

# **Business Support Function For Alternative Home Area Networks**

## **Appendix 3 Draft Terms and Conditions (For RFP Stage)**

Version	1.0 FINAL
Author	Alt HAN Delivery Project
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## Document Revision History

### Revision History

Version	Issue Date	Description of Version / Changes	Author
0.1	3 June 2016	Initial Draft	Adrian Rudd
0.2	08 July 2016	Quality and Technical Review	Chris Cook / Haz Elmamoun / Paul Coyle
0.3	13 July 2016	AHF Review	Adrian Rudd
0.4	28 July 2016	Post AHF Review	Adrian Rudd

### Approvals

Name	Responsibility	Date of Signature	Version
Alt HAN Forum	Industry Forum responsible for the delivery of Alternative HAN services		1.0

### Related Documents

Description of Version / Changes	Version
00_Business Support Function RFP	1.0
A1_Business Support Service Requirements	1.0
A2_Business Support Pricing Schedule for RFP	1.0
A4_Business Support NDA for RFP	2.0
A5_Indicative High Level Plan	1.0
Alternative HAN Target Operating Model	2.0

## 1. Notes to Potential Vendors

These draft Terms and Conditions are initial proposals and will be subject to further review and refinement as and when Alt HAN Co decides the structure of service provision, allocation of Lots and commercial negotiation.

## 2. Definitions

“Agreement”	shall mean this Agreement.
“Alt HAN Co”	shall mean Alt HAN Co Ltd
“Alt HAN Co/ Energy Supplier Agreement”	shall mean the contractual agreement between Alt HAN Co and each Energy Supplier using the Services
“Alt HAN Forum”	shall mean the Alternative HAN Forum established under Section Z of the Smart Energy Code
“Charges”	means the price agreed in respect of the Services, excluding Value Added Tax
“Confidential Information”	shall mean any information written, oral, visual, or otherwise disclosed in any medium by one Party to the other under this Agreement and marked or otherwise designated as "Confidential" or which is clearly by its nature confidential.
“Contractor”	shall mean the person contracted to provide services under this Agreement.
“Implementation of Services Plan”	shall mean the implementation plan or plans submitted by the Contractor in response to the Alternative HAN - Business Support Function RFP
“Energy Supplier”	shall mean a gas or electricity supplier licenced by the Gas and Electricity Markets Authority for the supply of gas and/or electricity to domestic and non-domestic consumers.
“Intellectual Property Rights”	means patents, trade marks, service marks, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, trade or business names and other similar rights or obligations, whether registrable or not, in any country, including but not limited to, the United Kingdom;
“Party” or “Parties”	shall mean one or both parties to this Agreement.
“QHSE Plans & Documentation”	Shall mean Quality, Health, Safety and Environmental plans, procedures, processes and records operated by the Contractor in provision of the Services

“Service” or “Services”

shall mean all kinds of services provided by the Contractor and requested by Alt HAN Co as defined in the Alternative HAN - Business Support Function RFP and its Appendix 1

### **3. Service of Notices and Communications**

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

### **4. Assignment and Sub-contracting**

(1) The Contractor shall not give, bargain, sell, assign, sub-contract or otherwise dispose of the Agreement or any part thereof without the previous agreement in writing of Alt HAN Co.

(2) The Contractor shall not use the services of self-employed individuals, contractors or consultants in connection with the Agreement without the previous agreement in writing of the Alt HAN Co.

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

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

### **5. Entire Agreement**

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

### **6. Provision of Services**

(1) Subject to the terms and conditions of this Agreement, Alt HAN Co hereby engages the Contractor and the Contractor undertakes to provide the Services as set out in the Agreement.

(2) This Agreement shall form part of the Alt HAN Co/Energy Supplier Agreement with the provision and performance of the Services referenced in the Alt HAN Co/Energy Supplier Agreement.

### **7. Duties of Contractor and Conflicts of Interest**

(1) The Contractor undertakes that it shall use all reasonable endeavours to provide the Services requested by Alt HAN Co in a professional manner.

(2) The Contractor warrants to Alt HAN Co that there is no conflict of interest at contract award or at any time during performance of the Services.

(3) The Contractor undertakes that upon becoming aware of any such conflict of interest during the performance of the Agreement (whether the conflict existed before the award of the Agreement or arises during its performance) he shall immediately notify the Alt HAN Co in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Alt HAN Co may reasonably require.

