

Terms and conditions of the TRANSFORM project

1 INTERPRETATION

1.1 In these Terms and Conditions the following terms shall have the following meanings:

"Access Tools" means the software application and other software tools provided by SpikesCavell that facilitate access to and analysis of the Information;

"Client" means any public sector body signing the MOU;

"Client Raw Data" means all data provided by the Client to SpikesCavell in connection with the MOU and any derivatives thereof, including the Client Standardised Data;

"Client Standardised Data" means the standardised and classified data that has been created from the Client Raw Data pursuant to the provision of the Services, and excludes the Information;

"Data Specification" means the document entitled *"SpikesCavell & Co - Data Requirements Document"* or such other document identified by SpikesCavell in writing as the Data Specification for the purposes of these, which sets out the technical specifications for the Client Raw Data and which is available on request;

"Deliverables" means any documents or materials in any form (including computer programs, reports, specifications and drafts) which are prepared by SpikesCavell and provided to the Client as part of the Services;

"Derivative Works" means any adaptation or translation of any information in any media, or any compilation of a number of separate works in which the information is included in its entirety in unmodified form;

"Fees" means the fees payable by IESE to SpikesCavell in consideration of the provision of the Services and the grant of the licence to use the Information and the Access Tools;

"Information" means any and all data and information other than the Client Raw Data which can be accessed using the Access Tools or which is contained in the Deliverables;

"Initial Term" means a term of twelve (12) months from the date on which SpikesCavell creates the Client Standardised Data;

"Intellectual Property Rights" means patents, copyright, moral rights, trade-marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off, rights in designs, rights in computer software, database 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 (or rights to apply) for, and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Licensed User" means a person who is authorised by the Client to use the Access Tools in accordance with these Terms and Conditions and identified by the Client in a written notice to SpikesCavell from time to time;

"Password" means a password provided by SpikesCavell to the Client to permit a Licensed User to use the Access Tools in accordance with these Terms and Conditions;

"MOU" means a Memorandum of Understanding signed between IESE and the public service body;

"Public Website" means a website accessible by the general public and organisations wishing to re-use Client Raw Data on which public sector expenditure data is made available, including expenditure data of the Client subject to the prior written agreement of the Client;

"Renewal Term" has the meaning set out in Clause 7.1;

"Re-Use Licence" means the licence in Annex 2 of this document for the purposes of licensing individuals or organisations to re-use the clients raw data;

"Services" means the services provided by SpikesCavell to transform the Client Raw Data into the Client Standardised Data, and all other services provided by SpikesCavell and IESE under the MOU;

"Terms and Conditions" means these terms and conditions for the provision of the Services and the grant of the licence to use the Information.

2 INTELLECTUAL PROPERTY RIGHTS

2.1 The Client warrants and represents that: 2.1.1 it has the authority to provide the Client Raw Data and to grant the licence to SpikesCavell and IESE in respect of the Client Raw Data pursuant to Clause 4.2; and 2.1.2 the use of the Client Raw Data by SpikesCavell in accordance with the Contract will not

violate any applicable law or regulation and will not constitute an infringement or other violation of any Intellectual Property Right of any third party.

2.2 Subject to the licences granted under Clause 4 (Licence to use data of the Client), no Intellectual Property Rights in the Client Raw Data shall transfer to SpikesCavell under the Contract.

2.3 SpikesCavell warrants and represents to the Client that: 2.3.1 SpikesCavell is the owner or authorised licensee of all Intellectual Property Rights in the Information and the Access Tools; 2.3.2 SpikesCavell has the full authority to grant the licence to the Client in respect of the Information and the Access Tools pursuant to Clause 3; and 2.3.3 the Client's use of the Information in accordance with the Contract will not will not violate any applicable law or regulation and will not constitute an infringement or other violation of any Intellectual Property Right of any third party.

