

# Oxera Consulting LLP: Terms of Engagement

## 1 Interpretation

### 1.1 In these Terms the following words and phrases shall have the following meanings:

**'Oxera':** the Oxera entity identified in Oxera's Letter of Engagement. (In the UK this is normally Oxera Consulting LLP, a limited liability partnership incorporated in England and Wales under number OC392464 whose registered offices are at Park Central, 40/41 Park End Street, Oxford, Oxfordshire, OX1 1JD, operating in Italy, through its Italian branch registered with the Register of Enterprises of Rome under number 09035950964, whose registered offices are at Via delle Quattro Fontane 15, 00178 Rome, Italy).

**'The Client':** the Party identified in Oxera's Letter of Engagement.

**'Affiliate':** any entity controlling, controlled by or under common control with Oxera, where 'control' means the ownership of the majority of the share capital of, or the legal power to direct or cause the direction of the general management and policies of, an entity.

**'Business Day':** a day (other than a Saturday, Sunday or public holiday in England and Italy).

**'Background IPR':** Intellectual Property Rights owned by or licensed to Oxera and subsisting prior to the date of the Contract; developed, conceived or created by Oxera, otherwise than exclusively in connection with the Services, and in any internal materials or any knowledge capital (including internal documents and correspondence, models, know-how, techniques, methodologies, working papers and calculations) developed by Oxera in connection with the Services.

**'Client IPR':** Intellectual Property Rights owned by or licensed to the Client in materials, documents and other property provided by the Client to Oxera from time to time.

**'Confidential Information':** all technical or commercial information, processes or initiatives that are of a confidential nature (including information relating to a Party's business, affairs or finances and irrespective of whether they are marked as **'Confidential'** or similar expressions or not) and have been disclosed by one Party (the **'Disclosing Party'**) or its agents to the other Party (the **'Recipient'**) or its agents at any time and any other confidential information concerning the Disclosing Party's business or its products which the Recipient may obtain, save to the extent that such information: i) has become public knowledge other than through disclosure in breach of the Contract; ii) was already known to the Recipient prior to disclosure; or iii) has been received by the Recipient from a third party who did not acquire it in confidence from the Disclosing Party or from someone owing a duty of confidence to the Disclosing Party.

**'Contract':** a contract between the Client and Oxera for the supply of Services, comprising the Letter of Engagement, the Project Specification (if any) and these Terms.

**'Damages':** all damages, losses, liabilities, fines, costs and expenses including legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties.

**'Deliverables':** reports, products, models or outputs of the Services which Oxera is to provide to the Client, as identified in the Engagement Letter or Project Specification.

**'Intellectual Property Rights':** patents, rights to inventions, copyright and related rights (including future copyright), trademarks, trade names, business names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in Confidential Information (including know-how and trade secrets) and any other Intellectual Property Rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**'Letter of Engagement':** the Letter of Engagement issued to the Client by Oxera.

**'Oxera Individuals':** Oxera's members, officers, employees or consultants.

**'Oxera Project Director':** Oxera's senior manager for the Contract with overall responsibility and contractual authority for the Services.

**'Oxera Project Manager':** Oxera's manager for the Services who shall act as the person responsible for all day-to-day actions and communications.

**'Party' or 'Parties':** Oxera or the Client as they may be referred to.

**'Project Specification':** the proposal or other detailed plan describing the Services to be provided by Oxera, the estimated timetable, the Parties' specific responsibilities and the basis for the charges payable by the Client.

**'Project Team':** any of Oxera's members, employees, agents, contractors or sub-contractors engaged in the provision of the Services.

**'Services':** the Services to be provided to the Client by Oxera under the Contract as set out in the Letter of Engagement and/or Project Specification or otherwise agreed with the Client from time to time.

