees and sub-contractors as though they are its own. The Contractor shall include a term in its contract with its sub-contractors requiring them to comply with the terms of this Contract. The Contractor shall not use the services of self-employed individuals without the Employer’s prior written agreement.

3.4 Where the Contractor enters into a sub-contract with a third party for the purpose of performing this Contract, it shall include a term in such sub-contract that the sub-contractor shall comply with the terms of the Contractor’s Contract with the Employer and a term that provides that payment shall be made by the Contractor to the sub-contractor of undisputed sums within a specified period not exceeding 30 days from the receipt of a valid invoice (as defined in the terms of the sub-contract).

4. Prevention of Corruption

4.1 Clause 6.6 of the Contract concerning “Corruption and regulation 73(1)(b) of the PC Regulations” shall be deleted and replaced with this Paragraph 4 of Schedule 4.

4.2 The Employer shall be entitled to recover in full any loss sustained as a consequence of a breach of this Paragraph 4 and shall be entitled to terminate the Contractor’s employment immediately, under this or any other contract with the Employer if, in relation to this or any other such contract, any of the following circumstances applies:

(a) the Contractor or any person employed by him or acting on his behalf shall have offered, given or agreed to give to anyone any inducement or reward (even if the Contractor did not know what was done); or

(b) the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010; or

(c) the Contractor or any person employed by him or acting on his behalf shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972; or

(d) the Contractor or any person employed by him or acting on his behalf shall have committed any fraud whether acting alone or in conjunction with the members, contractors, suppliers or employees of the Employer; or

(e) where this Contract is one to which regulation 73(1) of the PC Regulations applies, the circumstances set out in regulation 73(1)(b) of the PC Regulations apply.

4.3 The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by its staff or the Contractor (including its shareholders, members and directors) in connection with this Contract and shall notify the Employer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

4.4 Any clause limiting the Contractor's liability shall not apply to this Paragraph 4.

5. Right to Purchase Elsewhere

5.1 If the Contractor fails to perform the Services or any part thereof within the time or times specified in this Contract, the Employer may, without prejudice to any other remedy for breach of contract, reserve the right either:

(a) to terminate this Contract either wholly or in respect of that part of this Contract for which the Contractor is in default; and/or

(b) to purchase the relevant Services of the same or similar description to make good the default; or in the event of this Contract being wholly determined to procure the Services required from any third party without any obligation to the Contractor in respect of this Contract.

6. Service Standards

6.1 The Contractor shall perform the Services, or procure that they are performed, with reasonable skill and care and in accordance with all applicable law. Where a British Standard Specification or British Standard Code of Practice or other recognised standard (e.g. a Eurocode) is laid down by a regulatory body for the industry concerned and applies to the Contractor's workmanship or to any goods and materials used or supplied by the Contractor, the workmanship and the goods and materials used or supplied shall be at minimum to such standard.

7. Employer's Access to Sites

7.1 The Contractor shall permit appropriate and properly authorised and trained representatives of the Employer to enter upon any construction sites and/or sites of

operation for the Services at any reasonable time and have free and unfettered access to each and every part of the areas covered or affected by this Contract.

8. Publication of Spend

8.1 The Contractor is advised that local authorities are required by the Government to publish details of every item of expenditure that exceeds £500 and details of each invitation to tender (for contracts to provide goods or services) with a value of £5,000 or more.

8.2 The Contractor is advised that the Employer may therefore publish details (to the extent and in the manner required by the Government) of the tender process and any contract awarded.

8.3 The Contractor must comply with any reasonable request from the Employer in order to assist the Employer in complying with its obligations in respect of this requirement.

9. The Employer as a Local Authority

9.1 Nothing in this Contract shall prejudice, override, modify or in any other way affect the rights, powers, duties and obligations of the Employer in the exercise of its statutory powers as a local authority, local planning authority, highway authority, fire authority or statutory undertaker.

10. Data Processing

Definitions

Contractor Personnel: all employees, staff, other workers, agents and consultants of the Contractor and of any sub-contractors who are engaged in performing the Services from time to time.

