

## **D DATA SECURITY AND PROTECTION OF INFORMATION**

### **D1 Client Data**

- D1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to Client Data.
- D1.2 The Contractor shall not store, copy, disclose, or use Client Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise expressly authorised in writing by the Client.
- D1.3 To the extent that Client Data is held and/or processed by the Contractor, the Contractor shall supply that Client Data to the Client as may be requested by the Client and in the format specified by the Client.
- D1.4 The Contractor shall take responsibility for preserving the integrity of Client Data and shall take all necessary steps to prevent the corruption or loss of Client Data.
- D1.5 The Contractor shall perform secure back-ups of all Client Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Client's instructions. The Contractor shall ensure that such back-ups are available to the Client at all times upon request and are delivered to the Client at agreed intervals.
- D1.6 The Contractor shall ensure that any system on which the Contractor holds Client Data, including back-up data, is a secure system that complies with the Client's current Security Policy. If any Client Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Client may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Client Data to the extent required by the Client and in accordance with the Client's security requirements and the Contractor shall do so as soon as practicable but not later than any agreed timescale; and/or
  - (b) itself restore or procure the restoration of the Client Data, and shall be reimbursed by the Contractor any reasonable expenses incurred in doing so to the extent required by the Client and in accordance with the Client's security requirements.
- D1.7 If at any time the Contractor suspects or has reason to believe that Client Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Client immediately and inform the Client of the remedial action the Contractor proposes to take.

### **D2 Data Protection Act**

- D2.1 For the purposes of this Clause D2, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.
- D2.2 The Contractor shall (and shall ensure that all Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

D2.3 Notwithstanding the general obligation in Clause D1.2, where the Contractor is processing Personal Data as a Data Processor for the Client the Contractor shall:

- (a) Process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Client to the Contractor);
- (b) Comply with all applicable Laws;
- (c) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor's obligations under this Contract or as is required by Law or any Regulatory Body;
- (d) Implement appropriate technical and organised 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;
- (e) Take reasonable steps to ensure the reliability of Staff and agents who may have access to the Personal Data;
- (f) Obtain prior written consent from the Client in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
- (g) Not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Client;
- (h) Ensure that all Staff and agents 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 Clause D2;
- (i) Ensure that none of the Staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Client;
- (j) Not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Client or in compliance with a legal obligation imposed upon the Client; and

D2.4 Notify the Client within 5 Working Days if it receives:

- (a) A request from a Data Subject to have access to that person's Personal Data; or
- (b) A complaint or request relating to the Client's obligations under the DPA;

D2.5 Provide the Client with reasonable cooperation and assistance in relation to any such complaint or request made, including by:

- (a) Providing the Client with full details of the complaint or request;
- (b) Assisting the Client to comply with any such request in accordance with the Client's reasonable instructions; and

- (c) Providing the Client with any Personal Data it holds in relation to a Data Subject (within the timescales reasonably required by HMRC).

D2.6 The provision of this Clause D2 shall apply during the Contract Period and indefinitely after its expiry.

### **D3 Official Secrets Acts and related Legislation**

D3.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989; and
- (c) Section 18 and Section 19 of the Commissioners for Revenue and Customs Act 2005

D3.2 In the event that the Contractor or its Staff fail to comply with this Clause, the Client reserves the right to terminate the Contract with immediate effect.

### **D4 Confidential Information**

D4.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the Information owner's prior written consent.

D4.2 Clause D4.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause D5 (Freedom of Information);
- (b) such Information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the Information owner;
- (c) such Information was obtained from a third Party without obligation of confidentiality;
- (d) such Information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

D4.3 The Contractor may only disclose the Client's Confidential Information to the Staff who are directly involved in the provision of the Goods and Services and who need to

know the Information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

- D4.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of the Contract.
- D4.5 Where deemed appropriate by the Client, and at the written request of the Client, the Contractor shall procure that its Staff sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.
- D4.6 Nothing in this Contract shall prevent the Client from disclosing the Contractor's Confidential Information (including the Management Information obtained under Schedule D to this Contract):
- (a) to the Crown or any other Contracting Authority. The Crown and any Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to the Crown 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 the Crown or any Contracting Authority;
  - (b) to any consultant, Contractor or other person engaged by the Client or any person conducting an Office of Government Commerce gateway review;
  - (c) for the purpose of the examination and certification of the Client's accounts; or
  - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.
- D4.7 The Client shall use all reasonable endeavours to ensure that any Crown body, Contracting Authority, employee, third Party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause D4.6 is made aware of the Client's obligations of confidentiality.
- D4.8 Nothing in this Clause D4 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 disclosure of the other Party's Confidential Information or an infringement of its Intellectual Property Rights.