**'Terms':** these Terms of Engagement.

- 1.2 If there is any conflict or inconsistency between the Terms, the Letter of Engagement or the Project Specification, then unless stated otherwise the order of priority from highest to lowest is: i) the Letter of Engagement; ii) the Project Specification; iii) these Terms.
- 1.3 In these Terms, unless the context requires otherwise:
  - 1.3.1 references to any law or regulation include any updates or amendments to it;
  - 1.3.2 a reference to the singular includes the plural and vice versa;
  - 1.3.3 a reference to a person includes any natural person or any legal person, body or organisation, incorporated or unincorporated;
  - 1.3.4 a reference to a Party means a Party to the Contract;
  - 1.3.5 words following includes, including, for example and in particular shall be construed as indicative and not exhaustive; and
  - 1.3.6 references to **writing** include emails between the Parties' authorised representatives except in cases of legal notices.
- 1.4 The language of these Terms (and/or the Contract) shall, in all cases, be construed as a whole according to its fair meaning and without implying a presumption that the terms hereof should be construed against one Party, as opposed to the other, by reason of the

rules of construction that a document is to be construed against the Party who has prepared the same.

## **2 Oxera's relationship with the Client**

- 2.1 By signing the Letter of Engagement the Client is accepting Oxera's offer to provide the Services on the terms set out in the Contract and is entering into the Contract with Oxera.
- 2.2 The terms of the Contract govern the provision of the Services to the exclusion of all other terms which the Client seeks to impose or incorporate (including any standard terms to which the Client refers in any purchase order or other document), or which may be implied by trade, custom, practice or course of dealing.
- 2.3 Oxera may subcontract some of the Services to Oxera's Affiliates or other service providers who may deal with the Client directly (such as members of the Project Team who are consultants rather than Oxera's employees).
- 2.4 Subject to these Terms, Oxera alone will be liable to the Client in connection with the performance of the Contract, including for any wrongful acts or omissions of any Oxera Individual. No Oxera Individual (including the Oxera Project Manager and the Oxera Project Director) shall owe the Client any personal duty of care nor be liable to the Client. The Client may not bring any claim, whether in contract, tort, under statute or otherwise, against any Oxera Individual (including the Oxera Project Manager and the Oxera Project Director) in connection with the Contract.

## **3 Oxera's obligations**

- 3.1 Oxera shall use reasonable endeavours to manage and complete the Services in accordance with the Project Specification in all material respects.
- 3.2 Oxera shall use reasonable endeavours to meet the performance dates specified in the Project Specification, or other dates as agreed between the Parties, but any such dates shall be estimates only and time for performance shall not be of the essence of the Contract.
- 3.3 The Client may be required to formally approve the Deliverables provided during a phase of the Services in order for Oxera to proceed to a subsequent phase. If Deliverables have been approved expressly or tacitly (including by payment of the relevant invoice by Oxera) by the Client, the Client agrees that Oxera may rely on the suitability of these Deliverables for the performance of the remainder of the Services and Oxera shall not be liable for any defects in later Services or Deliverables to the extent that they are derived from Deliverables approved by the Client.
- 3.4 Oxera shall appoint the Oxera Project Director, Oxera Project Manager and Oxera Project Team. Oxera has the right to replace or alter the personnel provided from time to time at Oxera's discretion.
- 3.5 Any pricing set out in Oxera's Project Specification relates only to the scope of the Services described in it. If the Client requires any additional Services or any change in scope then these will be the subject of a further contract to be agreed and executed by the Parties either as a replacement of or extension to the Contract. In the absence of such a further contract Oxera will not be obliged to provide any additional or out-of-scope Services.