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

- (i) if the Contractor fails to comply with the Authority's requirements in this respect; or
- (ii) if, in the opinion of the Authority, it is not possible to remove the conflict,

Alt HAN Co may terminate the Agreement immediately and recover from the Contractor the amount of any loss resulting from such termination.

(5) Notwithstanding Condition 7(4), where Alt HAN Co is of the opinion that the conflict of interest which existed at the time of the award of the Agreement could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Alt HAN Co may terminate the Agreement immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

## **8. Contractor's Personnel**

(1) If and when requested by Alt HAN Co, the Contractor shall provide a list of the names and employer (where sub-contracted) of all persons who may at any time be connected with the performance of the Services to Alt HAN Co, specifying the role in which each such person is concerned with the Contractor and giving such other particulars as Alt HAN Co may require.

## **9. Performance Management**

(1) The Contractor shall provide the Services in accordance with and as specified in the Agreement to the satisfaction of Alt HAN Co whose decision shall be final and conclusive. Alt HAN Co shall have the power to inspect and examine the performance of the Services at the Contractor's premises at any reasonable time or, provided that the Alt HAN Co gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

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

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

(4) Timely and appropriate provision of the Services shall be of the essence of the Agreement, including in relation to commencing the provision of the Services in accordance with the Contractor's Implementation of Services Plan and QHSE Plans & Documentation and within the timescales or specified dates agreed.

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

(6) Without prejudice to the provision of Condition 9(1), the Contractor shall reimburse Alt HAN Co for all reasonable costs incurred by the Alt HAN Co which have arisen as a direct consequence of the Contractor's delay in the performance of the Agreement which the Contractor had failed to remedy after being given reasonable notice by the Alt HAN Co.

(7) The Contractor shall provide Services in accordance with agreed key performance indicators, liquidated damages and service levels. The Contractor shall provide performance management reports on monthly basis and, where requested, present them to the Alt HAN Co Board. Corrective actions, remediation and remedy actions shall be formally agreed between the parties. Failure of the Contractor to meet agreed performance management service levels shall be considered a breach of this agreement and covered under Condition 14 (below).

## **10. Invoices and Payment for Services**

(1) In consideration of the provision of the Services by the Contractor, and provided always that the Services have been performed to the satisfaction of Alt HAN, Alt HAN Co shall pay the Contractor for the Services rendered as set out in the Alternative HAN - Business Support Function RFP and associated Appendices subject to:

(i) The Contractor shall submit invoices at times or intervals agreed by Alt HAN Co in the Agreement or otherwise. The Contractor shall ensure that any invoice it submits sets out the Alt HAN Co Purchase Order or contract number, the Charges and, where not all of the Services have been completed, the relevant part of the Charges with an appropriate breakdown of resources used (staff, sub-contracted and materials), the part of the Services (if all the Services have not been completed) and period to which the invoice relates, and its confirmation that the Services (or relevant part of the Services referred to on the invoice) have been fully performed.

(ii) In consideration of the provision of the Services by the Contractor, the Alt HAN Co shall pay the sums due after receiving a correctly submitted invoice as set out in Condition 10(1)(i). Such payment shall normally be made within 60 days of receipt of the correctly submitted invoice.

(iii) The Contractor shall not be entitled to charge for the provision of any services that are not part of the Services agreed within the Agreement, unless the Agreement has been properly amended in advance in accordance with Condition 13.

(iv) Alt HAN Co may withhold payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of Alt HAN Co.

(v) If the Contractor believes that payment for a correctly submitted invoice is overdue, [representative of Alt HAN Co] shall be contacted by telephone or by email. In the event that the problem is not resolved to the Contractor's satisfaction, then the matter shall revert to Dispute Resolution (Condition 16).

(vi) For the purpose of calculating any interest where late payment is agreed, the relevant date for the payment of the debt shall be deemed to be the last day of a period of 30 days commencing on the day when the Alt HAN Co received the invoice, or, if the Contractor had not completed the Services (or the part of the Services to which the invoice relates) before submitting the invoice, the last day of a period of 30 days commencing on the day when the Contractor completed the Services, (or the part of the Services to which the invoice relates).

## **11. Accounts**

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

(2) The Contractor shall permit Alt HAN Co acting by its staff, representatives and agents or independent auditor on request and at all reasonable times to examine all accounts, records and vouchers at the offices of the Contractor or at such other places as the Alt HAN Co shall direct, and to take copies of such accounts, records and vouchers and the Contractor shall provide the

Alt HAN Co or its independent auditor with such explanations relating to that expenditure as the Alt HAN Co may request.