## **D5 Freedom of Information**

- D5.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.
- D5.2 The Contractor shall and shall procure that any sub-contractors shall:
- (a) transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receiving a Request for Information;

- (b) provide the Client with a copy of all Information in its possession or power in the form that the Client requires within 5 Working Days (or such other period as the Client may reasonably specify) of the Client's request; and
  - (c) provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- D5.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- D5.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.
- D5.5 If the Client receives a Request for Information relating to Information previously considered by the Parties to be Commercially Sensitive Information that is exempt under the FOIA the Client shall:
- (a) consider whether the Information is, in fact, exempt and;
  - (b) consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the Information (unless the Information benefits from an absolute exemption) and;
  - (c) consult with the Contractor prior to disclosure of the Information whenever reasonably practicable.
- D5.6 Without prejudice to Clause D5.5 the Client shall consult with the Contractor before disclosing any Confidential Information of the Contractor unless the Client is obliged under the FOIA to disclose such Information without consulting the Contractor.
- D5.7 The Client shall not be liable for any loss or damage suffered by the Contractor, whether in Contract, tort or any other way, as a result of the Client disclosing Information in response to a request made under the FOIA.
- D5.8 The Contractor shall ensure that all Information is retained for disclosure in accordance with any legislation or guidelines from time to time in place and shall permit the Client to inspect such records as requested from time to time.

## **D6 Security Requirements**

- D6.1 In the performance of this Contract, the Contractor shall comply with (and shall ensure that its staff comply with) the Client's specific security requirements as described in the Specification of Requirements at Schedule A as appropriate. Failure to do so may result in the termination of the Contract in accordance with Clause G2. The Contractor shall be obliged to inform the Client of any security incident, regardless of its size or perceived impact on the Client's business, as soon as the Contractor becomes aware of such an incident, and shall maintain auditable records of such events.

- D6.2 Where required by the Client, the Contractor shall comply, and shall procure the compliance of its Staff, with the HMRC Security Policy and the Security Plan at Schedule H of this Contract and the Contractor shall ensure that its Security Plan fully complies with the Security Policy.
- D6.3 The Client shall notify the Contractor of any changes or proposed changes to the Security Policy.
- D6.4 If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Goods or Services it may submit a Change Request. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate these costs. Any such change shall then be agreed in accordance with the change procedures previously agreed between the Client and the Contractor.
- D6.5 Unless and/or until such a change is agreed by the Client pursuant to Clause D6.4 the Contractor shall continue to perform the Services in accordance with its existing obligations under the Contract.
- D6.6 The Contractor shall, as an enduring obligation for the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- D6.7 Notwithstanding Clause D6.6, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- D6.8 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause D6.7 shall be borne by the parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
  - (b) by the Client if the Malicious Software originates from the Client Software or the Client Data (whilst the Client Data was under the control of the Client).

## **D7 Publicity, Media and Official Enquiries**

- D7.1 Without prejudice to the Client's obligations under the FOIA, neither Party 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, which shall not be unreasonably withheld or delayed.
- D7.2 Both Parties shall take all reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with Clause D7.1.
- D7.3 The Contractor shall not use HMRC's name or brand in any promotion or marketing or announcement without the prior written consent of the Client.

D7.4 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or Services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such Approval or endorsement.

## **D8 Intellectual Property Rights**

D8.1 All Intellectual Property Rights in any guidance, Specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials") furnished to or made available to the Contractor by the Client shall remain the Property of the Client and the Contractor shall not, and shall ensure that its Staff shall not (except when necessary for the performance of the Contract) without Prior Approval, use or disclose any Intellectual Property Rights in the IP materials.

D8.2 The Client acknowledges that ownership in all Intellectual Property Rights in any guidance, Specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials") prepared by or for the Contractor on behalf of the Client for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall remain with the Contractor.

D8.3 The Contractor hereby grants to the Client a non-exclusive licence to use, reproduce, modify, develop and maintain the material prepared by or for the Contractor on behalf of the Client for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract including but not limited to all Intellectual Property Rights in the same. Such licence shall be non-exclusive, perpetual, royalty free and irrevocable.

D8.4 The Contractor shall not infringe any Intellectual Property Rights of any third Party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:

- (a) items or materials based upon designs supplied by the Client; or
- (b) the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of the Contract.

D8.5 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

D8.6 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor.

D8.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:

- (a) modify any or all of the Goods or Services without reducing the performance or functionality of the same, or substitute alternative Goods or Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply to such modified Goods or Services or to the substitute Goods or Services; or
- (b) procure a licence to use and supply the Goods or Services which are the subject of the alleged infringement on terms which are acceptable to the Client, and in the event that the Contractor is unable to comply with Clauses D8.7(a) or (b) within 20 Working Days of receipt of the Contractor's notification the Client may terminate the Contract with immediate effect by notice in writing.

D8.8 The Contractor grants to the Client a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Client reasonably requires in order exercise its rights and take the benefit of this Contract including the Goods or Services provided.

## **D9 Audit and the National Audit Office**

D9.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods or Services supplied under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Contractor shall on request afford the Client or the Client's representatives such access to those records as may be requested by the Client in connection with the Contract.

## **D10 Client's Right to Publish the Contract**

D10.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Client shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor hereby gives its consent for the Client to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

D10.2 The Client may consult with the Contractor to inform its decision regarding any redactions but the Client shall have the final decision at its absolute discretion.

D10.4 The Contractor shall assist and cooperate with the Client to enable the Client to publish this Contract