## 4 The Client's obligations

- 4.1 The Client shall:
- 4.1.1 co-operate with Oxera in all matters relating to the Services;
  - 4.1.2 appoint and provide Oxera with contact details for the Client's representative for the management of the Contract, who shall have authority to manage day-to-day communications and interactions with Oxera as well as authority to bind the Client contractually;
  - 4.1.3 provide, in a timely manner, such data, information and facilities as Oxera may reasonably request in order to provide the Services, and respond promptly to all queries or requests for instructions Oxera may raise in the course of providing the Services; and
  - 4.1.4 ensure that the Project Specification is complete and accurate for the Client's requirements.
- 4.2 The Client warrants that all information, data and materials provided by the Client to Oxera will be, to the best of the Client's knowledge, lawful, accurate and complete in all material respects, that the Client is entitled to provide the information, data and materials to Oxera without recourse to any third party and that Oxera's authorised use of the information, data and materials for the purposes of the Contract will not infringe the rights of any third party. The Client will notify Oxera promptly if the Client has reason to believe that anything provided by the Client to Oxera is not lawful, accurate or complete or that its disclosure or use infringes any third party's rights.
- 4.3 If Oxera's performance in relation to the Services is prevented or delayed by any act or omission of the Client, or by a failure by the Client or the Client's members, officers, employees or consultants to perform any of their obligations as set out in the Contract ('**Client Default**'), then:
- 4.3.1 Oxera shall not be liable for any for such failure or delay in performance;
  - 4.3.2 Oxera may suspend performance of the affected Services until the Client has provided an adequate remedy to the Client Default; and
  - 4.3.3 Oxera shall be entitled to charge the Client for additional time Oxera may incur as a result of the Client Default, together with any additional costs, losses or expenses sustained or incurred by Oxera arising from the Client Default. Oxera shall use reasonable endeavours to mitigate these costs, losses or expenses.

## 5 Charges and payment

- 5.1 The charges payable for the Services shall be calculated on either:
- 5.1.1 a time and materials basis, at the rates set out in the Project Specification, or otherwise Oxera's standard hourly fee rates as advised to the Client and amended from time to time; or
  - 5.1.2 a fixed price basis.
- 5.2 If the charges payable for the Services are payable on a time and materials basis, Oxera shall ensure that all members of the Project Team complete timesheets recording time spent on

the Services, and Oxera shall use such timesheets to calculate the charges covered by each invoice.

- 5.3 If Oxera is required by any legal process to produce information or personnel as witnesses in connection with the subject matter of this Contract, the Client shall reimburse Oxera for any time (at Oxera's standard rates) and expenses (including reasonable legal costs) incurred, unless Oxera is a Party to the relevant proceedings or investigation.
- 5.4 Oxera shall invoice the Client for Oxera's charges:
  - 5.4.1 in relation to Services charged at a fixed price, at such intervals as are set out in the Project Specification; and
  - 5.4.2 in relation to Services charged on a time and materials basis, monthly in arrears, in each case setting out the applicable charges for time, expenses and materials (together with VAT where appropriate) for the period concerned, with a detailed breakdown of (in the case of Services charged on a time and materials basis) the time spent by each member of the Project Team
- 5.5 The Client shall pay the cost of all accommodation, subsistence, travel, data acquisition and any other ancillary expenses reasonably incurred by Oxera in connection with the provision of the Services, and the cost of any materials or services reasonably and properly provided by third parties required by Oxera for the supply of the Services., all inclusive of any tax, import duty or surcharge due thereon.
- 5.6 All invoices rendered are due and payable within thirty (30) days of the invoice date. The Client must notify Oxera in writing of any dispute relating to an invoice within fourteen (14) days after receipt of the invoice under penalty of forfeiture. In the event of any dispute, the Client must pay any undisputed sums pending resolution of the dispute. Otherwise, the Client shall pay all amounts due under the Contract in full without any deduction, set-off, counterclaim or withholding except as required by law.
- 5.7 Without limiting any other right or remedy, if the Client fails to pay Oxera on the due date Oxera may:
  - 5.7.1 charge the Client interest on the overdue amount at the rate provided by the Late Payment of Commercial Debts (Interest) Act 1998 or Article 5 of Italian Legislative Decree no. 231/2002, accruing on a daily basis from the due date until the date of actual payment of the overdue amount; and
  - 5.7.2 suspend all Services until payment has been made in full.
- 5.8 Where the Client expects a third party to reimburse the Client for Oxera's charges, Oxera shall remain entitled to recover payment in full and upon these terms from the Client, whether or not the third party fails to pay the Client on the due date or at all.
- 5.9 The Client agrees that Oxera may set off any liability the Client has to Oxera against any liability Oxera has to the Client.