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

## **12. Recovery of Sums Due**

(1) Whenever under the Agreement any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any amount then due, or which at any time thereafter may become due, to the Contractor under this Agreement or any other agreement or arrangement with Alt HAN Co.

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

## **13. Amendments**

(1) This Agreement including all its Appendices and Annexes constitutes the entire agreement of the Parties in relation to its subject matter and supersedes all prior agreements, understandings and negotiations in connection with it.

(2) This Agreement including all its Appendices and Annexes may be amended only in writing by a document signed by duly authorized representatives of both Parties.

## **14. Term and Termination of the Agreement**

(1) The initial term of this contract shall be five years with the potential for a two year extension, on the same terms and conditions, where mutually agreed. Any extension of this Agreement shall be only by express agreement between the Parties.

(2) Without prejudice to any other right or remedy Alt HAN Co may have against the Contractor Alt HAN Co may by written notice terminate this Agreement immediately if the Contractor:

(i) is in breach of any of the terms of this Agreement and, where the breach is capable of remedy, fails to remedy such breach within fourteen (14) days service of a written notice specifying the breach and requiring it to be remedied; or

(ii) in Alt HAN Co's opinion, is incompetent, commits any act of gross or persistent misconduct and/or neglect or omits to perform the Services or any of his duties or obligations under this Agreement; or

(iii) fails or refuses after written warning from Alt HAN Co to carry out the Services or the duties reasonably and properly required of it under this Agreement; or

(iv) becomes bankrupt, goes into liquidation, receivership, administration, make any composition with his creditors or enters any insolvency procedure; or

(v) the Contractor undergoes a change of control, where "control" has the meaning given in Section 416 of the Income and Corporation Taxes Act 1988.

(vi) provides Alt HAN Co with any false or misleading information with regard to its ability to perform the Services; or

(vii) fails to meet the requirements of the Implementation of Services Plan; or

(viii) breaches requirements set out in the QHSE Plans & Documentation; or



(ix) has done anything which brings or might reasonably be expected to bring Alt HAN Co into disrepute or otherwise damage Energy Suppliers, other contractors, employees, agents, customers, other business associates or the general public (including, but not limited to, committing an act of fraud or dishonesty whether or not connected with the provision of the Services); or

(x) causes Alt HAN Co or an Energy Supplier to be in breach of the Alt HAN Co/Energy Supplier Agreement and, where the breach is capable of remedy, fails to remedy such breach within fourteen (14) days service of a written notice specifying the breach and requiring it to be remedied.

(3) The termination of this Agreement howsoever arising is without prejudice to the rights, duties and liabilities of either Party accrued due prior to termination and all provisions of this Agreement which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

(4) After receipt of the notice under paragraph (2) above or earlier discovery by Alt HAN Co of the occurrence of any of the events described in that paragraph, Alt HAN Co may, by notice in writing to the Contractor, terminate the Agreement with immediate effect without compensation to the Contractor and without prejudice to any right or action or remedy which may accrue to Alt HAN Co thereafter. Alt HAN Co right to terminate the Agreement under Condition 14(2)(v) will exist until the end of a period of three months starting from receipt of the notice provided by the Contractor pursuant to Condition 3(1), or such other period as is agreed by the parties.

## **15. Cancellation**

(1) Alt HAN Co shall be entitled to terminate the Agreement, or to terminate the provision of any part of the Services, by giving to the Contractor not less than 90 days' notice in writing to that effect without prejudice to any rights or remedies of the Contractor for breach of contract. Once it has given such notice, Alt HAN Co may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

## **16. Dispute Resolution**

(1) The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement.

(2) If the parties cannot resolve the dispute pursuant to paragraph (1) of this Condition, the dispute may, by agreement between the parties, be referred to mediation pursuant to paragraph (4) of this Condition.

(3) The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to paragraph (2) of this Condition.

(4) If the parties agree to refer the dispute to mediation:

(i) in order to determine the person who shall mediate the dispute (the "Mediator") the parties shall by agreement choose a neutral adviser within 30 days after agreeing to refer the dispute to mediation;

(ii) the parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held;

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

(iv) if the parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties,

the agreement shall be made in writing and shall be binding on the parties once it is signed by both the Alt HAN Co and the Contractor;

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

(5) If the parties do not agree to refer the dispute to mediation, or if the parties fail to reach agreement as to who shall mediate the dispute pursuant to Condition 16(4)(i) or if they fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

(6) Costs for appointment of the Mediator shall be shared equally between Alt HAN Co and the Contractor.