2.4 Subject to the licences granted under Clause 3 (Licence to use the Information and the Access Tools), no Intellectual Property Rights in the Information and the Access Tools shall transfer to the Client under the Contract. All Intellectual Property Rights in any Derivative Works created under the Contract shall be owned by SpikesCavell, and the Client will take all reasonable steps necessary to cause such rights to vest with SpikesCavell. All rights not expressly granted to the Client under the Contract are reserved by SpikesCavell.

2.5 The Information is proprietary to SpikesCavell and comprises (a) works of original authorship, including compiled information containing SpikesCavell's selection, arrangement, co-ordination and expression of such information or pre-existing material that SpikesCavell has created, gathered or assembled, (b) confidential and trade secret information, and (c) information that SpikesCavell has created, developed and maintained at great expense of time and money, such that misappropriation or unauthorised use by others for commercial gain would unfairly or irreparably harm SpikesCavell. Accordingly: 2.5.1 the Client will not commit, and will not authorise any of its employees, agents or sub-contractors to commit, any act or omission that would impair the Intellectual Property Rights of SpikesCavell in the Information; 2.5.2 the Client will not use any of SpikesCavell's trade names, trade marks, service marks or copyrighted materials, or otherwise identify SpikesCavell, in listings or advertising in any manner without the prior written approval of SpikesCavell; and 2.5.3 the Client will reproduce SpikesCavell's copyright notice and proprietary rights legend on all authorised copies of the Information which are to be disclosed to third parties in accordance with Clause 3 (Licence to use the Information and the Access Tools). For the avoidance of doubt, the copyright notice and proprietary rights legend required to be reproduced under this Clause are automatically embedded in all charts and graphs exported directly from the Access Tools.

3 LICENCE TO USE THE INFORMATION AND THE ACCESS TOOLS

3.1 The Intellectual Property Rights in certain parts of the Information are owned by third parties, and that such third parties may have imposed restrictions on the use of such data. Accordingly the Information is made available to the Client on the following terms as set out in this Clause 3.

3.2 In consideration of the payment of the applicable Fees to SpikesCavell by the IESE, SpikesCavell hereby grants to the Client a non-exclusive, non-transferable, revocable licence to use the Information in the United Kingdom for the Term subject to the terms of the Contract including the following: 3.2.1 the Client may use, copy and create Derivative Works of the Information for its internal purposes only without restriction; 3.2.2 the Client will use the Information only in compliance with applicable laws and regulations, including laws and regulations regarding telemarketing, customer solicitation (including fax and/or email solicitation), data protection and privacy; and 3.2.3 notwithstanding any obligations of confidentiality the Client may disclose the Information to third parties on a de minimis and inconsequential basis provided that: (a) such Information shall relate to the Client only and no other public sector body; (b) the source of the Information is accredited to SpikesCavell; (c) the Client shall not seek any financial gain in relation to any disclosure of the Information; and (d) additionally, in the case of disclosure of the Information to a non-public sector body: (i) the Information shall not be attributable or identifiable to any individual supplier or vendor unless the identity of such supplier or vendor may be determined from the Client Raw Data; and (ii) the Information may only be used by a non-public sector body for its internal purposes, and the non-public sector body shall not be entitled to publish the Information.

- 3.3 In consideration of the payment of the applicable Fees to SpikesCavell by the IESE, SpikesCavell hereby grants to the Client a non-exclusive, non-transferable, revocable licence to use the Access Tools in the United Kingdom for the Term subject to the terms of the Contract. The Client shall only use the Access Tools in accordance with Clause 6 (Passwords); and the Client shall take all necessary precautions to ensure that no unauthorised use is made of (and that no unauthorised person gains access to) the Information, in whole or in part.