## **6 Third-party reliance**

- 6.1 Oxera's Services, including any Deliverables, are provided for the Client's benefit alone and are not intended to be relied upon by any third party. Oxera expressly disclaims all liability for any use of, or reliance placed on, Oxera's Services or Deliverables by any third party, unless

Oxera has entered into a separate letter of reliance with that third party (in which case the extent of such liability will be determined solely by that letter).

- 6.2 The Client may not modify or adapt any Deliverable, disclose any Deliverable to any third party or publish any Deliverable except to the extent expressly anticipated in the Project Specification or Letter of Engagement, as required by law, or with Oxera's prior written consent. In disclosing or publishing any Deliverable or any material derived from the Deliverable the Client must include in full any disclaimers or references which Oxera included in the Deliverable and otherwise must comply with any laws or regulations which may apply to such disclosure or publication. Oxera expressly reserves all rights and remedies in relation to any unauthorised use of Oxera's Deliverables by third parties, including the right to take action for infringement or misuse of confidential information.
- 6.3 The Client will indemnify Oxera, Oxera's Affiliates and the Oxera Individuals against any Damages suffered or incurred by Oxera or them in connection with any claim brought or threatened against Oxera by any third party arising in connection with the Services or Deliverables, except to the extent that such claim is brought or threatened by a third party:
  - 6.3.1 with whom Oxera has entered into a letter of reliance to which that claim relates;
  - 6.3.2 on the basis that any of Oxera's Background IPR contained in those Deliverables infringes the relevant third party's rights; or
  - 6.3.3 based on personal injury or property damage which is proved to have been caused by Oxera's gross negligence or wilful misconduct.

## **7 Limitation of liability: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 7.1 Nothing in the Contract excludes Oxera's liability:
  - 7.1.1 for death or personal injury caused by Oxera's negligence;
  - 7.1.2 resulting from fraud, gross negligence, wilful misconduct or fraudulent misrepresentation made by Oxera; or
  - 7.1.3 for any other liability for which liability may not lawfully be limited or excluded.
- 7.2 Subject to Clause 7.1:
  - 7.2.1 Oxera shall not be liable for:
    - i) any: loss of profits; loss of business; loss of agreements or contracts; loss of anticipated savings; loss of data; loss of reputation or depletion of goodwill (in each case whether direct or indirect); or
    - ii) any special, indirect or consequential loss, costs, Damages, charges or expenses however arising, and;
  - 7.2.2 Oxera's total aggregate liability in contract, tort (including, without limitation, negligence or breach of statutory duty), indemnity, misrepresentation, restitution or otherwise for any other Damages arising in connection with the performance or contemplated performance of the Contract shall be limited to the value of the fees paid for the Services (excluding expenses, materials and disbursements) during the six (6) months preceding the date on which the first event or occurrence giving rise to liability occurred (or, where such event or occurrence occurs during the first six (6)

months of the Contract, the value of the fees which would have been paid for the Services assuming performance in full during those first six (6) months). For the avoidance of doubt, if there are multiple Client Parties to the Contract, Oxera's aggregate liability to all such Parties will be subject to this limit, and it will be a matter for the Client to allocate among the Client respective shares of any potential recovery of Damages from Oxera.