## **17. Indemnities and Insurance**

(1) The Contractor shall hold harmless and indemnify the Alt HAN Co on demand from and against all claims, demands, proceedings, actions, damages, costs (including legal costs), expenses and any other liabilities arising from claims made by the Alt HAN Co's directors, staff or agents, or by third parties, in respect of any death or personal injury, or loss or destruction of or damage to property, or any other loss, destruction or damage, including but not limited to financial losses which are caused, whether directly or indirectly, by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Contractor, its employees, agents or sub-contractors.

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

(3) The Contractor shall effect with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in respect of the indemnities provided under the Agreement, which in any event shall not be less than £5 million (Five million pounds) and shall at the request of the Alt HAN Co produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due there under.

(4) Nothing in these Conditions nor in any part of the Agreement shall impose any liability on any board member, representative, agent or staff of Alt HAN Co.

(5) The Contractor shall indemnify Alt HAN Co against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used by or on behalf of the Contractor for the purpose of the Agreement, providing that any such infringement or alleged infringement is not knowingly caused by, or contributed to, by any act of the Alt HAN Co.

(6) Alt HAN Co shall indemnify the Contractor against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used at the request of the Alt HAN Co by the Contractor in the course of providing the Services.

(7) Except in relation to death or personal injury as referred to in Condition 17(1), and subject to Conditions 17 (5), the amount of liability under this clause shall be limited to a sum of £10 million (Ten million pounds) – with the exception of Condition 17 (6) where no cap will apply.

## **18. Representations and Warranties**

(1) Contractor represents, warrants and covenants to Alt HAN Co that:

(i) its performance of the Services shall be in accordance with professional and industrial standards customary for services of similar nature, and in compliance with all applicable laws, rules and regulations;

(ii) it will perform its obligations with reasonable care and skill and to the best of its ability and it will at all times act with the utmost good faith towards Alt HAN Co.

## **19. Liability of Contractor**

(1) The Contractor shall be liable to Alt HAN Co for any loss or damage of any nature incurred or suffered by Alt HAN Co, caused by or arising from Services rendered in the context of this Agreement.

## **20. Corrupt Gifts**

(1) The Contractor shall not offer or give, or agree to give, to Alt HAN Forum members or Alt HAN Co directors, staff or agents, or by third parties any person employed by or on behalf of the Alt HAN Co any gift or consideration of any kind as an inducement or reward for doing, or having done, or not doing, any act in relation to the obtaining or execution of this Agreement or any other contract with the Alt HAN Co, or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with Alt HAN Co.

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

(3) Where the Agreement has been terminated under paragraph (2) of this Condition, there shall be deemed to be a failure to commence the provision of the Services, enabling Alt HAN Co to terminate the Agreement with immediate effect and Alt HAN Co will not be obliged to pay any outstanding payments.

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

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

(ii) the right of the Alt HAN Co to determine the Agreement; or

(iii) the amount or value of any gift, consideration or commission,

the decision of Alt HAN Co shall be final and conclusive.

## **21. Confidentiality**

(1) For the purpose of this Agreement, any information relating to Alt HAN Co, including, but not limited to, the Services, products and intellectual property and any information of a technical, financial or commercial nature relating thereto shall be deemed to be Confidential Information.

(2) All Confidential Information shall remain solely the property of the disclosing Party, and its confidentiality shall be maintained and protected by the receiving Party. Alt HAN Co shall be authorized to disclose Confidential Information to the Alt HAN Forum as and when necessary to allow the Alt HAN Forum execute the Smart Energy Code Alt HAN Forum objectives. In each case of Confidential Information disclosure to the Alt HAN Forum the duty to protect will fall to Alt HAN Co. Each Party agrees not to disclose the other Party's Confidential Information to third parties which are not authorized by the disclosing Party to receive such Confidential Information.

(3) This duty to protect Confidential Information shall survive the termination of this Agreement.

(4) The foregoing prohibition on disclosure of Confidential Information shall not apply to the extent certain Confidential Information is required to be disclosed by the receiving Party as a matter of law or by order of a court, provided that the receiving Party uses reasonable efforts to provide the disclosing Party with prior written notice of such disclosure obligation and reasonably assists in obtaining a protective order therefore.