Controller, Processor, Process, Processing, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer, take the meanings given to them in the GDPR and their cognate terms shall be construed accordingly.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the GDPR; the DPA; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC); the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426); the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699) as amended; any other European Union legislation relating to Personal Data and all other legislation and regulatory requirements in force from time to time which apply to a Party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: the Data Protection Act 2018.

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679).

Law: any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply.

LED: the Law Enforcement Directive (Directive (EU) 2016/680).

Protective Measures: appropriate technical and organisational measures which may include: pseudonym-ising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

Sub-processor: means any person appointed to Process Personal Data on behalf of the Contractor related to this Contract.

10.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Employer is the Controller and the Contractor is the Processor. The only Processing that the Contractor is authorised to do is listed in Appendix 1 by the Employer and may not be determined by the Contractor.

10.2 Both Parties will comply with all applicable requirements of the Data Protection Legislation.

10.3 This Paragraph 10 is in addition to, and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.

10.4 Appendix 1 sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.

10.5 The Contractor shall notify the Employer immediately if it considers that any of the Employer's instructions infringe the Data Protection Legislation and shall not knowingly or negligently do or omit to do anything which places the Employer in breach of the Employer's obligations under the Data Protection Legislation.

10.6 The Contractor shall provide all reasonable assistance to the Employer in the preparation of any Data Protection Impact Assessment prior to commencing any Processing or at any time. Such assistance may, at the discretion of the Employer, include:

(a) a systematic description of the envisaged Processing operations and the purpose of the Processing;

(b) an assessment of the necessity and proportionality of the Processing operations in relation to providing the Goods;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

10.7 The Contractor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:

(a) Process that Personal Data only in accordance with Appendix 1, unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Employer before Processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures to ensure a level of security appropriate to the risks, including, as appropriate, the measures referred to in Article 32(1) of the GDPR, which have been reviewed and approved by the Employer as appropriate to protect against a Data Loss Event having taken account of the:

(i) nature and scope as well as context and purposes of the Personal Data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(c) ensure that:

(i) the Contractor Personnel do not Process Personal Data except in accordance with this Contract (and in particular Appendix 1);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Contractor's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Employer or as otherwise permitted by this Contract; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU or European Economic Area unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:

(i) the Employer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Employer;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Employer in meeting its obligations); and

(iv) the Contractor complies with any reasonable instructions notified to it in advance by the Employer with respect to the Processing of the Personal Data;

(e) at the written direction of the Employer, delete or return Personal Data (and any copies of it) to the Employer on termination of this Contract unless the Contractor is required by Law to retain the Personal Data.

10.8 Subject to Paragraph 10.6, the Contractor shall notify the Employer immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;

(e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

10.9 The Contractor’s obligation to notify under Paragraph 10.5 shall include the provision of further information to the Employer in phases, as details become available.

10.10 Taking into account the nature of the Processing, the Contractor shall provide the Employer with full assistance in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication or request made under Paragraph 10.8 (and insofar as possible within the timescales reasonably required by the Employer) including by promptly providing:

(a) the Employer with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Employer to enable the Employer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Employer, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Employer following any Data Loss Event;

(e) assistance as requested by the Employer with respect to any request from the Information Commissioner's Office, or any consultation by the Employer with the Information Commissioner's Office.

10.11 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause under the obligation in Articles 28(3)(h) and 30(2) GDPR. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

(a) the Employer determines that the Processing is not occasional;

(b) the Employer determines (or the Contractor is aware that) the Processing includes special categories of Personal Data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and/or

(c) the Employer determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

10.12 The Contractor shall allow for audits of its Data Processing activity by the Employer or the Employer's designated auditor.

10.13 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.

10.14 Before allowing any Sub-processor to Process any Personal Data related to this Contract, the Contractor must:

(a) notify the Employer in writing of the intended Sub-processor and Processing;

(b) obtain the written consent of the Employer;

(c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Paragraph 10.14 such that they apply to the Sub-processor; and

(d) provide the Employer with such information regarding the Sub-processor as the Employer may reasonably require.