- 7.3 Without prejudice to Clause 7.2, Oxera's liability for Damages which the Client has suffered arising in connection in any case with the Services shall be limited to a proportion that is just and equitable having regard to the extent to which Oxera, the Client and any other person who is jointly and/or severally liable to the Client for all or part of the same Damages is in each case responsible for such Damages and shall be subject to any limitations or exclusions agreed between Oxera but shall not be subject to limitations or exclusions agreed between the Client or any other person.
- 7.4 Where Oxera provides draft or provisional analysis, reports or other material, such analysis, reports or material is not to be relied upon for any reason whatsoever.
- 7.5 Except as specifically stated in the Contract, all warranties, conditions and other terms implied by statute or civil and/or common law, custom, trade usage, course of dealing or otherwise, in connection with Oxera's provision of the Services, are excluded to the fullest extent permitted by law.
- 7.6 No claim may be brought against Oxera in connection with the Services unless commenced within two (2) years after the date on which the Client became aware (or ought reasonably to have become aware) of the facts giving rise to the cause of action.
- 7.7 The Client acknowledges that Oxera's charges are calculated based on the risk profile assumed by Oxera taking into account the limitations and exclusions contained in this Clause 7 and any change in that profile may entail a change in the relevant charges.

## **8 Investment and tax business**

- 8.1 Oxera is not licensed in the conduct of investment business or in the professional provision of investment services and activities for the public as defined, respectively, in the Financial Services and Markets Act 2000 and, as to the activities carried out in the Italian territory, in the Italian Legislative Decree no. 58/1998. If the Client is considering a specific investment the Client should consult their broker or other investment adviser. Any views on investments Oxera expresses are intended to be generic only. Oxera will not be liable for or in connection with any specific investment decision made by the Client, and the Client accepts all risk and responsibility in relation to their investment decisions.
- 8.2 The Services that Oxera provides shall in no way constitute tax advice and any obligation on an organisation or entity, including that of the Client either directly or indirectly, shall remain the sole responsibility of the Client to report or comply with any relevant legislation, including but not limited to the EU Council Directive 2011/16 (known as '**DAC 6**') or other legislation as applicable. Where Oxera believes that the Services it provides imposes an obligation to report to any relevant authority it shall notify the Client as soon as possible of its intention to report in order to comply with its obligations.



## 9 Insurance

9.1 Oxera shall during the term of the Contract and for at least twelve (12) months after the Contract term has ended maintain the following insurance cover:

- i) employers' liability;
- ii) public/product liability; and
- iii) professional indemnity insurance

in each case to a level of cover in accordance with good professional practice. Copies of Oxera's insurance certificates are available upon request.

## 10 Intellectual Property Rights

10.1 All rights in Oxera's Background IPR shall remain with and be owned by Oxera.

10.2 Subject to Clause 10.1, all Intellectual Property Rights in the Deliverables shall remain with and be owned by Oxera. Oxera hereby grants to the Client a worldwide, non-exclusive, royalty-free licence under Oxera's rights in the Deliverables and in any associated Background IPR solely to the extent necessary for the Client to use the Deliverables for the Client's business purposes, subject to the restrictions in Clause 6.

10.3 All Intellectual Property Rights in the Client IPR shall remain with and be owned by the Client. The Client hereby grants to Oxera a worldwide, non-exclusive, royalty-free licence to use, modify and adapt the Client's IPR for the sole purposes of providing the Services and for Oxera's record-keeping purposes in relation to the Services.

10.4 If the Deliverables contain any third-party data, materials or other content which Oxera has sourced and included with the Client's approval, then all Intellectual Property Rights in such items ('**Third-Party IPR**') shall remain with their proprietor. Unless Oxera agrees otherwise with the Client, it will be the Client's responsibility to obtain, and to comply with, the Client's own licences in relation to the Client's proposed use of such Third-Party IPR.

10.5 The Client shall indemnify, keep indemnified and hold harmless at the Client's own expense Oxera, Oxera's Affiliates and the Oxera Individuals from and against any and all Damages suffered or incurred by Oxera or them in connection with any claim or allegation by a third party that Oxera's possession, use, modification or adaptation of the Client's IPR in accordance with the terms of the Contract infringes the Intellectual Property Rights of that third party.