## **22. Intellectual Property**

(1) Subject to any pre-existing rights of third parties and of the Contractor, the Intellectual Property Rights (other than copyright) in all reports, documents and other materials which are generated or acquired by the Contractor (or any of its sub-contractors or agents) ("the Contractor Materials") in the performance of the Services shall belong to and be vested in Alt HAN Co.

(2) The Contractor warrants to the Alt HAN Co that all of their staff, agents and sub-contractors are and will be engaged in relation to the Agreement on terms which do not entitle any of them to any Intellectual Property Rights and which require them to waive all moral rights.

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

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

(5) Nothing in this Agreement or done under the Agreement shall be taken to diminish any other Intellectual Property Rights which would, apart from this Agreement, vest in Alt HAN Co.

(6) The Contractor shall ensure that all royalties licence fees or similar expenses in respect of Intellectual Property Rights in materials used in connection with the Agreement have been paid and are included in payments under this Agreement.

(7) If Alt HAN Co reimburses the Contractor for the cost of any equipment, such equipment shall become the property of Alt HAN Co and the Contractor shall on request deliver such equipment to Alt HAN Co. The Contractor shall keep a proper inventory of such equipment and shall deliver that inventory to Alt HAN Co on request and on completion of the Services.

### **23. Data Protection**

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

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

(3) Upon reasonable notice the Contractor shall allow Alt HAN Co access to any relevant premises owned or controlled by it to enable the Alt HAN Co to inspect its procedures described at Condition 23(2) above and will upon the Alt HAN Co’s request from time to time prepare a report for it on the technical and organisational measures it has in place to protect the personal data it is processing on the Alt HAN Co’s behalf.

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

(5) If the Contractor fails to comply with any provision of this condition, the Alt HAN Co may terminate the Agreement immediately in which event the provisions of Condition 14 (Term and Termination) shall apply.

(6) The Contractor shall indemnify Alt HAN Co against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Alt HAN Co by any person in respect of the Act or equivalent applicable legislation in any other country which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor or its sub-contractors and hold it harmless against all costs, losses and liability whatsoever incurred by it arising out of any action or inaction on its part in relation to any of its obligations as set out in this Agreement which results in the Alt HAN Co being in breach of its obligations under the Act or equivalent applicable legislation in any other country.

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

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

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

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

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

## **24. Taxes**

- (1) Any taxes or other dues are to be settled by the Contractor at its sole cost and expense.
- (2) Alt HAN Co shall pay to the Contractor, in addition to the Charges, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Agreement.
- (3) Any invoice or other request for payment of monies due to the Contractor under the Agreement shall be in accordance with statutory provisions related to Value Added Tax in force when each invoice is presented to Alt HAN Co.
- (4) The Contractor shall, if so requested by Alt HAN Co, furnish such information as may reasonably be required by the Alt HAN Co relating to the amount of Value Added Tax chargeable on the Services.

## **25. Waiver**

- (1) No omission or delay on the part of any Party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or of any other right, power or privilege.

## **26. Severability**

- (1) The illegality, invalidity or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of the remainder thereof. If any provision of this Agreement is found to be illegal, invalid or unenforceable, the Parties agree that if practicable, they shall substitute a provision in a form similar to the offending provision but without thereby rendering such provision illegal, invalid or unenforceable.

## **27. Transfer of Services**

- (1) Where Alt HAN Co intends to continue with services equivalent to any or all of the Services after termination or expiry of the Agreement, either by performing them itself or by the appointment of a replacement contractor, the Contractor shall use all reasonable endeavours to ensure that the transition is undertaken with the minimum of disruption to Alt HAN Co.
- (2) The Contractor shall co-operate fully during the transition period and provide full access to all data, documents, manuals, working instructions, reports and any information, whether held in electronic or written form, which the Alt HAN Co considers necessary, at no cost to the Alt HAN Co.
- (3) The Contractor shall develop and agree a handover plan with Alt HAN Co with at least six months remaining of the Term or any agreed extension.

## **28. Applicable Law and Jurisdiction**

- (1) This Agreement shall be governed by and construed in accordance with the laws of England and subject to the jurisdiction of the English courts.

Date: .....

Date: .....

**Alt HAN Co Ltd**

**<Contractor's full legal name>**

Sig.: .....

Sig.: .....

Name : .....

Name : .....