10.15 The Contractor shall remain fully liable for all acts and omissions of any Sub-processor.

10.16 The Employer may, at any time on not less than 30 Business Days' notice, revise this clause by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract) per Articles 28(6), 28(7) and 28(8) GDPR.

10.17 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Employer may on notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

10.18 Without prejudice to the rest of this Paragraph 10.18, the Contractor shall, in relation to any Personal Data Processed in connection with the performance by the Contractor of its obligations under this Contract Process that Personal Data only on the written instructions of the Employer unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to Process Personal Data ("Applicable Laws"). Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for Processing Personal Data, the Contractor shall promptly notify the Employer of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Employer.

10.19 The Contractor shall fully indemnify the Employer in respect of all losses, liabilities, claims, actions, proceedings, demands, costs, charges or expenses arising out of or in connection with any civil claim made in respect of information subject to the Data Protection Legislation, which claims would not have arisen but for some act, omission or negligence in breach of this condition on the part of the Contractor, its employees, agents or any Sub-contractor or anyone acting on its or their behalf.

10.20 The Parties agree that on the termination of this Contract, the Processor and any Sub-Processor shall, at the choice of the Controller, return all Personal Data and copies thereof to the Employer or shall destroy all the Personal Data and certify to the Employer that it has done so, unless legislation imposed on the data importer prevents it from returning or destroying all or part of the Personal Data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the Personal Data transferred and will not actively Process the Personal Data transferred anymore.

10.21 The Contractor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Processor who may have access to Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know or access the relevant Personal Data, as strictly necessary for the purposes of this Contract, and to comply with the Data Protection Legislation in the context of that individual's duties to the Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

Obligations after the termination of this Contract

10.22 The provisions of this Paragraph 10.22 shall apply both during the term of this Contract and indefinitely after this Contract's expiry or termination.

10.23 The Parties agree that on the termination of this Contract, the Data Processor and any Sub-processor shall, at the choice of the Data Controller, return all the Personal Data transferred and the copies thereof to the Data Controller or shall destroy all the Personal Data and certify to the Data Controller that it has done so, unless legislation imposed on the Data Processor prevents it from returning or destroying all or part of the Personal Data transferred. In that case, the Data Processor warrants that it will guarantee the confidentiality of the Personal Data transferred and will not actively Process the Personal Data transferred anymore.

Appendix 1

GDPR – The General Data Protection Regulation

Appendix of Data Processing, Personal Data and Data Subjects

1. The Contractor shall comply with any written instructions with respect to Processing by the Employer.
2. Any such further instructions shall be incorporated into this Appendix 1.

PROCESSING BY THE CONTRACTOR

A. Scope Description Details

Subject matter of the Processing.

The Contractor shall Process Personal Data in order to perform the Services. The Personal Data shall comprise the names and contact information of Employer staff members.

B. Duration of the Processing

The Contractor shall Process Personal Data for the duration of this Contract.

C. Nature and purposes of the Processing

The names and contact information of Employer staff members will be Processed. This could involve collecting, recording, organising, structuring, storing, adapting or altering, retrieving, consulting, using, disclosing by transmission, disseminating or otherwise making available, aligning or combining, restricting, erasing or destroying the Personal Data (whether or not by automated means). The purpose of the Processing will be to perform the Services pursuant to this Contract.

D. Type(s) of Personal Data

- Title
- First and middle names
- Surname
- Email address
- Telephone numbers
- Full office address

E. Categories of Data Subject

Staff of the Employer.

F. Termination Provision

The Contractor shall destroy and return to the Employer the Personal Data and copies thereof once the Processing is complete UNLESS there is a requirement under UK or Applicable Law or a written direction of the Employer that the Contractor stores the Personal Data.

The Contractor shall keep the Personal Data for no longer than is necessary for the purposes for which the Personal Data are processed.