10.6 Oxera shall indemnify the Client, keep the Client indemnified and hold the Client harmless at Oxera's own expense from and against any and all Damages suffered or incurred by the Client as a direct result of any claim or allegation by a third party that the Client's use of the Deliverables in accordance with the terms of the Contract infringes the Intellectual Property Rights of that third party.

10.7 In relation to the indemnities given in Clauses 6.3, 10.5 and 10.6 the indemnified Party shall:

- 10.7.1 promptly notify the indemnifying Party in writing with details of any relevant claim;
- 10.7.2 not make any admission in relation to the claim;
- 10.7.3 allow the indemnifying Party to have the conduct of the defence or settlement of the claim; and



- 10.7.4 give the indemnifying Party all reasonable assistance (at the indemnifying Party's expense) in dealing with the claim.

## 11 Confidentiality

### 11.1 The Recipient shall:

- 11.1.1 use the Confidential Information only to perform its obligations and exercise its rights under the Contract;
- 11.1.2 maintain the Confidential Information of the other Party in secure conditions as to prevent unauthorised access by third parties, taking at least no less care than it takes to protect its own confidential information;
- 11.1.3 restrict disclosure of such Confidential Information to:
  - i) such of its employees, Affiliates, agents, consultants or sub-contractors (including the Project Team) as need to know the same for the purpose of exercising its rights and performing its obligations pursuant to the Contract; or
  - ii) its legal and professional advisers for the purposes of taking advice;

and shall ensure that such persons are subject to obligations of confidentiality and non-use equivalent in effect to those in this Clause 11.1 remaining in any case responsible for any breach of the latter.

- 11.2 The Recipient may disclose Confidential Information to the extent required by law or any legal or regulatory authority or court of competent jurisdiction, provided that to the extent permitted by law it notifies the Disclosing Party as early as possible, doing so to allow the Disclosing Party to take action to resist the disclosure request.
- 11.3 Both the Client and Oxera may use electronic media to correspond or transmit information and such use will not in itself constitute a breach of any confidentiality obligations. In particular, the Client acknowledges that Oxera uses a cloud-based IT infrastructure and that Confidential Information disclosed to Oxera may be hosted by: i) Microsoft Ireland Operations Ltd (in connection with the provision of cloud-based Office 365 services, including email); and ii) NetSuite Ltd (the provider of Oxera's enterprise management system which hosts project-related emails, documents and contact information).
- 11.4 While Oxera shall make every endeavour to secure Oxera's IT systems, Oxera cannot guarantee the security of these systems, nor that of any electronic communications or external server or system on or through which the Client's Confidential Information may be stored or processed. Oxera will not be liable to the Client in connection with any disclosure of the Client's Confidential Information or personal data as a result of any interception of communications, attack on Oxera's IT systems or those of Oxera's service providers, theft or loss of Oxera's devices or computer virus or other harmful code except to the extent caused by Oxera's gross negligence or wilful misconduct. If the Client has specific concerns about transferring sensitive information via email then Oxera shall agree other transfer protocols with the Client.
- 11.5 Upon termination of the Contract each Party shall forthwith destroy or, at the request of the other Party, return all information and materials belonging to the other Party in its or its contractors' or agents' possession, custody or control, including all Confidential Information of the other Party, provided that each Party may retain a single copy of such information or

materials to meet legal, professional or regulatory requirements or *bona fide* internal compliance policy existing at the date of commencement of the Contract and neither Party shall be obliged to remove such information or materials from an electronic archival or back-up system if the archive or back-up will be overwritten automatically within a reasonable period of time. Any retained information or materials shall be subject to continuing obligations of confidentiality as set out in this Clause.

- 11.6 Oxera reserves the right to publicise the fact that the Client is Oxera's Client.