4 LICENCE TO USE DATA OF THE CLIENT

- 4.1 The Client shall provide the Client Raw Data to Spikes Cavell in accordance with the Data Specification. Unless otherwise agreed by the parties, the Client Raw Data may only consist of data that the Client is required to make available to the public under the Applicable Codes upon receipt of a Request for Information, and the Client shall use reasonable endeavours to remove all personal data from the Client Raw Data. The Client acknowledges that SpikesCavell is unable to provide the Client Standardised Data or the Information until the Client has provided SpikesCavell with the Client Raw Data in accordance with the Data Specification.
- 4.2 The Client hereby grants to SpikesCavell a perpetual, royalty-free, non-exclusive licence to use, copy and create Derivative Works of the Client Raw Data solely for the purposes contemplated under the Contract.
- 4.3 The Client hereby grants to SpikesCavell a perpetual, royalty-free, non-exclusive licence to use the Client Standardised Data subject to the terms of the Contract including the following:
- 4.3.1 SpikesCavell may use, copy and create Derivative Works of the Client Standardised Data; 4.3.2 notwithstanding any obligations of confidentiality, SpikesCavell may for its business purposes, including the generation of incremental revenue to offset the cost of providing the Services, grant sub-licences to the following organisations to use the Client Standardised Data on the following terms: (a) public sector bodies which are customers of SpikesCavell, together with their Licensed Users, may use the Client Standardised Data on the standard terms and conditions of SpikesCavell (as updated from time to time); and (b) non-public sector bodies may only use the Client Standardised Data subject to the following restrictions: (i) the Client Standardised Data may only be used by a non-public sector body for its internal purposes, and the non-public sector body shall not be entitled to publish the Client Standardised Data; (ii) at the written request of the Client certain categories of expenditure data shall be excluded from the scope of any such sub-licence for political or security reasons.
- 4.4 At the Client's written request, IESE arrange for the publication of the Client Standardised Data in accordance on the Public Website. Neither IESE nor SpikesCavell shall have any liability (in contract, tort including negligence or otherwise) to the Client in respect of any Client Standardised Data that is uploaded to the Public Website.
- 4.5 At the Client's written request, IESE will publish the Client Raw Data on the Public Website for re-use subject to the Re-Use Licence Agreement. The Client licenses IESE to publish the data in accordance with the Re-Use Licence. Neither IESE nor SpikesCavell shall have no liability (in contract, tort including negligence or otherwise) to the Client in respect of any Client Raw Data that is uploaded to the Public Website.

5 PROVISION OF THE SERVICES

- 5.1 In consideration of the signature of the MOU by the Client, IESE and SpikesCavell shall perform the Services set out in the MOU.
- 5.2 Time for performance of the Services shall not be of the essence and, unless IESE and SpikesCavell otherwise expressly agrees in writing, any specific dates cited in the Contract or otherwise by IESE or SpikesCavell for performance are only estimates.

6 PASSWORDS

- 6.1 The Client will provide written notice to SpikesCavell of the names of the Licensed Users at the start of the Contract, and the Client will notify SpikesCavell as soon as practicable of any changes to the identity of such Licensed Users. The Client may substitute individuals as Licensed Users throughout the Term at no additional cost.
- 6.2 SpikesCavell will issue a Password to each of the Licensed Users to use the Access Tools. Each such Password may only be used by the respective Licensed User in accordance with these Terms and Conditions, and no other use may be made of the Password.
- 6.3 The Client is entirely responsible for maintaining the confidentiality of the account information of the Licensed Users, including the Passwords, and for any and all activity that occurs

under the accounts of the Licensed Users. The Client agrees to notify SpikesCavell immediately of any unauthorised use of the accounts of the Licensed Users or the Passwords or any other breach of security. SpikesCavell will not be liable for any Losses that the Client may incur as a result of someone other than the Licensed User using its Password or account other than where such use arises due to the negligence or wilful misconduct of SpikesCavell, either with or without the knowledge of the Client. However, the Client will be liable for Losses incurred by SpikesCavell due to someone other than the Licensed User using the Password or account of the Client.

- 6.4 Without limiting its other rights, IESE and SpikesCavell may at any time cancel any of the Passwords and/or terminate the right of any Licensed User to use the Access Tools (a) if the Client is in default of the MOU or these Terms and Conditions; or (b) upon the expiry or termination of the MOU; or (c) if SpikesCavell is or becomes unable to grant the Client a right to use any of the Information.

7 EFFECTS OF TERMINATION

- 7.1 At the end of the Initial Term and (if applicable) each Renewal Term, the Client may (i) allow the MOU to expire or (ii) elect, by written notice to IESE no later than 30 days prior to the date when the MOU would otherwise expire, to renew the MOU for another 12 months ("**Renewal Term**") either (a) on an access only basis, thereby entitling the Client to continue to access the Information using the Access Tools but without any new Client Raw Data being processed, in which case IESE reserve the right to pass on any fees for the access only service to the Client, or (b) on a full renewal basis, entitling the Client to continue to access the Information using the Access Tools and to have new Client Raw Data processed in consideration of the payment of the Fees by IESE for the Renewal Term.
- 7.2 Upon expiry or termination of the MOU for any reason: 7.2.1 the Client shall be entitled to continue to use any charts, graphs or other derivative products that contain de minimis extracts of the Information for its internal purposes only, and all other rights of the Client to use the Information whether pursuant to Clause 2.1 or otherwise shall cease; and 7.2.2 neither the Client nor IESE nor Spikes Cavell shall have any further right or obligation with respect to the other party except as set out in this Clause 7 and in the following additional Clauses, which shall survive such expiry or termination: Clause 2 (Intellectual Property Rights) and Clause 4 (Licence to Use data of the Client).
- 7.3 The expiry or termination of the Contract as provided for under these Terms and Conditions shall not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to a party under the Contract or at law.

Appendix 2 The Re-Use Licence

The following terms and conditions will be used to govern access to the Clients Raw Data in accordance with Appendix 1

You are encouraged to use and re-use the information that is available in this section of this web site freely and flexibly, with only a few conditions.

The licence below governs your access to and use of information and datasets identified on this section of the site that are covered by either Copyright or Database Right.

Using this website

Access to and use of the Data expressly made available under this licence (the “Data”) indicates your acceptance of these terms and conditions.

This is a worldwide, royalty-free, perpetual, non-exclusive licence from the provider of the Data (the “Data Provider”) to use it subject to the conditions below.

This licence does not affect your fair dealing or fair use rights, or any other copyright or database right exceptions and limitations.

You are free to:

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- exploit the Data commercially whether by sub-licensing it, combining it with other data, or by including it in your own product or application.

You must:

- acknowledge the copyright and the source of the Data by including any attribution statement specified by the Data Provider.
 - If no specific statement is provided please use the following:
Contains local authority data © [local authority name] copyright and database right
 - If you are using more than one local authority’s data and multiple acknowledgements are an inconvenience then please use the following:
Contains data from more than one local authority © IESE copyright and database right

include the same acknowledgment requirement in any sub-licences of the Data that you grant, and a requirement that any further sub-licences do the same;

- ensure that no personal data are released. Reasonable endeavours have been made to remove personal data but you should check this before release and notify this web site of any personal data that you find.
- ensure that you do not use the Data in a way that suggests the Data Provider endorses you or your use of the Data;
- ensure that you do not misrepresent the Data or its source.

No warranty

The Data is licensed 'as is' and the Data Provider excludes all representations, warranties, obligations and liabilities in relation to the Data to the maximum extent permitted by law. The Data Provider is not liable for any errors or omissions in the Data and shall not be liable for any loss, injury or damage of any kind caused by its use. The Data Provider does not guarantee the continued supply of the Data.

Governing law

This licence is governed by the laws of the country in which the Data Provider has its principal place of business, unless otherwise specified by the Data Provider.

Changes to this licence

The Data Provider may amend the terms of this licence or make the Data available under a different licence. However, these terms will continue to apply to data you already license from the Data Provider.

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These terms have been aligned to be interoperable with any Creative Commons Attribution 3.0 Licence. This means that you may mix the information with Creative Commons licensed content to create a derivative work that can be distributed under any Creative Commons Attribution 3.0 Licence.