## **12 Conflicts of interest**

- 12.1 If Oxera is engaged by the Client and providing Services to the Client in relation to a particular matter, Oxera shall not accept any engagement with a third party in relation to the same matter if Oxera determines that there is, or is likely to be, a conflict of interest between the Client's and that third party's respective interests in that matter, unless the Client has consented to Oxera doing so.
- 12.2 Otherwise, Oxera reserves the right to provide services to any other person at any time, including any person who may be engaged in activities similar to or in competition with the Client.
- 12.3 Oxera may, at its discretion, decline to provide Services to the Client or cease to provide Services to the Client in relation to any matter where to do so would, in Oxera's reasonable opinion, create a possibility of a conflict of interest or a breach of any contract in place with a third party. If Oxera ceases to provide Services for this reason, the Client shall be liable to Oxera for any charges incurred by Oxera before Oxera became aware of the possibility of such conflict or breach unless Oxera, in its discretion, agrees otherwise.
- 12.4 Where Oxera has declined or ceased to provide Services to the Client because Oxera determines that a conflict of interest or breach of contract is possible, Oxera may continue to provide services to the relevant third party without that provision of services being interpreted as a violation of Oxera's obligations (contractual or otherwise) towards the Client.

## **13 Term and termination**

- 13.1 The Contract shall commence on the date of the Client's acceptance of the Letter of Engagement as set out in Clause 2 and shall, unless terminated earlier for any reason, continue until the Services are completed.
- 13.2 Without limiting any other rights or remedies to which the Parties may be entitled, either Party may terminate the Contract with immediate effect on written notice to the other if:
- 13.2.1 the other Party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within twenty-eight (28) days of that Party being notified in writing of the breach;
- 13.2.2 the other Party becomes insolvent or suspends payment of its debts or enters into any composition or any other voluntary arrangement with its creditors or convenes a meeting of its creditors or suffers any distress or execution to be levied on any part of its property, undertaking or assets or ceases or threatens to cease to carry on its business or to trade or enters into liquidation (whether voluntary or otherwise) or has a winding-up, receiving or administration order made against it or has a receiver or

manager or administrator or trustee appointed over any of its property, assets or undertaking or makes any arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for the protection of its creditors in any way or becomes bankrupt; or

13.2.3 the other Party takes or suffers any event or action similar to or analogous with those set out in Clause 13.2.2 in any jurisdiction other than England and Italy.

13.3 Termination of the Contract, however arising, shall not affect or limit the accrued rights of the Parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination. In particular, Clauses 6 to 11 (inclusive) and 14 to 19 (inclusive) shall survive termination.

13.4 All payments payable to Oxera under the Contract shall become due immediately upon the termination of the Contract, despite any other provision. This condition does not limit any right to claim for interest under the law, or any such right under the Contract.

## **14 Data protection**

14.1 In almost all circumstances, Oxera is a data controller in its own right in relation to any personal data the Client provides to Oxera for the purposes of providing the Services. Oxera will comply with Oxera's legal obligations in relation to such data (including those set out in the General Data Protection Regulation ('**GDPR**') and the Data Protection Act 2018 ('**DPA**') and the Italian Legislative Decree no. 196/2003 as subsequently amended and integrated) and will use such data in accordance with Oxera's privacy notice set out at <https://www.oxera.com/privacy-policy/>. The Client must ensure that any provision by the Client to Oxera of such personal data is lawful.

14.2 In rare circumstances, Oxera may act as a data processor on behalf of the Client (for example, if Oxera's Services involve Oxera temporarily handing or using databases or records within systems under the Client's sole control). Where this is the case, Oxera shall enter into its standard data processing agreement with the Client, sufficient to address the requirements of Article 28 GDPR and equivalent provisions in the DPA and in the Italian Legislative Decree no. 196/2003.

## **15 Freedom of information and environmental information regulations**

15.1 If the Client receives a request under the UK Freedom of Information Act 2000 ('**FOIA**') or the UK Environmental Information Regulations 2004 ('**EIR**') and/or Italian Legislative Decree no. 195/2005 in relation to information relating to Oxera or which includes any of Oxera's Confidential Information, the Client shall inform Oxera by written notice of the request as soon as practicable and in any event within five (5) Business Days after receipt of the request. Such notice must detail the nature of the information requested including the date of the request, the name of the requestor (to the extent it is lawful to disclose this to Oxera), and details of any information that the Client is considering releasing to the requestor.

15.2 If the Client determines that any such information (including Oxera's Confidential Information) must be disclosed pursuant to the FOIA or EIR or Italian Legislative Decree no. 195/2005, the Client shall notify Oxera by written notice of that decision at least five (5) Business Days before disclosure. Such notice shall include details of the information which the Client proposes to disclose.

- 15.3 The Client shall, prior to disclosing any such information under the FOIA, EIR, Italian Legislative Decree no. 195/2205 or otherwise, promptly consult with Oxera and take Oxera's views into account.

## **16 Disputes and mediation**

- 16.1 Oxera is committed to resolving any disputes arising out of or in connection with the Services as efficiently as possible. Any disputes shall be referred to the Oxera Project Manager in the first instance who shall attempt to resolve the dispute. If the Oxera Project Manager is unable to resolve the dispute within fourteen (14) days of its referral to him or her, the dispute shall be referred to the Oxera Project Director, who shall endeavour to resolve the dispute through negotiation with an authorised representative of the Client's organisation.
- 16.2 If the dispute has not been resolved within fourteen (14) days of referral to the Oxera Project Director, it shall be referred to mediation by a sole mediator agreed between Oxera and the Client. If the dispute is not settled through mediation, the provision of Clause 19.10 shall apply.

## **17 Non-solicitation**

- 17.1 The Client will not during the term of the Contract or for six (6) months after its termination directly or indirectly solicit or offer employment or engagement to any of Oxera's employees who have been involved in the provision of the Services or the negotiation or management of the Contract.

## **18 Notices**

- 18.1 Any notice under the Contract must be in writing and must be delivered by hand or sent by registered mail to the registered office of the other Party. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, on the first Business Day following delivery). A correctly addressed notice sent by registered mail shall be deemed to have been received on the second Business Day after posting.

## **19 General**

- 19.1 Neither Party shall be liable for any breach of the Contract (except payment obligations) caused by acts, events, omissions or accidents beyond its reasonable control.
- 19.2 A waiver of any right under the Contract is effective only if it is in writing and it applies only to the Party to whom the waiver is addressed and the circumstances for which it is given.
- 19.3 Unless otherwise provided, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 19.4 If any provision or part-provision of the Contract is found by any court or administrative body of a competent jurisdiction to be invalid, unenforceable or illegal, that provision or part-provision shall be severed and the other provisions shall remain in force.
- 19.5 The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, representations and understandings between them relating to its subject matter. Each Party acknowledges that in entering into the Contract it does not rely on any representation not set out in the Contract.

- 19.6 Neither Party may without the other Party's prior written consent assign, transfer, charge, or deal in any other manner with any of its rights or obligations under the Contract.
- 19.7 Nothing in the Contract is intended to or shall operate to create a partnership between the Parties, or to authorise either Party to act as agent for the other, and neither Party shall have authority to bind the other in any way (including by making of any representation or warranty, assuming any obligation or liability or exercising any right or power).
- 19.8 A person who is not a Party to the Contract shall not have any right under the Contracts (Rights of Third Parties) Act 1999 or otherwise (including, without limitation, Article 1411 of the Italian civil code) to enforce any of its terms, except that Oxera Individuals may rely on and enforce Clause 2.4 and any Oxera Individuals and Affiliates shall have the right to enforce the indemnities in their favour. The Parties shall not require the consent of any third party to vary the Contract.
- 19.9 No variation of the terms of the Contract shall be effective unless it is in writing and is signed by an authorised representative of both Parties. For these purposes Oxera's authorised representatives include Oxera's members. Any additional Services or changes in scope may be agreed only in accordance with Clause 3.5.
- 19.10 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales.