



Foreign & Commonwealth Office

FRAMEWORK AGREEMENT

Disclaimer:

This model contract is provided for suppliers' information only to help them decide whether the terms are acceptable to them in order to choose whether or not to accede to the CSSF Framework.

The model is based on the Department for International Development (DfID) standard terms and conditions which will continue to be updated from time to time.

All provisions relating to the former Data Protection Act have now been updated to reflect the new General Data Protection Regulation (GDPR). The new text has been source from the Crown Commercial Service's Procurement Policy Note 02/18:

<https://www.gov.uk/government/publications/procurement-policy-note-0218-changes-to-data-protection-legislation-general-data-protection-regulation>

The Authority's Supplier Code of Conduct is also being developed in concert with DfID and the code will continue to be updated from time to time.

Section 1 – Form of Agreement

Framework Agreement for: **CONFLICT, STABILITY & SECURITY FUND (CSSF)
FRAMEWORK RE-TENDER 2018**

Reference Number: **CPG/2350/2018**

WHEREAS:

- A. The Authority may require the Supplier to supply the services outlined in Section 4, and as more particularly defined in the Statement of Requirements within Call-Off Contracts which may be placed from time to time (the "Services") pursuant to the Framework Agreement, and
- B. The Supplier has agreed to provide the Services on the terms and conditions set out in this Framework Agreement and the related Call-Off Contract.

This Framework Agreement is made between the Secretary of State for Foreign & Commonwealth Affairs represented by the Foreign & Commonwealth Office, acting as part of the Crown ("the Authority"),
and
the British Council..... ("the Supplier") having his main or registered office at 10 Spring Gardens, London, SW1A 2BN
("the Parties")

IT IS AGREED THAT:

1. Documents

This Agreement consists of the following documents:

Section 1	Form of Agreement	
Section 2	Conditions of Agreement <i>(including Supplier Code of Conduct)</i>	
Section 3	Schedule of Prices & Rates (Agreement)	<i>(See Attachment 4 of ITT)</i>
Section 4	Statement of Service Requirement (Agreement)	<i>(See Attachment 5 of ITT)</i>

The Framework Agreement constitutes the entire agreement between the Parties hereto, and supersedes all negotiations, representation or agreements between the Parties either written or oral preceding the Agreement other than expressly provided in Section 2 or Section 4, without prejudice to the Authority's rights and remedies at law or otherwise.

2. Agreement Signature

No payment will be made to the Supplier under any Call-Off Contract until this Form of Agreement and relevant Call-Off Contract, are signed on behalf of the Supplier, and returned to the Authority's Contract Officer.

3. Use of Agreement

Other Contracting Authorities (eg UK Government Departments and other donors of development funding) can make use of the arrangements under this Framework Agreement.

SIGNED on behalf of the Parties:

For the Supplier:

By: 

Full Name: Adrian Greer.....

Position held on behalf of Supplier:

Chief Operating Officer

Date: 30 November 2018

For the Authority:

By:

Full Name:

Position held on behalf of Authority:

Date:

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PRELIMINARIES

1. DEFINITIONS & INTERPRETATION

- 1.1 In this Framework Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in [Schedule 1 \(Definitions\)](#) or the meaning set out in the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in [Schedule 1 \(Definitions\)](#) or the relevant Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 The interpretation and construction of the Framework Agreement shall be subject to the following provisions:
- 1.3.1 clause headings shall not affect the interpretation or construction of the Contract;
 - 1.3.2 a reference to Law includes a reference to that Law as amended, consolidated or re-enacted from time to time;
 - 1.3.3 references to a “person” includes a natural person and a corporate or unincorporated body;
 - 1.3.4 words in the singular shall include the plural and vice versa;
 - 1.3.5 references to “representations” shall be construed as references to present facts, to “warranties” as references to present and future facts and to “undertakings” as references to obligations under this Framework Agreement;
 - 1.3.6 words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
 - 1.3.7 a reference to one gender shall include a reference to the other genders; and
 - 1.3.8 where the context allows, references to Clauses are to clauses in this Framework Agreement and references to Sections are the sections of this Framework Agreement.
- 1.4 Except as expressly provided elsewhere in this Framework Agreement, and subject to Clause 1.5, in the event of and only to the extent of any conflict between each Section of this Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.4.1 Section 1 (Form of Framework Agreement);
 - 1.4.2 Section 4 (Statement of Service Requirement (Agreement));
 - 1.4.3 Section 2 (Conditions of Agreement (including Supplier Code of Conduct)); and
 - 1.4.4 Section 3 (Schedule of Prices & Rates (Agreement));
- 1.5 Where the Supplier’s original Tender contains provisions which are more favourable to the Authority in relation to (the rest of) this Framework Agreement and/or pursuant Contract, such provisions of the Tender shall prevail. The Authority shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable in this context.
- 1.6 In entering into this Framework Agreement the Authority is acting as part of the Crown.

2. REPRESENTATIONS & WARRANTIES

- 2.1 The Supplier represents and warrants that:
- 2.1.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
 - 2.1.2 it has full capacity and authority to enter into and to perform this Framework Agreement;
 - 2.1.3 this Framework Agreement is executed by its duly authorised representative;
 - 2.1.4 it has all necessary consents and regulatory approvals to enter into this Framework Agreement;

- 2.1.5 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Framework Agreement;
 - 2.1.6 its execution, delivery and performance of its obligations under this Framework Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
 - 2.1.7 its obligations under this Framework Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
 - 2.1.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the standard selection questionnaire and invitation to tender (if applicable), its Tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Framework Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Framework Agreement;
 - 2.1.9 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
 - 2.1.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-Contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Framework Agreement and/or the receipt of the Services by the Authority;
 - 2.1.11 the Charges set out in [Section 3 \(Schedule of Prices\)](#) is/will be a true and accurate reflection of the costs and the Projected Profit Margin and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Charges;
 - 2.1.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Framework Agreement;
 - 2.1.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.
- 2.2 The representations and warranties set out in Clause 2.1 shall be deemed to be repeated by the Supplier on the Commencement Date (if later than the date of signature of this Framework Agreement) by reference to the facts then existing.
- 2.3 The representations and warranties set out in this Clause 2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Framework Agreement.
- 2.4 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 2.1 has been breached, is untrue or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.
- 2.5 the Supplier System and assets used in the performance of the Services will be:
- 2.5.1 free of all encumbrances, any exceptions must be agreed in writing with the Authority; and
 - 2.5.2 Euro Compliant.
- 2.6 The Supplier shall at all times comply with Law in carrying out its obligations under this Framework Agreement.
- 2.7 For the avoidance of doubt, the fact that any provision within this Framework Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 2.8 Except as expressly stated in this Framework Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

3. FINANCIAL LIMIT

- 3.1 The components which comprise the Financial Limit are set out in [Section 3 \(Schedule of Prices\)](#) and the price schedule to be inserted into Annex 2 of any pursuant Call-Off Contract. No expenditure may be incurred in excess of the Financial Limit and no virements between the components are permitted without the prior written authority of the Authority's Contract Officer.

TERM OF FRAMEWORK AGREEMENT

4. FRAMEWORK AGREEMENT TERM

- 4.1 The duration of this Framework Agreement shall be the Term.
- 4.2 Where the Authority has specified an Extension Period in [Section 4 \(Statement of Service Requirement\)](#), the Authority may extend this Framework Agreement for the Extension Period by providing written notice to the Supplier before the end of the Initial Period. The minimum period for the written notice shall be as specified in [Section 4 \(Statement of Service Requirement\)](#).

PROVISION OF SERVICES

5. OBLIGATIONS OF THE SUPPLIER

- 5.1 The Supplier shall perform all its obligations under this Framework Agreement and any pursuant Call-Off Contract with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts and in accordance with the Authority's [Supply Partner Code of Conduct \(Appendix B\)](#).
- 5.2 If the Supplier is a joint venture or an unincorporated consortium then each of the joint venture or consortium partners shall bear joint and several liability where liability may arise.
- 5.3 In performing its obligations under this Framework Agreement and any pursuant Call-Off Contract, neither the Supplier, nor any of its Affiliates, shall embarrass the Authority or otherwise bring the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Framework Agreement.
- 5.4 The Supplier shall ensure that the Services:
- 5.4.1 comply in all respects with the description of Services in [Section 4 \(Statement of Service Requirement\)](#) or elsewhere in this Framework Agreement and/or pursuant Call-Off Contract; and
 - 5.4.2 are supplied in accordance with the provisions of this Framework Agreement and/or pursuant Call-Off Contract and the Tender.
- 5.5 The Supplier shall perform its obligations under this Framework Agreement and/or pursuant Call-Off Contract in accordance with:
- 5.5.1 all applicable Law;
 - 5.5.2 Good Industry Practice;
 - 5.5.3 any policies provided by the Authority; and
 - 5.5.4 the Supplier's own established procedures and practices to the extent they do not conflict with the requirements of Clauses 5.5.1 to 5.5.3.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that its Supplier Personnel also do, or refrain from doing, such act or thing.

SUPPLIER PERSONNEL & SUPPLY CHAIN MATTERS

6. SUPPLIER PERSONNEL

- 6.1 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Clause 16 (Exit Management)) unless:
- 6.1.1 requested to do so by the Authority;
 - 6.1.2 the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - 6.1.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated by the employer for material breach of contract; or
 - 6.1.4 the Supplier obtains Approval (such Approval not to be unreasonably withheld or delayed).
- 6.2 The Supplier shall:

- 6.2.1 provide a list of the names of all Supplier Personnel requiring admission to the Authority Sites, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- 6.2.2 ensure that all Supplier Personnel:
 - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (b) are vetted in accordance with Good Industry Practice and in compliance with the Staff Vetting Procedure (www.gov.uk/government/collect/ons/government-security);
 - (c) shall be subject to pre-employment checks that include, as a minimum, employment history for the last three years, identity checks, unspent criminal convictions and right to work (including nationality and immigration status);
 - (d) obey all lawful instructions and reasonable directions of the Authority (including, if so required by the Authority, the ICT Policy) and provide the Services to the reasonable satisfaction of the Authority; and
 - (e) comply with:
 - (i) all reasonable requirements of the Authority concerning conduct at the Authority Sites, including any security requirements; and
 - (ii) any the Authority policies, provided to the Supplier or Supplier Personnel from time to time;
- 6.2.3 subject to [Schedule 2 \(Staff Transfer\)](#), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or Contractors of the Authority;
- 6.2.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Framework Agreement shall be a Default by the Supplier;
- 6.2.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- 6.2.6 subject to Clause 6.1, replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- 6.2.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- 6.2.8 procure that the Supplier Personnel shall vacate the Authority Sites immediately upon the Expiry Date.
- 6.3 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Framework Agreement and/or pursuant Call-Off Contract, it may:
 - 6.3.1 refuse admission to the relevant person(s) to the Authority Sites and/or
 - 6.3.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).
 - 6.3.3 require the Supplier to replace the relevant person(s) without direct or indirect charge to the Authority and the Supplier shall fully indemnify and hold the Authority harmless against any claims of any kind that may arise with regard to the replacement of such Supplier Personnel.

7. SUB-CONTRACTORS & EXCLUSIVITY

- 7.1 The Authority has consented to the appointment of the Sub-Contractors set out in Section 4 (Statement of Service Requirement).
- 7.2 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
 - 7.2.1 manage any Sub-Contracts in accordance with Good Industry Practice;
 - 7.2.2 comply with its obligations under this Framework Agreement and/or pursuant Call-Off Contract in the provision of the Services; and
 - 7.2.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Framework Agreement.
- 7.3 Prior to sub-contacting any of its obligations under this Framework Agreement and/or pursuant Call-Off Contract, the Supplier shall notify the Authority and provide the Authority with:
 - 7.3.1 the proposed Sub-Contractor's name, registered office and company registration number;

- 7.3.2 the scope of any Services to be provided by the proposed Sub-Contractor; and
 - 7.3.3 where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 7.4 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 7.3, the Supplier shall also provide:
- 7.4.1 a copy of the proposed Sub-Contract; and
 - 7.4.2 any further information reasonably requested by the Authority.
- 7.5 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 7.3 (or, if later, receipt of any further information requested pursuant to Clause 7.4), object to the appointment of the relevant Sub-Contractor if they consider that:
- 7.5.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority under this Framework Agreement;
 - 7.5.2 the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - 7.5.3 the proposed Sub-Contractor employs unfit persons,
- in which case, the Supplier shall not proceed with the proposed appointment.
- 7.6 If the Authority has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
- 7.6.1 the Supplier's notice issued pursuant to Clause 7.3; or
 - 7.6.2 any further information requested by the Authority pursuant to Clause 7.4,
- the Supplier may proceed with the proposed appointment.
- 7.7 The Supplier shall ensure that all Sub-Contracts contain provisions:
- 7.7.1 requiring the Sub-Contractor to comply with the Authority's [Supply Partner Code of Conduct \(Appendix B\)](#) at all times;
 - 7.7.2 requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
 - 7.7.3 requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
 - 7.7.4 conferring a right to the Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
 - 7.7.5 giving the Supplier a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law;
 - 7.7.6 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause 7.7; and
 - 7.7.7 equivalent to those set out in Clauses 50.1 to 50.7 inclusive, and shall further ensure that:
 - (a) the Supplier has all appropriate rights to be able to onwards report Misconduct on the part of the Sub-Contractor's own employees, agents or contractors to the Relevant Authorities; and
 - (b) written confirmation is sought and obtained from its Sub-Contractors that they accept the standards set out in Clauses 50.1 to 50.7 inclusive.
- 7.8 The Supplier shall:
- 7.8.1 pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice;
 - 7.8.2 include within the Performance Monitoring Reports required under Clause 13.3 a summary of its compliance with this Clause 7.8.1, such data to be certified each quarter by a director of the Supplier as being accurate and not misleading;

- 7.8.3 not include in any Sub-Contract any provision the effect of which would be to limit or restrict the ability of the Sub-Contractor to contract directly with the Authority, a Replacement Supplier, or with any other organisation and Sub-Contractors shall be free to assert their rights independently regarding contractual exclusivity.

8. VISIBILITY OF SUB-CONTRACT OPPORTUNITIES

8.1 The Supplier shall:

- 8.1.1 subject to Clause 8.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
- 8.1.2 within 90 days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
- 8.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- 8.1.4 provide reports on the information at Clause 8.1.3 to the Authority in the format and frequency as reasonably specified by the Authority; and
- 8.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

8.2 Each advert referred to at Clause 8.1 above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

8.3 The obligation at Clause 8.1 shall only apply in respect of Sub-Contract opportunities arising after the Commencement Date.

8.4 Notwithstanding Clause 8.18.1, the Authority may by giving its Approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.

9. STAFF TRANSFER

9.1 The Parties agree that:

9.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, [Schedule 2 \(Staff Transfer\)](#) shall apply as follows:

- (a) where the Relevant Transfer involves the transfer of Transferring the Authority's Employees, [Part A of Schedule 2 \(Staff Transfer\)](#) shall apply;
- (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, [Part B of Schedule 2 \(Staff Transfer\)](#) shall apply;
- (c) where the Relevant Transfer involves the transfer of Transferring the Authority's Employees and Transferring Former Supplier Employees, [Parts A and B of Schedule 2 \(Staff Transfer\)](#) shall apply; and
- (d) [Part C of Schedule 2 \(Staff Transfer\)](#) shall not apply.

9.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, [Part C of Schedule 2 \(Staff Transfer\)](#) shall apply and [Parts A and B of Schedule 2 \(Staff Transfer\)](#) shall not apply; and

9.1.3 [Part D of Schedule 2 \(Staff Transfer\)](#) shall apply on the expiry or termination of the Services or any part of the Services;

9.2 The Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

10. DUTY OF CARE

10.1 The Supplier owes a duty of care to the Supplier Personnel and is responsible for the health, safety, security of life and property and general wellbeing of such persons and their property and this includes where the Supplier Personnel carry out the Services.

10.2 The Supplier warrants that it has and will throughout the duration of the Framework Agreement:

- 10.2.1 carry out the appropriate risk assessment with regard to its delivery of the Services;
- 10.2.2 provide the Supplier Personnel with adequate information, instruction, training and supervision;

- 10.2.3 have appropriate emergency procedures in place to enable their provision of the Services so as to prevent damage to the Supplier Personnel's health, safety, security of life and property and general wellbeing.
- 10.3 The provision of information of any kind whatsoever by the Authority to the Supplier shall not in any respect relieve the Supplier from responsibility for its obligations under this Clause 10. The positive evaluation of the Supplier's proposal for the provision of the Services and the award of this Framework Agreement and/or pursuant Call-Off Contract is not an endorsement by the Authority of any arrangements which the Supplier has made for the health, safety, security of life and property and wellbeing of the Supplier Personnel in relation to the provision of the Services.
- 10.4 The Supplier acknowledges that the Authority accepts no responsibility for the health, safety, security of life and property and general wellbeing of the Supplier Personnel with regard to the Supplier Personnel carrying out the Services under this Framework Agreement and/or pursuant Call-Off Contract.
- 10.5 The Supplier will ensure that such insurance arrangements as are made to cover the Supplier Personnel, or any person employed or otherwise engaged by the Supplier, and pursuant to the Suppliers duty of care as referred to in this Clause 10 are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.
- 10.6 The costs of any insurance specifically taken out by the Supplier to support the performance of this Framework Agreement and/or pursuant Call-Off Contract in relation to the Supplier's duty of care may be included as part of the management costs of the project, and must be separately identified in all financial reporting relating to the project.
- 10.7 Where the Authority is providing any specific security arrangements for the Supplier or Supplier Personnel in relation to the Framework Agreement and/or pursuant Call-Off Contract, these will be as detailed in the Section 4 (Statement of Service Requirement).
- 10.8 The Supplier shall provide training on a continuing basis for all Supplier Personnel, in compliance with the Security Policy and the security plan.

11. PROCUREMENT OF EQUIPMENT

- 11.1 The Supplier shall ensure that procurement of goods and equipment shall:
 - 11.1.1 be undertaken in accordance with best practice principles of openness fairness and transparency;
 - 11.1.2 achieve "Value for Money" defined as the optimum combination of whole-life cost and quality to meet requirements in a fully transparent manner and the procurement may be subject to audit by the Authority;
 - 11.1.3 be carried out using strict due diligence processes that ensure the protection of the Authority's interests and reputation, with particular emphasis on anti-terrorism, anti-corruption and fraud throughout the delivery chain; and
 - 11.1.4 be on the basis that the ownership of Equipment shall vest in the Authority, and shall be so marked.

12. USE OF AND RESPONSIBILITY FOR EQUIPMENT

- 12.1 Equipment may only be used in providing the Services and shall be safely kept and maintained. Personal use of Equipment by the Supplier is not permitted without Approval.
- 12.2 The Supplier shall keep an up to date inventory of the Equipment its condition and location and make such inventory available to the Authority immediately on request.
- 12.3 Subject to Clause 12.4 the Supplier shall be responsible for all loss or damage to Equipment other than that caused by fair wear and tear. The Supplier shall notify the Authority immediately the Supplier becomes aware of any loss of or damage to Equipment
- 12.4 Except as required by law or circumstance, the Supplier shall not insure Equipment. The Authority shall bear the risk in respect of loss or damage provided such loss or damage was not due to the Supplier's negligence and provided the Supplier obtains and pays to the Authority such proper compensation as may be due from any third party in respect of such loss or damage to the Equipment.
- 12.5 The Supplier shall obtain the Authority's instructions on the disposal of Equipment and comply with such instructions.

CONTRACT GOVERNANCE

13. MONITORING OF CONTRACT PERFORMANCE

- 13.1 Unless Section 4 (Statement of Service Requirement) specifies that obligations relating to the monitoring of Contract performance shall be those set out in Section 4 (Statement of Service Requirement), the remaining provisions of this Clause 13 shall apply.

- 13.2 Within twenty (20) Working Days of the Commencement Date the Supplier shall provide the Authority with details of how the process in respect of the monitoring and reporting of the performance of the Supplier's obligations under this Framework Agreement will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 13.3 The Supplier shall provide the Authority with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Clause 13.2 above which shall contain, as a minimum, the following information:
- 13.3.1 details of compliance with its obligations under Clause 7.8.2
 - 13.3.2 details of compliance with any additional obligations set out in Section 4 (Statement of Service Requirement); and
 - 13.3.3 such other details as the Authority may reasonably require from time to time.
- 13.4 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Supplier and the Authority of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
- 13.4.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier;
 - 13.4.2 take place at such location and time (within normal business hours) as the Authority shall reasonably require unless otherwise agreed in advance;
 - 13.4.3 be attended by the Supplier's Contract Officer and the Authority's Contract Officer; and
 - 13.4.4 be fully minuted by the Supplier. The prepared minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Authority's Contract Officer and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Supplier's Contract Officer and the Authority's Contract Officer at each meeting.
- 13.5 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of the Supplier's provision of the Services and the Authority shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with this Framework Agreement.

14. PROGRESS & FINANCIAL REPORTS

- 14.1 Where progress and financial reports are to be submitted under the Framework Agreement and/or pursuant Call-Off Contract, the Supplier shall render those reports at such time and in such form as may be specified by the Authority or where not specified by the Authority, as otherwise agreed between the Parties.

15. OPEN BOOK ACCOUNTING AND AUDIT

- 15.1 The Supplier shall keep and maintain for seven (7) years after the expiry of the Term (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of all Call-Off Contracts including the Services provided under it, any Sub-Contracts and the amounts paid by the Authority.
- 15.2 If so stated in the Statement of Requirement or Terms of Reference of a Call-Off Contract pursuant to this Framework Agreement, the Authority shall be entitled to apply the principles of open book contract management set out in Procurement Policy Note 05/16 (<https://www.gov.uk/government/publications/procurement-policy-note-0516-open-book-contact-management>), or any other replacement guidance or policy issued from time to time to this Contract. The Authority shall apply the appropriate tier level which, in the Authority's reasonable opinion, is commensurate with the delivery model of the Services and the Supplier shall comply with the principles etc. (as more particular described in the OBMC guidance).
- 15.3 The Supplier shall:
- 15.3.1 keep the records and accounts referred to in Clause 15.1 in accordance with Good Industry Practice and Law; and
 - 15.3.2 afford the Authority and/or its Auditors access to the records and accounts referred to in Clause 15.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Term and the period specified in Clause 15.1, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Framework Agreement and/or pursuant Call-Off Contract including in order to:
 - (a) verify the accuracy of the Charges and any other amounts payable by the Authority under this Contract (and proposed or actual variations to them in accordance with this Contract);
 - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Services;

- (c) verify the Open Book Data;
- (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
- (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Sub-Contractors or their ability to perform the Services;
- (g) obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
- (i) carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (k) review any records relating to the Supplier's performance of the provision of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (l) verify the accuracy and completeness of any information delivered or required by this Contract;
- (m) review the Supplier's quality management systems (including any quality manuals and procedures);
- (n) review the Supplier's compliance with any standards referred to in this Contract or applicable to the provision of the Services;
- (o) inspect any of the Authority's assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that any of the Authority's assets are secure and that any register of assets is up to date; and/or
- (p) review the integrity, confidentiality and security of the Authority's Data.

15.4 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Authority.

15.5 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:

15.5.1 all reasonable information requested by the Authority within the scope of the audit;

15.5.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Services; and

15.5.3 access to the Supplier Personnel.

15.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15 unless the audit reveals a Default by the Supplier in which case the Supplier shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

16. EXIT MANAGEMENT

16.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

16.1.1 details of the Service(s);

16.1.2 a copy of the Register, updated by the Supplier up to the date of delivery of such Registers;

- 16.1.3 an inventory of the Authority Data in the Supplier's possession or control;
- 16.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
- 16.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
- 16.1.6 all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees' required to be provided by the Supplier under any Call-Off Contract pursuant to this Framework Agreement, such information to include the Staffing Information as defined in Schedule 2 (Staff Transfer); and
- 16.1.7 such other material and information as the Authority shall reasonably require;

(together, the "Exit Information").

16.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-Contractors' prices or costs).

16.3 if the Exit Information materially changes from the Exit Information previously provided and it could reasonably adversely affect:

- 16.3.1 the provision of the Services; and/or
- 16.3.2 the delivery of the exit services/exit plan; and/or
- 16.3.3 any re-tender exercise by the Authority,

then the Supplier shall notify the Authority within a reasonable period of time and consult and shall consult with the Authority regarding such proposed material changes and provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.

16.4 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- 16.4.1 prepare an informed offer for those Services; and
- 16.4.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

16.5 The Supplier shall, within three (3) months after the Commencement Date, deliver to the Authority an Exit Plan which:

- 16.5.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the Services from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination of a Call-Off Contract;
- 16.5.2 complies with the requirements set out in Clause 16.7 below;
- 16.5.3 is otherwise reasonably satisfactory to the Authority.

16.6 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

16.7 Unless otherwise specified by the Authority, the Exit Plan shall set out, as a minimum:

- 16.7.1 how the Exit Information is obtained;
- 16.7.2 the management structure to be employed during both transfer and cessation of the Services;
- 16.7.3 the management structure to be employed whilst carrying out the activities to be performed by the Supplier as identified in the Exit Plan;
- 16.7.4 a detailed description of both the transfer and cessation processes, including a timetable;
- 16.7.5 how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-Contractors (where applicable);

- 16.7.6 details of contracts (if any) which will be available for transfer to the Authority and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer (and the Supplier agrees that all assets and contracts used by the Supplier in connection with the provision of the Services will be available for such transfer);
- 16.7.7 proposals for the training of key personnel of the Replacement Supplier in connection with the continuation of the provision of the Services following the Expiry Date charged at rates agreed between the Parties at that time;
- 16.7.8 proposals for providing the Authority or a Replacement Supplier copies of all documentation:
 - (a) used in the provision of the Services and necessarily required for the continued use of the Replacement Services, in which the Intellectual Property Rights are owned by the Supplier; and
 - (b) relating to the use and operation of the Services;
- 16.7.9 proposals for the assignment or novation of the provision of all services, leases, maintenance agreements and support agreements utilised by the Supplier in connection with the performance of the supply of the Services;
- 16.7.10 proposals for the identification and return of all Equipment in the possession of and/or control of the Supplier or any third party (including any Sub-Contractor);
- 16.7.11 proposals for the disposal of any redundant Services and materials;
- 16.7.12 procedures to:
 - (a) deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 2 (Staff Transfer);
 - (b) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and
 - (c) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees;
- 16.7.13 how each of the issues set out in this Clause 16 will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services;
- 16.7.14 proposals for the supply of any other information or assistance reasonably required by the Authority or a Replacement Supplier in order to effect an orderly handover of the provision of the Services.

PAYMENT AND TAXATION

17. CHARGES

- 17.1 In consideration of the Supplier carrying out its obligations under any Call-Off Contract pursuant to this Framework Agreement, including the provision of the Services, the Authority shall pay the undisputed Charges in accordance with the pricing and payment profile set out in Section 3 (Schedule of Prices) and the invoicing procedure set out in Clause 22.
- 17.2 If the Authority fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

18. VAT

- 18.1 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a Valid Invoice.
- 18.2 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

19. RETENTION AND SET-OFF

- 19.1 The Authority may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.

19.2 If the Authority wishes to exercise its right pursuant to Clause 19.1 it shall give at least 21 days' notice of its intention to do so, setting out the reasons for retaining or setting off the relevant Charges.

19.3 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has obtained a sealed court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier

20. NOT USED

21. SATISFACTORY PERFORMANCE

21.1 Payments made pursuant to Clause 17.1 are subject to the satisfactory performance by the Supplier of its obligations under the Contract as determined by the Authority Project Officer in addition to verification by the Authority's Project Officer that all prior payments made to the Supplier under this Contract were properly due.

21.2 If for any reason the Services are not provided in accordance with this Contract, or the Authority is dissatisfied with the performance of this Contract, the Authority, without prejudice to any other rights or remedies howsoever arising, shall be entitled to withhold payment of the applicable Charges for the Services that were not so provided until such time as the applicable Services are provided in accordance with this Contract.

21.3 Should the Authority determine after paying for a particular part of the Services that this has not been provided in accordance with this Contract, the Authority may recover, or withhold from further payments, an amount not exceeding the applicable Charges paid for that part of the Service until the unsatisfactory part of the Services is remedied to the Authority's satisfaction.

22. PAYMENTS & INVOICING INSTRUCTIONS

22.1 Subject to the Authority being satisfied that the Supplier is or has been carrying out their duties, obligations and responsibilities under this Contract, the applicable Charges shall be paid within 30 days of receipt of an undisputed Valid Invoice and payment shall be made in sterling in the UK or any other currency in any other country as determined from the Authority from time to time.

22.2 Expenses (if any) arising in foreign currency shall be reimbursed at the exchange rate stated in OANDA (www.oanda.com) on the Friday immediately preceding the date on which the purchase was made or services acquired by the Supplier or, if this took place on a Friday, at the rate so stated on that day.

22.3 Unless otherwise expressly provided in Section 4 (Statement of Service Requirement) or Section 3 (Schedule of Prices), invoices should be submitted electronically monthly in arrears to FCO Accounts Payable, ukpcinvoices@fco.gov.uk, and in accordance with this Clause 22.

22.4 The Authority shall unless otherwise expressly provided in Section 4 (Statement of Service Requirement) make payments due by direct credit through the UK Bank Clearing Systems (BACS). For an invoice to be valid, it must contain:

22.4.1 details of the bank account to which payments are to be made (i.e. name and address of bank, sort code, account name and number).

22.4.2 the date of the invoice;

22.4.3 a unique invoice number;

22.4.4 the period(s) to which the relevant charge(s) relate;

22.4.5 the correct reference for this Agreement and the purchase order to which it relates;

22.4.6 a contact name and telephone number of a responsible person in the supplier's finance department;

22.4.7 a detailed breakdown of the Services and the appropriate Charges and supported by any other documentation required by the Authority to substantiate the invoice.

22.5 All Valid Invoices should correspond with the budget lines identified in Section 3 (Schedule of Prices) of this Contract.

22.6 The Authority may request proof of purchase in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.

22.7 Where an invoice is not a Valid Invoice it may be rejected by the Authority and in any event shall be liable to query and delay in payment. The Authority reserves the right to not pay any amount due in respect of any invoice received by the Authority more than 90 days after the day of the Supplier becoming entitled to invoice for the payment to which it relates.

23. UNITED KINGDOM INCOME TAX & NATIONAL INSURANCE CONTRIBUTIONS

23.1 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:

23.1.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration;

23.1.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

24. TAX COMPLIANCE

24.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

24.1.1 notify the Authority in writing of such fact within 5 Working Days of its occurrence;

24.1.2 promptly provide to the Authority:

- (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

INTELLECTUAL PROPERTY, SECURITY & INFORMATION

25. INTELLECTUAL PROPERTY RIGHTS

25.1 Save as expressly granted elsewhere under this Contract:

25.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

- (a) the Supplier Background IPR; and
- (b) the Third Party IPR.

25.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including the:

- (a) the Authority's Background IPR;
- (b) the Authority's Data;
- (c) Project Specific IPRs; and
- (d) Programme Name and any rights and interests in it at all times.

25.2 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 25.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

25.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

25.4 Any Project Specific IPRs created under this Contract shall be owned by the Authority. The Authority grants the Supplier a licence to use any the Authority's Background IPR and Project Specific IPRs for the purpose of fulfilling its obligations under this Contract during its Term.

25.5 Subject to Clause 25.7, to the extent that it is necessary to enable the Authority to obtain the full benefits of ownership of the Project Specific IPRs, the Supplier hereby grants to the Authority and shall procure that any relevant third party licensor shall grant to the

Authority a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit any Supplier Background IPRs or Third Party IPRs that are embedded in or which are an integral part of the Project Specific IPR Items.

- 25.6 The Supplier shall promptly notify the Authority if it reasonably believes that it will be unable to grant or procure the grant of the licences set out in Clause 25.5 above and the Supplier shall provide full details of the adverse effect this may have on the Authority's use of the Project Specific IPRs.
- 25.7 Where the Supplier is unable to comply with Clause 25.5, the Supplier shall refrain from embedding or integrating any Supplier Background IPRs and/or Third Party IPRs with the Project Specific IPRs in such a way that could affect the Authority obtaining full benefit of the ownership of those Project Specific IPRs, except where the Authority has provided express written Approval to do so.
- 25.8 The Supplier shall, during and after the Term, on written demand, indemnify the Authority against all Losses incurred by, awarded against, or agreed to be paid by the Authority (whether before or after the making of the demand pursuant to the indemnity hereunder) arising from an IPR Claim.
- 25.9 If an IPR Claim is made or anticipated, the Supplier must at its own expense and the Authority's sole option, either:
- 25.9.1 procure for the Authority the rights in Clause 25.5 without infringing the IPR of any third party; or
 - 25.9.2 replace or modify the relevant item with non-infringing substitutes with no detriment to functionality of performance of the Services.

26. SECURITY REQUIREMENTS

- 26.1 The Supplier shall comply, and shall procure that the Supplier Personnel comply, with the Security Policy and any security plan requested by the Authority, and the Supplier shall ensure that the security plan produced by the Supplier fully complies with the Security Policy.
- 26.2 The Supplier shall ensure that it keeps up to date with the latest version of the Security Policy.
- 26.3 If the Supplier believes that a change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a variation in accordance with Clause 38. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in discussion with the Authority's Contract Officer.
- 26.4 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 26.3 the Supplier shall continue to perform the Services in accordance with its obligations and for the Charges applicable prior to any change request.

27. MALICIOUS SOFTWARE

- 27.1 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 27.2 Notwithstanding Clause 27.1 if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority's Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 27.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 27.2 shall be borne by the Parties as follows:
- 27.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software or the Authority's Data (whilst the Authority's Data was under the control of the Supplier); and
 - 27.3.2 by the Authority if the Malicious Software originates from the Authority's Software or the Authority's Data (whilst the Authority's Data was under the control of the Authority).

28. TRANSPARENCY

- 28.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of Clause 30 (Freedom of Information), the content of this Contract is not confidential information. the Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 28.2 Notwithstanding any other term of this Contract, the Supplier hereby gives their consent for the Authority to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 28.3 The Authority may consult with the supplier to inform its decision regarding any exemptions with regard to FOIA but the Authority shall have the final decision in its absolute discretion.

- 28.4 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
- 28.5 The Supplier acknowledges that the Authority endorses/supports the requirements of the IATI standard and shall assist and cooperate with the Authority, to enable the Supplier to understand the different elements of IATI implementation and to comply with the different data, policy and technical considerations that need to be taken into account.
- 28.6 The Supplier shall:
- 28.6.1 publish information data to the IATI standard, that relates to a specific activity in a single, common, electronic format for the transparent, accurate, timely and comprehensive publishing of data, on all activities in the delivery chain, in the delivery of development cooperation and humanitarian aid; and
 - 28.6.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the IATI requirements.
- 28.7 The Supplier shall maintain an up-to-date and accurate record of named downstream delivery partners in receipt of the Authority's funds and/or the Authority's funded inventory or assets. This record should demonstrate how funds flow from initial source to end beneficiaries. This record should be made available to the Authority's upon written request and within the time set out in the request. This record should be updated by the Supplier;
- 28.7.1 as required in the Statement of Service Requirement;
 - 28.7.2 annually;
 - 28.7.3 when there are material changes in the delivery chain; and
 - 28.7.4 as part of the project completion process.

29. CONFIDENTIALITY

- 29.1 Except to the extent set out in this Clause 29 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 29.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;
 - 29.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 29.2 Clause 29.1 shall not apply to the extent that:
- 29.2.1 such disclosure is a requirement of Law applicable to the Party making the disclosure, including any requirements for disclosure under the FOIA, the Environmental Information Regulations and associated codes of practice pursuant to Clause 30 (Freedom of Information);
 - 29.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 29.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 29.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 29.2.5 it is independently developed without access to the other Party's Confidential Information.
- 29.3 The Supplier may only disclose the Authority's Confidential Information to the Supplier Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier Personnel are aware of and shall comply with these obligations as to confidentiality.
- 29.4 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- 29.5 At the written request of the Authority, the Supplier shall procure that those members of the Supplier Personnel referred to in Clause 29.3, respectively sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 29.6 Nothing in this Contract shall prevent the Authority from disclosing the Supplier's Confidential Information:
- 29.6.1 on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - 29.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

- 29.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 29.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 29.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 29.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 15 (Open Book Accounting and Audit), its rights to appoint an advisor pursuant to Clause 47 (Dispute Resolution) and any rights set out in Clause 16 (Exit Management);
- 29.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract; or
- 29.6.7 for the purpose of the examination and certification of the Authority's accounts,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 29; or

- 29.7 Nothing in this Clause 29 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

30. FREEDOM OF INFORMATION

- 30.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA, the Environmental Information Regulations and associated codes of practice and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 30.2 The Supplier shall and shall ensure that its Sub-Contractors shall:
 - 30.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 30.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - 30.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 30.3 the Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA, the Environmental Information Regulations and associated codes of practice.
- 30.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 30.5 The Supplier acknowledges that the Authority may, acting in accordance with any code of practice issued pursuant to Section 45 of FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:
 - 30.5.1 in certain circumstances without consulting the Supplier;
 - 30.5.2 following consultation with the Supplier and having taken their views into account;
 - 30.5.3 provided always that where Clause 30.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 30.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clauses 30.7 and 30.8 and shall permit the Authority to inspect such records as requested by the Authority from time to time.
- 30.7 The Supplier shall, during this Contract and for a period of at least seven years following the expiry or termination of this Contract, retain and maintain all Information:
 - 30.7.1 in accordance with Good Industry Practice and Law;

- 30.7.2 in chronological order;
- 30.7.3 in a form that is capable of audit;
- 30.7.4 at its own expense.

30.8 Wherever practical, original Information shall be retained and maintained in hard copy form.

31. OFFICIAL SECRETS ACT

31.1 The Supplier shall, and shall ensure that the Supplier Personnel shall, comply with any relevant obligations arising under the Official Secrets Acts 1911 to 1989.

32. AUTHORITY DATA

32.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority's Data.

32.2 The Supplier shall not store, copy, disclose, or use the Authority's Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

32.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format(s) specified by the Authority.

32.4 Upon receipt or creation by the Supplier of any Authority Data and during any collection, processing, storage and transmission by the Supplier of any Authority Data, the Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.

32.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Security Policy. The Supplier shall ensure that such back-ups are available to the Authority at all times upon request, with delivery times as specified by the Authority.

32.6 The Supplier shall ensure that the system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

32.7 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:

32.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Authority's Data to the extent and in accordance with the Business Continuity and Disaster Recovery Provisions specified in the Security Policy and the Supplier shall do so as soon as practicable but not later than three days following a written request from the Authority; and/or

32.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery provisions specified in the Security Policy.

32.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

32.9 The Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme.

33. PROTECTION OF PERSONAL DATA

33.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor unless otherwise specified in Annex 4 of any Call-Off Contract issued pursuant to this Framework Agreement. The only processing that the Processor is authorised to do shall be listed in Annex 4 of the applicable Call-Off Contract by the Controller and may not be determined by the Processor.

33.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

33.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

33.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

33.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

- 33.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
- 33.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 33.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
 - 33.4.1 process that Personal Data only in accordance with Annex 4 of the applicable Call-Off Contract, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - 33.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
 - 33.4.3 ensure that:
 - (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Annex 4 of the applicable Call-Off Contract);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (c) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
 - (d) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Framework Agreement and/or an applicable Call-Off Contract unless the Processor is required by Law to retain the Personal Data.
- 33.5 Subject to Clause 33.6, the Processor shall notify the Controller immediately if it:
 - 33.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 33.5.2 receives a request to rectify, block or erase any Personal Data;

- 33.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 33.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - 33.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 33.5.6 becomes aware of a Data Loss Event.
- 33.6 The Processor's obligation to notify under Clause 33.5 shall include the provision of further information to the Controller in phases, as details become available.
- 33.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 33.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 33.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 33.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 33.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 33.7.4 assistance as requested by the Controller following any Data Loss Event;
 - 33.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 33.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 33.8.1 the Controller determines that the processing is not occasional;
 - 33.8.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - 33.8.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 33.9 The Processor shall allow for audits of its Personal Data processing activity by the Controller or the Controller's designated auditor.
- 33.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.
- 33.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- 33.11.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 33.11.2 obtain the written consent of the Controller;
 - 33.11.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 33 such that they apply to the Sub-processor; and
 - 33.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 33.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 33.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this Clause 33 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 33.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 33.15 Where the Parties include two or more Joint Controllers as identified in Annex 4 of the applicable Call-Off Contract, in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement in replacement of Clauses 33.1 to 33.14 for the Personal Data under Joint Control.

34. PUBLICITY & BRANDING

34.1 The Supplier shall not:

34.1.1 make any press announcements or publicise this Contract or its contents in any way; or

34.1.2 use the Authority's name or brand (including DFID's 'UK aid logo') in any promotion, marketing, communications or announcement of orders;

without the prior written consent of the Authority.

34.2 Where and to the extent that the Authority has provided consent pursuant to Clause 34.1, then the Supplier:

34.2.1 shall collaborate with the Authority and proactively look for ways to build support for development and raise awareness of the Authority's funding.

34.2.2 shall explicitly acknowledge the Authority's funding, in written and verbal communications about activities related to the funding, to the public or third parties, including in announcements, and through use, where appropriate, of DFID's "UK aid – from the British people" logo ('UK aid logo') in accordance with the DFID standards for use of the UK aid logo, unless otherwise agreed in advance by the Authority and in all cases subject to security and safety considerations of the Supplier.

34.2.3 shall provide a visibility statement of how and when they or Sub-Contractors will acknowledge funding from the Authority and where they will use the UK aid logo. The Supplier shall include reference to this in its progress reports and annual reviews.

34.2.4 may use the UK aid logo in conjunction with other donor logos, and where the number of donors to a programme or project is such as to make co-branding impractical, acknowledgement of funding from the Authority shall be equal to that of other co-donors making contributions of equivalent amounts to the programme or project.

LIABILITIES

35. LIMIT OF LIABILITY

35.1 Neither Party limits its liability for:

35.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors (as applicable);

35.1.2 fraud or fraudulent misrepresentation by it or its employees;

35.1.3 breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

35.1.4 any liability to the extent it cannot be limited or excluded by Law.

35.2 Subject to Clause 35.1, within each Call-Off Contract, the Supplier's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) incurred by the Authority under or in connection with the relevant Call-Off Contract as a result of Defaults by the Supplier shall not exceed the applicable Financial Limit for that Call-Off Contract, unless a different amount has been stated in Section 4 (Statement of Service Requirement) in which case that amount shall apply.

35.3 Subject to Clause 35.1, the Authority's total aggregate liability in respect of all Losses (whether in tort, contract or otherwise) shall not exceed one hundred thousand pounds (£100,000).

35.4 Subject to Clause 35.1 neither Party be liable to the other for any:

35.4.1 loss of profits, turnover, savings business opportunities, revenue or damage to goodwill (in each case whether direct or indirect); and/or

35.4.2 indirect, special or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the Party has been advised of the possibility of such losses occurring.

35.5 Subject to Clause 35.2, and notwithstanding Clause 35.4, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:

35.5.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

- 35.5.2 any wasted expenditure or charges;
- 35.5.3 the additional cost of procuring Replacement Services for the remainder of the Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Contract;
- 35.5.4 any compensation or interest paid to a third party by the Authority; and
- 35.5.5 any fine, penalty or costs incurred by the Authority pursuant to Law.

36. INDEMNITY

- 36.1 Subject to Clauses 35.1 to 35.5 (inclusive), the Supplier shall indemnify the Authority in respect of any Losses howsoever arising out of or in consequence of negligent acts or omissions by the Supplier or the Supplier Personnel or any claims made against the Authority by third parties in respect thereof and in relation to this Contract.
- 36.2 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or the Authority's employees, or by breach by the Authority of its obligations under the Contract.

37. INSURANCE

- 37.1 The Supplier shall effect and maintain insurances in relation to the performance of its obligations under this Contract in accordance with [Schedule 3 \(Insurance Requirements\)](#).
- 37.2 The Supplier shall ensure that its Sub-Contractors shall effect and maintain insurances (where appropriate) in relation to the performance of their obligations under any Sub-Contracts appropriate to Services being provided.
- 37.3 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Contract.

CONTROL OF CONTRACT

38. VARIATIONS

- 38.1 Either Party may request a variation to this Contract provided that such variation does not amount to a material change of this Contract within the meaning of the Regulations and the Law. Such a change once implemented is hereinafter called a "**Variation**".
- 38.2 A Party may request a Variation at any time by sending the request in writing to the relevant Contract Officer. The request shall contain sufficient information setting out:
 - 38.2.1 the extent of the proposed Variation and any additional cost that may be incurred; and
 - 38.2.2 a formal, technical and commercial justification.
- 38.3 In the event that the Parties are unable to agree a change to the Contract that may be included in a request of a Variation or response to as a consequence thereof, the Authority may:
 - 38.3.1 agree to continue to perform its obligations under this Contract without the Variation; or
 - 38.3.2 terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the provision of the Services in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 38.4 If the Parties agree the Variation, the Variation shall be effected upon both Parties signing the Contract Amendment Letter (Appendix A) and the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this Contract.

39. ASSIGNMENT & NOVATION

- 39.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without Approval.
- 39.2 Subject to Clause 39.1, the Supplier may assign to a third party ("the Assignee") the right to receive payment of the Charges or any part thereof due to the Supplier under this Contract (including any interest to which the Authority is liable under the Late Payments of Commercial Debts (Interest) Act 1998). Any assignment under this Clause 39.2 shall be subject to:

- 39.2.1 deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 19 (Retention and Set Off);
 - 39.2.2 all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - 39.2.3 the Authority receiving notification under both Clauses 39.3 and 39.4.
- 39.3 In the event that the Supplier assigns the right to receive the Charges under Clause 39.2, the Supplier shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 39.4 The Supplier shall notify the Authority of the assignee's contact information and bank account details to which the Authority shall make payment.

DEFAULT & TERMINATION

40. AUTHORITY REMEDIES FOR DEFAULT

40.1 Remedies

40.1.1 Without prejudice to any other right or remedy of the Authority howsoever arising if the Supplier commits any Default of this Contract then the Authority may (whether or not any part of the Services have been provided) do any of the following:

- (a) at the Authority's option, give the Supplier the opportunity (at the Supplier's expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of this Contract are fulfilled, in accordance with the Authority's instructions;
- (b) carry out, at the Supplier's expense, any work necessary to make the provision of the Services comply with this Contract;
- (c) if the Default is a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults - whether of the same or different obligations and regardless of whether such Defaults are remedied - which taken together constitute a material Default):
 - (i) instruct the Supplier to comply with the Rectification Plan Process;
 - (ii) suspend this Contract (whereupon the relevant provisions of Clause 45 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services;
 - (iii) without terminating or suspending the whole of this Contract, terminate or suspend this Contract in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 45 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services.

40.1.2 Where the Authority exercises any of its step-in rights under Clauses 40.1.1 (c) (ii) or 40.1.1 (c) (iii), the Authority shall have the right to charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

40.2 Rectification Plan Process

40.2.1 Where the Authority has instructed the Supplier to comply with the Rectification Plan Process pursuant to 40.1.1 (c) (i):

- (a) the Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of the Authority's instructions. The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Default giving rise to the Authority's request for a draft Rectification Plan.
- (b) the draft Rectification Plan shall set out:
 - (i) full details of the Default that has occurred, including a root cause analysis;
 - (ii) the actual or anticipated effect of the Default; and

- (iii) the steps which the Supplier proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
- 40.2.2 The Supplier shall promptly provide to the Authority any further documentation that the Authority requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Dispute Resolution Procedure.
- 40.2.3 the Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Default; and/or
 - (d) will rectify the Default but in a manner which is unacceptable to the Authority.
- 40.2.4 the Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 40.2.5 If the Authority consents to the Rectification Plan, the Supplier shall immediately start work on the actions set out in the Rectification Plan.

41. FINANCIAL DISTRESS

- 41.1 The Supplier acknowledges and agrees that the financial stability and solvency of the Supplier and its key Sub-Contractors is critical to the successful delivery of the Services and that any deterioration or potential deterioration of their financial position may have an adverse effect on the performance of the Contract. The Supplier shall monitor its own financial standing and that of its key Sub-Contractors on a regular basis throughout the term using a Financial Monitoring Plan and shall report on this to the Authority.
- 41.2 The Financial Monitoring Plan shall be designed by the Supplier to ensure that DFID has an early and clear warning indicator of any financial distress of the Supplier and key Sub-Contractors which may affect the Services; such design to be proportionate for the circumstances; taking into account the nature of the Services and the identity of the suppliers.
- 41.3 Except where the Authority has agreed otherwise, the Supplier shall within four (4) weeks of the Commencement Date, prepare and submit via the Project Officer for Approval by the Authority, a Financial Monitoring Plan which shall set out the Supplier's proposals for the monitoring and reporting of its financial stability, and the financial stability of its key Sub-Contractors to the Authority on a regular basis throughout the Term.
- 41.4 The Financial Monitoring Plan may include (but shall not be limited to):
- 41.4.1 A summary of the Supplier's and key Sub-Contractors' financial positions at the date of submission of the Financial Distress Plan and on a regular basis thereafter to the Authority (including credit ratings, financial ratios, details of current liabilities, value of marketable securities, cash in hand and bank, account receivables etc.);
 - 41.4.2 An objective means of measuring the Supplier and key Sub-Contractor's financial standing on a regular basis throughout the Term against historical financial standing to show trend (including use of credit ratings, financial ratios and/or other financial indicators);
 - 41.4.3 The Supplier's proposals for reporting financial standing to the Authority (including the template reporting forms which the Supplier intends to use);
 - 41.4.4 The frequency of monitoring and reporting activity;
 - 41.4.5 Provision of reporting lines for the supply chain to notify the Authority of incidents of non-payment of valid and undisputed invoices;
 - 41.4.6 Any other provisions which in the reasonable opinion of the Supplier may be required by the Authority to assess current financial standing of the Supplier and key Sub-Contractors and which enable quick and easy assessment of any movement in financial standing.

- 41.5 The Supplier shall make any reasonable amendments to the Financial Monitoring Plan as may be requested by the Authority and shall resubmit it for Approval. If Approved by the Authority, the Supplier shall promptly implement the Financial Monitoring Plan throughout the Term.
- 41.6 In addition to its obligations under the Financial Monitoring Plan, the Supplier shall promptly notify the Authority in writing if any of the following "Financial Distress Events" occurs in respect of the Supplier or a key Sub-Contractor:
- 41.6.1 there is a material deterioration of its financial standing;
 - 41.6.2 the appointment of an administrator or receiver;
 - 41.6.3 late filing of statutory accounts with Companies House;
 - 41.6.4 it issues a profits warning or other similar public announcement about a deterioration in its finances or prospects;
 - 41.6.5 it is being publicly investigated for improper financial accounting and reporting, fraud or any other financial impropriety;
 - 41.6.6 it commits a material breach of covenant to its lenders;
 - 41.6.7 a key Sub-Contractor not being paid any sums properly due under a specified invoice that is not subject to a genuine dispute;
 - 41.6.8 it is subject to any claims, litigation, investigations, actions or decisions in respect of financial indebtedness;
- 41.7 In the event of a Financial Distress Event occurring, then the Supplier shall and shall procure that any affected key Sub-Contractor shall, as soon as reasonably practicable review the effect of the Financial Distress Event on the continued performance of the Services under this Contract and provide a report to the Authority. Where the Authority reasonably believes that the Financial Distress Event is likely to adversely impact on the performance of the Services, the Supplier shall submit to the Authority for Approval a Financial Distress Service Continuity Plan as soon as is reasonably practicable and shall provide any further financial information as the Authority may reasonably require to assess financial standing and risks.
- 41.8 If the Authority acting reasonably considers that the Financial Distress Service Continuity Plan is insufficient to remedy the effects of the Financial Distress Event on the Service, then it may require the Supplier (and/or key Sub-Contractor) to redraft and resubmit an improved and updated plan or may require the issue to be escalated via the Dispute Resolution Procedure.
- 41.9 If the Authority Approves the Financial Distress Service Continuity Plan, then the Supplier shall execute and continue to review the plan (with submissions to the Authority for Approval where it is updated).
- 41.10 Where the Parties agree that the Financial Distress Event no longer adversely affects the delivery of the Services, the Supplier shall be relieved of its obligations in respect of the current Financial Distress Service Continuity Plan.
- 41.11 the Authority shall be entitled to terminate this Contract for material Default if:
- 41.11.1 The Supplier fails to notify the Authority of a Financial Distress Event in accordance with Clause 41.6;
 - 41.11.2 the Authority and the Supplier fail to agree a Financial Distress Service Continuity Plan or any updates to a plan within a reasonable timescale (taking into account the effects of the Financial Distress Event on the Services);
 - 41.11.3 The Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan or any updates to the plan.

42. FORCE MAJEURE

- 42.1 Subject to the remainder of this Clause 42, a Party may claim relief under this Clause 42 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.
- 42.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 42.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 42 to the extent that consequences of the relevant Force Majeure Event:
- 42.3.1 are capable of being mitigated by any of the provision of any Services but the Supplier has failed to do so; and/or

42.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract.

42.4 Subject to the Authority's right to terminate set out in Clause 42.5, the Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

42.5 Where the Authority receives a Force Majeure Notice, from the date of receipt of the Force Majeure Notice, the Authority may, at its sole discretion, either suspend this Contract for a period of up to six (6) months ("the Suspension Period") or terminate this Contract forthwith.

42.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

42.7 Relief from liability for the Affected Party under this Clause 42 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 42.6.

42.8 If by the end of the Suspension Period the Parties have not agreed a further period of suspension or re-instatement of the Contract, this Contract shall terminate automatically.

43. TERMINATION WITHOUT DEFAULT OF THE SUPPLIER

43.1 The Authority may, at its sole discretion, terminate this Contract, at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice (unless stated differently in Section 4 (Statement of Service Requirement)).

44. TERMINATION WITH DEFAULT OF THE SUPPLIER

44.1 The Authority may terminate this Contract for material Default by issuing a Termination Notice to the Supplier where:

44.1.1 any representation or warranty given by the Supplier pursuant to Clause 2 (Representations and Warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority are acceptable;

44.1.2 the Authority expressly reserves the right to terminate this Contract for material Default;

44.1.3 the Supplier commits any material Default of the Contract which is not, in the reasonable opinion of the Authority, capable of remedy; and/or

44.1.4 the Supplier commits a Default, including a material Default, which in the opinion of the Authority is remediable but has not remedied such Default to the satisfaction of the Authority in accordance with the Rectification Plan Process.

44.2 For the purpose of Clause 44.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

44.3 the Authority may, without prejudice to its other rights, including but not limited to the right to claim for Losses incurred, issue a Termination Notice where:

44.3.1 the Supplier or any Supplier Personnel, either directly or through their servants or agents or Sub-Contractors breaches any of their obligations under this Contract; or

44.3.2 the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf has committed an offence under the Bribery Act 2010 or the Terrorism Act 2000 in breach of Clauses 35 or 36 of this Contract; or

44.3.3 the Authority has the right to terminate under Clause 38.3.2; or

44.3.4 the Supplier is an individual or a partnership and at any time:

(a) becomes bankrupt; or

(b) is the subject of a receiving order or administration order; or

(c) makes any composition or arrangement with or for the benefit of the Supplier's creditors; or

- (d) makes any conveyance or assignment for the benefit of the Supplier's creditors; or
 - (e) the warranty given by the supplier pursuant to Clause 24 (Tax Compliance) is materially untrue; or
 - (f) the Supplier commits a material breach of its obligation to notify the Authority of any Occasion of Tax Non Compliance as required by Clause 24 (Tax Compliance); or
 - (g) the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Authority, are acceptable; or
- 44.3.5 the Supplier is a company and:
- (a) an order is made or a resolution is passed for the winding up of the Supplier; or
 - (b) a receiver or administrator is appointed in respect of the whole or any part of the undertaking of the Supplier; or
- 44.3.6 the Supplier is a partnership or a company and there is a Change of Control.
- 44.3.7 there is an occurrence of any of the statutory provisos contained in Regulation 73(1)(a)-(c) of the Regulations.
- 44.4 Where this Contract is terminated in accordance with this Clause 44, the Supplier shall without prejudice to the Authority's other remedies, take any steps necessary to terminate the provision of the Services in a timely and orderly manner and in compliance with Clause 16 (Exit Management) but shall not be entitled to any further payment in relation to this Contract.

45. PARTIAL TERMINATION, SUSPENSION & PARTIAL SUSPENSION

- 45.1 Where the Authority has the right to terminate this Contract, the Authority shall be entitled to terminate or suspend all or part of this Contract provided always that, if the Authority elects to terminate or suspend this Contract in part, the parts of this Contract not terminated or suspended can, in the Authority's reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Contract.
- 45.2 Any suspension of this Contract under Clause 45.1 shall be for such period as the Authority may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Authority.
- 45.3 The Parties shall seek to agree the effect of any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the procedure set out in Clause 38 (Variation), including the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Charges, provided that the Supplier shall not be entitled to:
- 45.3.1 an increase in the Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of the Authority's termination rights under Clause 44 (Termination With Default of the Supplier) except Clause 43 (Termination Without Default of the Supplier); and
 - 45.3.2 reject the Variation.

46. CONSEQUENCES OF EXPIRY OR TERMINATION

- 46.1 Where this Contract has been terminated pursuant to Clause 43 (Termination Without Default of the Supplier), the Supplier shall:
- 46.1.1 take such steps as are necessary to terminate the provision of the Services or any part of the Services (including suspending or terminating any Sub-Contracts) in a cost-effective, timely and orderly manner;
 - 46.1.2 act in accordance with Clause 16 (Exit Management); and
 - 46.1.3 provide to the Authority, not more than 60 days after the Authority notifies the Supplier of the termination of this Contract an account in writing with detailed supporting evidence, stating:
 - (a) any costs, if any, due before the date of termination, which cannot be avoided by the Supplier using reasonable endeavours; and
 - (b) costs to be expended after the date of termination which the Supplier necessarily incurred in the proper performance of this Contract and which the Supplier cannot reasonably avoid or recover using reasonable endeavours;

and, subject to Approval, the Authority shall pay such amount stated pursuant to Clause 46.1.3 to the Supplier within 30 days of receipt from the Supplier of a Valid Invoice in respect of the amount due.

- 46.2 Where this Contract is terminated under Clause 44 (Termination with Default of the Supplier) and the Authority makes other arrangements for the provision of Services the Authority may recover from the Supplier pursuant to Clause 19 (Retention and Set Off) or otherwise, the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term provided that the Authority shall take all reasonable steps to mitigate such additional expenditure.
- 46.3 Where this Contract is terminated for any reason, save as expressly provided in this Contract:
- 46.3.1 termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- 46.3.2 termination of this Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under Clauses 14, 15, 16, 17, 18, 20, 21, 24, 27, 28, 29, 30, 31, 32, 34, 35, 44, 45, 49 and 54, and the provisions of Schedule 2 (Staff Transfer) of this Section 2 and any relevant clauses listed under Section 4 (Statement of Service Requirement), and, without limitation to the foregoing, any other provision of this Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the Expiry Date.

MISCELLANEOUS & GOVERNING LAW

47. DISPUTE MANAGEMENT PROCEDURE

- 47.1 The Parties will attempt in good faith to negotiate a settlement to any Dispute between them arising out of or in connection with this Contract. If the matter is not resolved by negotiation within 45 days of when either Party first made contact in respect of the same, the Parties will refer the Dispute to mediation in accordance with CEDR (Centre for Effective Dispute Resolution in London, UK) procedures. If the parties fail to agree terms of settlement within 90 days of the initiation of the procedure the Dispute may be referred to an arbitrator as agreed between the parties or failing such agreement as may be nominated by the President of the Law Society of England and Wales upon application of any Party. The initiation of the procedure is defined as the written request to CEDR by any Party for mediation provided that such request is copied to the other Party.
- 47.2 The decision of the arbitrator shall be final and binding on both Parties.
- 47.3 The seat and place of arbitration shall be London.

48. PREVENTION OF FRAUD & BRIBERY

- 48.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, any person acting on their behalf, have at any time prior to the Commencement Date:
- 48.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- 48.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 48.2 The Supplier, Supplier Personnel, or any person acting on their behalf shall not during the Term:
- 48.2.1 commit a Prohibited Act; and/or
- 48.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, suppliers, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 48.3 The Supplier shall during the Term:
- 48.3.1 establish, maintain and enforce, and require that its Supplier Personnel establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- 48.3.2 keep appropriate records of its compliance with its obligations under Clause 48.3.1 and make such records available to the Authority on request.
- 48.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 48.1 and/or Clause 48.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:
- 48.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

- 48.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 48.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 48.5 The Supplier warrants and represents to the Authority that to the best of its knowledge, that neither the Supplier, Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf:
- 48.5.1 has given, offered or agreed to give or accepted, any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do any act in relation to the obtaining or execution of any contract or for showing or forbearing to show favour or disfavour to any person or entity in relation to any contract; or
- 48.5.2 has entered into any contract in connection with which commission has been paid or agreed to be paid by or to the Supplier or Supplier Personnel or on their behalf or to their knowledge unless, before such contract was made, particulars of any such commission and of the terms of any agreement for the payment of such commission were disclosed in writing to the Authority, whose written consent was subsequently given to such payment.
- 48.6 Neither the Supplier or the Supplier Personnel or any person acting on their behalf shall accept for their own benefit or pass on for the benefit of partner government, recipient or end user, any trade commission, discount, voucher scheme, re-sale or similar payment or benefit in connection with this Contract.
- 48.7 Where the Supplier or Supplier Personnel, or any person acting on their behalf, does any of the acts mentioned in Clause 48.5 or commits any offence under the Bribery Act 2010, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
- 48.7.1 to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any Losses resulting from the termination;
- 48.7.2 to recover from the Supplier the amount or value of any such gift, consideration or commission;
- 48.7.3 to recover from the Supplier any other Losses sustained as a result of any breach of this Clause 48, whether or not the Contract is terminated.
- 48.8 The Authority, the Supplier and the Supplier Personnel shall immediately and without undue delay inform each other of any event that interferes or threatens to materially interfere with the successful delivery of the Services, whether financed in full or in part by the Authority, including credible suspicion of/or actual fraud, bribery, corruption or any other financial irregularity or impropriety.

The Authority has an Anti-Fraud & Corruption Unit (AFCU), which should be contacted in the first instance at afcu@fco.gov.uk or +44(0)7771 573944 / +44(0)7881 249938. All suspicions will be treated with the utmost confidentiality.

49. ANTI-TERRORISM REGULATIONS

- 49.1 In accordance with the Terrorism Act 2000 and all subsequent regulations pursuant to this Act, the Supplier will assure itself to the best of its knowledge that UK funding, including financial assets or economic resources is not made available, either directly or indirectly to, or for the benefit of persons, groups or entities listed in accordance with European Council Regulation EC/2580/2001 (as amended) and/or the Terrorism (United Nations Measures) Orders 2009 of the United Kingdom, or contravene the provisions of those and any subsequent applicable terrorism legislation.
- 49.2 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf, have at any time prior to the Commencement Date and/or during the term of this Contract appeared on the Home Office Proscribed Terrorist Organisations List.
- 49.3 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 49.1 and/or Clause 49.2, or has reason to believe that it has or any Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf have:
- 49.3.1 been subject to an investigation or prosecution which relates to an alleged infringement of Clause 49.1 and/or Clause 49.2;
- 49.3.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts.
- 49.4 Where the Supplier or any of his employees, servants, agents or Sub-Contractors, or any person acting on their behalf, breaches any of the acts mentioned in Clause 49.1 and/or Clause 49.2 commits any offence under the Terrorism Act 2000, with or without the knowledge of the Supplier, in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
- 49.4.1 to terminate the Contract with immediate effect by written notice to the Supplier and recover from the Supplier the amount of any loss resulting from the termination;

49.4.2 to recover from the Supplier any other loss sustained as a result of any breach of this Clause 49, whether or not the Contract has been terminated.

50. SAFEGUARDING

50.1 For the purposes of this Clause 50, “Reasonable Measures” shall mean:

all reasonable endeavours expected to be taken by a professional and prudent supplier in the Supplier’s industry to eliminate or minimise risk of actual, attempted or threatened exploitation, abuse and harassment (including Sexual Abuse, Sexual Exploitation and Sexual Harassment) and whether or not such conduct would amount to a criminal offence in the United Kingdom or an offence under the laws of the territory in which it takes place (together “Serious Misconduct”) as is reasonable and proportionate under the circumstances. Such endeavours may include (but shall not be limited to):

- (a) clear and detailed policies and guidance for Supplier Personnel, Supplier Providers and where appropriate, beneficiaries;
- (b) developing, implementing and maintaining a safeguarding plan throughout the term (including monitoring);
- (c) provision of regular training to Supplier Personnel, Supplier Providers and where appropriate, beneficiaries;
- (d) clear reporting lines and whistleblowing policies in place for Supplier Personnel, Supplier Providers and beneficiaries;
- (e) maintaining detailed records of any allegations of Serious Misconduct and regular reporting to the Authority and the Appropriate Authorities (where relevant) of any such incidents;
- (f) any other Good Industry Practice measures (including any innovative solutions);

50.2 The Supplier shall take all Reasonable Measures to prevent Serious Misconduct by the Supplier Personnel or any other persons engaged and controlled by it to perform any activities under this Agreement (“Supplier Providers”) and shall have in place at all times robust procedures which enable the reporting by beneficiaries, Supplier Providers, and Supplier Personnel of any such Serious Misconduct, illegal acts and/or failures by the Supplier or Supplier Personnel to investigate such reports.

50.3 The Supplier shall take all Reasonable Measures to ensure that the Supplier Personnel and Supplier Providers do not engage in sexual activity with any person under the age of 18, regardless of the local age of majority or age of consent or any mistaken belief held by the Supplier Personnel or Supplier Provider as to the age of the person. Furthermore, the Supplier shall ensure that the Supplier Personnel and Supplier Providers do not engage in ‘transactional sex’ which shall include but not be limited to the exchange of money, employment, goods, or services for sex and such reference to sex shall include sexual favours or any form of humiliating, degrading or exploitative behaviour on the part of the Supplier Personnel and the Supplier Providers. For the avoidance of doubt, such ‘transactional sex’ shall be deemed to be Serious Misconduct in accordance with Clause 50.1.

50.4 The Supplier shall promptly report in writing any complaints, concerns and incidents regarding Serious Misconduct or any attempted or threatened Serious Misconduct by the Supplier Personnel and Supplier Providers to the Authority, including the Authority’s Anti-Fraud and Corruption Unit (AFCU) at afcu@fco.gov.uk or on +44(0)7771 573944 / +44(0)7881 249938, and where necessary, the Appropriate Authorities.

50.5 The Supplier shall fully investigate and document all cases or potential cases of Serious Misconduct and shall take appropriate corrective action to reduce the risk and/or eliminate Serious Misconduct being committed by the Supplier Personnel and Supplier Providers (which may include disciplinary action, termination of contracts etc.), such investigations and actions to be reported to the Authority as soon as is reasonably practicable.

50.6 The Supplier shall not engage as Supplier Personnel or Supplier Provider for the purposes of the Services any person whose previous record or conduct known to the Supplier (or reasonably ought to be known by a diligent supplier which undertakes the appropriate checks) indicates that they are unsuitable to perform the Services and/or where they represent an increased and unacceptable risk of committing Serious Misconduct.

50.7 The Supplier shall comply with all applicable laws, legislation, codes of practice and government guidance in the UK and additionally, in the territories where the Services are being performed, relevant to safeguarding and protection of children and vulnerable adults, which the Supplier acknowledges may include vetting of the Supplier Personnel by the UK Disclosure and Barring Service in respect of any regulated activity performed by the Supplier Personnel (as defined by the Safeguarding Vulnerable Groups Act 2006 (as amended)) and/or vetting by a local equivalent service. Where the Authority reasonably believes that there is an increased risk to safeguarding in the performance of the Services, the Supplier shall comply with any reasonable request by the Authority for additional vetting to be undertaken.

50.8 Failure by the Supplier to:

50.8.1 put in place preventative measures to eliminate and/or reduce the risk of Serious Misconduct; or

50.8.2 fully investigate allegations of Serious Misconduct; or

50.8.3 report any complaints to the Authority and where appropriate, the relevant authorities (including law enforcement)

shall be a material Default of this Contract and shall entitle the Authority to terminate this Contract with immediate effect.

50.9 Where the Supplier (acting reasonably) considers in a particular case that it is unable fully to comply with one or more of the obligations in Clause 50 as a result of the operation of legally binding provisions relating to the protection of personal data, human

rights or employment rights (or equivalent provisions in the relevant territory), the Supplier shall notify the Authority without undue delay (providing all such information as the Authority may reasonably request) and the Parties shall meet and commence good faith negotiations to amend Clause 50 (with effect only in relation to that particular case) so that, as amended, the Supplier is able to comply with it in a manner that achieves the Parties' original intention.

51. DISCRIMINATION

- 51.1 The Supplier shall not unlawfully discriminate either directly or indirectly against protected characteristics such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010, the International Development (Gender Equality) Act 2014 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 51.2 The Supplier shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission. The Supplier shall take all reasonable steps to secure the observance of these provisions and codes of conduct by all suppliers, employees or agents of the Supplier and all suppliers and Sub-Contractors employed in the execution of this Contract.
- 51.3 The Supplier will comply with any request by the Authority to assist the Authority in meeting its obligations under the Equality Act 2010 and to allow the Authority to assess the Supplier's compliance with its obligations under the Equality Act 2010.
- 51.4 Where any investigation is concluded or proceedings are brought under the Equality Act 2010 which arise directly or indirectly out of any act or omission of the Supplier, its agents or Sub-Contractors, or Supplier Personnel, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier will indemnify the Authority with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Authority may have been ordered or required to pay to a third party.

52. LAW & JURISDICTION

- 52.1 This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

53. ENVIRONMENTAL REQUIREMENTS

- 53.1 The Supplier shall provide the Services and any goods & equipment required under the Contract in accordance with applicable national and international laws, including those of the country or countries in which the Services or goods & equipment are to be provided, and the Authority's environmental operations policy, which is to conserve energy, water and other resources, reduce waste, phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 53.2 The Supplier shall work with the Authority and the populations that are potentially affected by its operations under the Contract regarding any environmental issues that could affect the sustainable development provisions of the International Development Act (2002), comply with special conditions as stipulated in the Statement of Service Requirement in any Call-Off Contract, and carry out any reasonable additional request to ensure the protection of the environment, society and the economy throughout the contract period.
- 53.3 The Supplier shall ensure it has the requisite expertise and controls to identify and mitigate all factors that may affect compliance with the conditions outlined in Clauses 53.1 and 53.2 as a result of its own operations or those of Sub-Contractors working on its behalf.
- 53.4 The Supplier shall promptly notify the Authority of any changes in potential material adverse effects from its operations under the Contract and of the occurrence of any incident or accident related to the Project that has or is likely to have a significant adverse effect on the environment.
- 53.5 Nothing in Clauses 53.1 to 53.3 shall relieve the obligations of the Supplier to comply with its statutory duties and Good Industry Practice.

54. CONFLICT OF INTEREST

- 54.1 Neither the Supplier nor any of the Supplier Personnel shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to this Contract.
- 54.2 The Supplier and the Supplier Personnel shall notify the Authority immediately of any actual or potential conflict together with recommendations as to how the conflict can be avoided.
- 54.3 The Supplier shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between Services undertaken for the Authority and that undertaken for other clients. The Supplier shall avoid knowingly committing any acts which are likely to result in any allegation of impropriety against the Authority, including conflicts of interest which are likely to prejudice their independence and objectivity in performing the Contract, howsoever arising.

- 54.4 The Supplier shall notify the Authority immediately of any circumstances of which it becomes aware which give rise or potentially give rise to a conflict with the Services and shall advise the Authority of how they intend to avoid such a conflict arising or remedy such situation. The Supplier shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Supplier's cost) that the Authority may request of the Supplier in order to avoid or resolve a conflict of interest and shall ensure that at all times they work together with the Authority with the aim of avoiding a conflict or remedy a conflict.
- 54.5 Pursuant to Clause 54.4, the Authority shall have the right to require that the Supplier puts in place Ethical Walls and will ensure and satisfy the Authority that all information relating to the Contract and to the Services (including all working papers, draft reports in both tangible and intangible form) are not shared or made available to person(s) other than Supplier Personnel and that such matters are not discussed by any person(s) other than Supplier Personnel.
- 54.6 In the event of a failure to maintain the Ethical Walls as described above arising during the course of this Contract, the Authority reserves the right to immediately terminate the Contract on giving written notice to the Supplier.

55. WAIVER

- 55.1 A waiver of any of the terms and/or conditions of this Contract shall be valid only where it is agreed expressly in writing and signed by the parties. No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

56. ENTIRE AGREEMENT

- 56.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Clause 56.1 shall not exclude liability in respect of any fraudulent misrepresentation.
- 56.2 The Supplier is not the agent of the Authority and has no authority to represent and shall not purport to represent or enter into any commitments on behalf of the Authority in any respect.
- 56.3 Nothing in this Contract is intended to make nor shall it make the Authority the employer of the Supplier or any of the Supplier Personnel.
- 56.4 All communications by the Supplier relating to the Contract must be addressed to the Authority's Contract Officer whose name and address is given in Section 4 (Statement of Service Requirement).

57. 3RD PARTY RIGHTS

- 57.1 The provisions of paragraphs 2.1 and 2.6 of Part A, paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, paragraphs 2.1 and 2.3 of Part C and paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 2 (Staff Transfer) (together the "Third Party Provisions") confer benefits on persons named in such provisions other than the Parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 (CRTPA).
- 57.2 Subject to Clause 57.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 57.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 57.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 57.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

58. NOTICES

- 58.1 Except as otherwise expressly provided within this Contract, any notices sent under this Contract must be in writing. For the purpose of this Clause 58, an e-mail is accepted as being "in writing".
- 58.2 Subject to Clause 58.3, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email (Subject to Clauses 58.3 and 58.4)	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message

Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm)	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 58.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in Clause 58.2:
- 58.3.1 any Termination Notice (Clause 43 (Termination Without Default of the Supplier) and Clause 44 (Termination With Default of the Supplier)); and
- 58.3.2 any notice in respect of:
- (a) partial termination, suspension or partial suspension (Clause 44 (Partial Termination, Suspension and Partial Suspension)),
 - (b) waiver (Clause 55 (Waiver)); or
 - (c) Default.
- 58.4 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 58.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 58.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 58.5 Clause 58 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 58.6 For the purposes of Clause 58, the address and email address of each Party shall be as specified in Section 1 Form of Contract).

FRAMEWORK PROVISIONS

59. SCOPE OF FRAMEWORK ARRANGEMENT

- 59.1 The Framework Agreement governs the relationship between the Authority and the Supplier in respect of the provision of Services and/or Goods by the Supplier to the Contracting Authority.
- 59.2 Any Contracting Authority may at their absolute discretion and from time to time order Services and/or Goods from the Supplier in accordance with the Ordering Procedure during the Term.
- 59.3 The Supplier acknowledges that there is no obligation for a Contracting Authority to purchase any Services and/or Goods from the Supplier during the Term.
- 59.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Contracting Authority in respect of the total quantities or values of the Services and/or Goods to be ordered by it pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

60. NON-EXCLUSIVITY

- 60.1 The Supplier acknowledges that, in entering the Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for services and/or Goods from the Supplier and that the Contracting Authority is at all times entitled to enter into other contracts and agreements with other contractors for the provision of any of the services and/or goods.

61. AWARD PROCEDURES FOR FRAMEWORK AGREEMENTS

Direct Awards

- 61.1 Where the Invitation to Tender allows for a Contracting Authority to award without re-opening competition (a direct award) a Contracting Authority shall, when ordering Services and/or goods:
- 61.1.1 Identify the relevant Services and/or goods;

- 61.1.2 (Where there is more than one Supplier) select the Supplier in accordance with the method set out in the Invitation to Tender, or where the Invitation to Tender does not specify a selection method, identify the Supplier who offers best value for money for those Services and/or goods on the basis of the price(s) submitted by the Supplier in its Tender and who is able to fulfil the Order within the time specified;
- 61.1.3 (Subject to Clause 61.2 below) place an Order with the successful Supplier which:-
- (a) States the requirements;
 - (b) Identifies the Services and/or goods;
 - (c) States the price payable in accordance with the Tender submitted by the successful Supplier; and
 - (d) Incorporates Call-Off Specific Terms and Conditions.

Mini Competition

- 61.2 Where there is more than one Supplier appointed under the Framework and the Invitation to Tender so specifies, a Contracting Authority shall, prior to placing an Order:
- 61.2.1 Identify the Suppliers capable of performing the Call-Off Contract for the Contracting Authority's requirements;
 - 61.2.2 Supplement and refine the Call-Off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance where applicable;
 - 61.2.3 Invite tenders by conducting a mini-competition for its requirements in accordance with the Invitation to Tender, the Regulations and Guidance and in particular:
 - (a) Confirm prior to the mini-competition whether or not the Contracting Authority intends to follow this with an electronic auction or use the mini-competition alone. Should this be the case the Contracting Authority shall provide all Suppliers with full details prior to the e-auction including but not limited to how the e-auction is to be conducted and the outcome of the mini-competition;
 - (b) Consult in writing all the Suppliers capable of performing the Call-Off Contract and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;
 - (c) Set a time limit for the receipt by it of the tenders; and
 - (d) Keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.
 - 61.2.4 Apply the Call-Off Award Criteria, including where relevant in any pricing the consideration of any and all additional cost(s) to the Contracting Authority to the Suppliers' compliant tenders submitted through the mini-competition as the basis of its decision to award a Call-Off Contract for its requirements.
- 61.3 The Supplier agrees that all tenders submitted by the Supplier in relation to a mini-competition held pursuant to Clause 61.2 shall remain open for acceptance for ninety (90) days (or such other period specified in the invitation issued by the Contracting Authority in accordance with the Ordering Procedure).
- 61.4 Notwithstanding the fact that a Contracting Authority has followed the procedure set out above in this Clause 61 (AWARD PROCEDURES FOR FRAMEWORK AGREEMENTS), a Contracting Authority shall be entitled at all times to decline to make an award. Nothing in this Framework Agreement shall oblige the Council or any Contracting Authority to place any Order.

Form of Order

- 61.5 Subject to Clause 61 (AWARD PROCEDURES FOR FRAMEWORK AGREEMENTS), a Contracting Authority may place an Order with the Supplier by serving an Order Form in writing in such form agreed with the Supplier including systems of ordering involving facsimile, electronic mail or other on-line solutions.
- 61.6 The Order constitutes an offer by a Contracting Authority to purchase the Services and/or goods subject to the overarching Terms and Conditions of the Framework and any special Call-Off Terms and Conditions applied by the Contracting Authority.

Accepting and Declining Orders

- 61.7 Following receipt of an Order, the Supplier shall promptly, and in any event within a reasonable period determined by the Contracting Authority and notified to the Supplier in writing at the same time as the submission of the Order (which in any event shall not exceed three (3) Working Days), acknowledge receipt of the Order and either:-
- 61.7.1 Notify the Contracting Authority in writing that it declines to accept the Order; or
 - 61.7.2 Notify the Contracting Authority in writing that it accepts the Order.
- 61.8 If the Supplier:-
- 61.8.1 Notifies the Contracting Authority that it declines to accept an Order; or
 - 61.8.2 The time-limit referred to in Clause 61.7 has expired;
- then the offer from the Contracting Authority to the Supplier shall lapse and the Contracting Authority may offer that Order to the Supplier that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria

or, if there is only one Supplier appointed under the Framework Agreement, or there is no other capable supplier, the Contracting Authority may make alternative arrangements for the provision of the Services and/or goods.

61.9 The Supplier in agreeing to accept such an Order pursuant to Clause 61.7 above shall enter a Call-Off Contract with the Contracting Authority for the provision of Services and/or goods referred to in that Order. A Call-Off Contract shall be formed on the Contracting Authority's receipt of the written confirmation of acceptance of the Order provided by the Supplier (or such similar or analogous form agreed with the Supplier) pursuant to Clause 61.7.2.

62. CALL-OFF CONTRACT PERFORMANCE

62.1 The Supplier shall perform all Call-Off Contracts entered into with a Contracting Authority in accordance with:-

62.1.1 The requirements of this Framework Agreement; and

62.1.2 Any special Call-Off Terms and Conditions applied to respective Call-Off Contracts.

62.1.3 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement, the Call-Off Terms and Conditions, and any Special Terms and Conditions, the application of the Conditions shall prevail in the following order:

- Special Terms and Conditions
- Call-Off Terms and Conditions
- Framework Agreement.

SCHEDULE 1: DEFINITIONS

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below:

"Affected Party" the Party seeking to claim relief in respect of a Force Majeure Event;

"Affiliate" in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

"Agreement" and **"Framework Agreement"** Means the agreement between the Authority and each Contractor which sets out the terms governing Call-Off Contracts to be awarded during the Term and which incorporates:

- The Framework Terms and Conditions;
- The Invitation to Tender; and
- The Tender;

"Appropriate Authorities" means any and/or all of (as may be relevant under the circumstances) the UK government bodies and/or government bodies/agencies in the territory where Serious Misconduct may have or is suspected of having taken place, which have responsibility for safeguarding, recording, investigating, enforcing and/or determining allegations of Serious Misconduct and which may include (but shall not be limited to), the Authority, the National Crime Agency, UK Police force, local territory police forces, and social services.

"Approval" means the prior written consent of the Authority and **"Approve"** and **"Approved"** shall be construed accordingly;

"Auditor" means:

- (a) the Authority's internal and external auditors;
- (b) the Authority's statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Authority to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above.

"Authority Background IPR" means:

- a) IPRs owned by the Authority before the Commencement Date, including IPRs contained in any of the Authority's know-how, documentation, software, processes and procedures;
- b) IPRs created by the Authority independently of this Contract; and/or
- c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;

"Authority Data" means (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of the Authority; or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or (b) any Personal Data for which the Authority is the Data Controller.

"Authority System" the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Contract which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;

"Call-Off Contract" means the legally binding agreement (made pursuant to the provisions of the Framework Agreement) for the provision of Services and/or Goods made between a Contracting Authority and the Supplier comprising:

- (i) The Order Form;
- (ii) The Call-Off Terms and Conditions;
- (iii) Any Special Terms and Conditions; and
- (iv) The Tender

"Central Government Body" a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"Change of Control" means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

"Charges" means the charges raised under or in connection with this Contract from time to time, which shall be calculated in a manner that is consistent with Section 3 (Schedule of Prices) and the eligible cost guidance:

(a) Include the following costs:

- i) the cost to the Supplier, calculated per Man Day, of engaging the Supplier Personnel, including:
 - (A) base salary paid to the Supplier Personnel;
 - (B) employer's national insurance contributions;
 - (C) pension contributions;
 - (D) car allowances;
 - (E) any other contractual employment benefits;
 - (F) staff training;
 - (G) work place accommodation;
 - (H) work place IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (ii) below); and
 - (I) reasonable recruitment costs by agreement with the Authority;
- ii) costs incurred in respect of any Supplier assets which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier assets by the Supplier to the Authority or (to the extent that risk and title in any Supplier asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier assets;
- iii) operational costs which are not included within (i) or (ii) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Services; and

(b) not include the following costs:

- i) overhead;
- ii) financing or similar costs;
- iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term whether in relation to Supplier assets or otherwise;
- iv) taxation;
- v) fines and penalties;
- vi) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"Commencement Date" means the date identified in Section 1 Form of Contract.

"Commercially Sensitive Information" the information listed in Section 4 (Statement of Service Requirement) comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business of which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage of material financial loss.

"Confidential Information" means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of either party, including all intellectual property rights, together with all information derived from any of the above, and any other information clearly being designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.

"Contract" means this Framework Agreement between the Authority and the Supplier, and any **Call-Off Contract** made pursuant to this Framework Agreement.

"Contract Amendment Letter" means the form set out in Appendix A.

"Contract Officer" means the person named in Section 4 who is responsible for all contractual aspects of the Contract.

"Contracting Authority" means any contracting authority as defined in Statutory Instrument 2015 No. 102 - Public Procurement - The Public Contracts Regulations 2015.

"Contracts Finder" means the Government's publishing portal for public sector procurement opportunities

"Control" means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;

“Controller”, “Processor”, “Data Subject”, “Personal Data”, “Personal Data Breach”, “Data Protection Officer” take the meaning given in the GDPR;

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

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

“Data Protection Legislation” means

- (a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;
- (b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;
- (c) all applicable Law about the processing of personal data and privacy;

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

“Default” means any breach of the obligations of the Supplier (including but not limited to including abandonment of this Contract in breach of its terms) or any other default (including material Default), act, omission, negligence or statement of the Supplier, of the Supplier Personnel howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Authority;

“Delivery Chain” means all of the Supplier’s Sub-Contractors, Supplier Providers and partners involved in delivering a specific good, service or change for the purposes of the Services provided under this Agreement, down to the end beneficiary;

“Dispute” any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Variation Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

“Dispute Resolution Procedure” means the dispute resolution procedure set out in Clause 47;

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

“DPA 2018” means the Data Protection Act 2018;

“Employee Liabilities” means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Authority or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
- g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;

“Employment Business” means an employment agency is an organization which matches employers to employees. In all developed countries there is a publicly funded employment agency and multiple private businesses which also act as employment agencies.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations;

“Ethical Walls” means a process for avoiding conflicts of interest by limiting disclosure of information to certain individuals within an organisation, thereby building a metaphorical wall between the holders of information and colleagues who represent interests or hold opinions which conflict.

“Euro Compliant” means that:

- (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority’s business;
- (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and
- (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):
 - (a) be able to perform all such functions in any number of currencies and/or in euros;
 - (b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;
 - (c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
 - (d) incorporate protocols for dealing with rounding and currency conversion;
 - (e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and
 - (f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority’s normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK.

“Equipment” means any equipment, computer hardware or software, materials, goods and vehicles and associated services necessarily required for the implementation of the Services, which the Supplier cannot reasonably be expected to provide, which are financed or provided by the Authority for use by the Supplier.

“Exit Management” services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier.

“Exit Plan” the plan produced and updated by the Supplier during the Term in accordance with Statement of Service Requirement and Clause 16;

“Expiry Date” means:

- (a) the end date of the Initial Period or, if exercised, the end date of any Extension Period; or
- (b) if this Contract is terminated before the date specified in (a) above, the earlier date of termination of this Contract;

“Extension Period” means such period or periods up to a maximum of the number of years in total as may be specified by the Authority, pursuant to Clause 4.2 and in Section 4 (Statement of Service Requirement);

“Financial Limit” means the amount specified in Section 1 (Form of Contract) and is the maximum amount of Charges paid by the Authority and which the Authority has agreed are duly payable under this Contract for the receipt of the Services.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation.

“Force Majeure Event” any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel, servants, agents or Sub-Contractors, or any person acting on their behalf or any other failure in the Supplier’s or a Sub-Contractor’s supply chain;

“Force Majeure Notice” a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

“Former Supplier” means a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such supplier (or any Sub-Contractor of any such Sub-Contractor);

“Framework” Means the overarching arrangement whereby the Authority seeks to appoint one of more Contractors as a potential supplier of the Goods and/or Services as described in the Invitation to Tender.

“Framework Terms and Conditions” Means the terms and conditions set out in this agreement and all the Schedules to this Agreement;

“**GDPR**” means the General Data Protection Regulation (*Regulation (EU) 2016/679*);

“**General Anti-Abuse Rule**” means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

“**Good Industry Practice**” at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

“**Halifax Abuse Principle**” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“**HM Government Cyber Essentials Scheme**” means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>.

“**IATI**” means the International Aid Transparency Initiative standard and is a technical publishing framework allowing data to be compared. It is designed to report forward-looking aggregate budget information for the reported organisations, and planned future budgets to recipient institutions or countries.

“**ICT Environment**” means the Authority System and the Supplier System;

“**Information**” has the meaning given under Section 84 of the Freedom of Information Act 2000; including all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

“**Initial Period**” means the initial term of this Contract from the Commencement Date to the end date of the initial term stated in Section 4 (Statement of Service Requirement);

“**Intellectual Property Rights**” or “**IPRs**” means

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semiconductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

“**IPR Claim**” means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR, used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority (including any claims arising from the publication of the Project Specific IPRs as open source) in the fulfilment of its obligations under this Contract

“**ITT**” means the Authority’s Invitation to Tender for this Framework Agreement or pursuant Call-Off Contract;

“**Joint Controller**” means where two or more Controllers jointly determine the purposes and means of processing (and “**Joint Control**” shall be construed accordingly);

“**Joint Controller Agreement**” means an agreement between Joint Controllers, in accordance with Article 26 of the GDPR, which shall be based on the terms outlined at Annex A – Part 3: Schedule for Joint Controller Agreements (Schedule Y) of PPN 02/18;

“**Key Personnel**” means the individuals (if any) identified as such in Section 4 (Statement of Service Requirement);

“**Key Performance Indicators**” or “**KPIs**” means a set of quantifiable measures that the Authority and Supplier will use to measure the performance of the Services provided by the Supplier under the Contract (as defined in the Call-off Statement of Service Requirement).

“**Law**” means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

“**LED**” means the Law Enforcement Directive (*Directive (EU) 2016/680*);

“**Licensed Software**” all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Authority for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;

“**Losses**” means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and “**Loss**” shall be interpreted accordingly;

“Malicious Software” any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Man Day” means 7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;

“Man Hours” means the hours spent by the Supplier Personnel properly working on the provision of the Services including time spent travelling (other than to and from the Supplier's offices) but excluding lunch breaks;

“Milestone” an event or task described in the Statement of Requirement of a Call-Off Contract pursuant to this Framework which, if applicable, shall be completed by the relevant Milestone Date;

“Milestone Payment” a payment identified in Section 3 to be made following the issue of a Milestone Achievement Certificate;

“Occasion of Tax Non-Compliance” means:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - vii) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - viii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud evasion.

“Open Book Data” means complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the Term, including details and all assumptions relating to:

- (a) the Supplier's Costs broken down against each Service and/or deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all services;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - i) the unit costs and quantity of any consumables and bought-in goods and services;
 - ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; and
 - iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Projected Profit Margin;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier Profit achieved over the Term and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency;
- (h) the actual Costs profile under this Contract; and
- (i) anything not listed in a) to h) but relevant to supplier discharging responsibilities under the Contract;

“Overhead” means those amounts which are intended to recover a proportion of the Supplier's or the Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of Charges;

“Parties” and **“Party”** have the meanings respectively given in Section 1 of this Contract;

“Performance Indicators” means the Key Performance Indicators and the subsidiary Performance Indicators;

“Personal Data” means personal data (as defined in the Data Protection Act 1998) which is Processed by the Supplier or any Sub-Contractor on behalf of the Authority or a Central Government Body pursuant to or in connection with this Contract;

“PPN 02/18” means Procurement Policy Note – Changes to Data Protection Legislation & General Data Protection Regulation (Action Note PPN 02/18, dated May 2018), or such policy of Her Majesty’s Government which replaces or supplements the same from time to time;

“Process” has the meaning given to it under the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and “Processing” and “Processed” shall be interpreted accordingly;

“Processor Personnel” means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;

“Programme Name” means the name given to the programme to which this Contract relates as identified in Section 1 (Form of Contract);

“Prohibited Act” has the meaning;

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or
- (d) any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK;

“Project” means a set of co-ordinated activities, with definite starting and finishing points, undertaken by an individual or team to meet specific objectives within defined time, cost and performance parameters;

“Project Officer” means the person named in Section 4 who is responsible for issuing instructions and dealing with all correspondence in connection with the technical aspects of the Contract;

“Project Specific IPRs” means:

- a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- b) IPR in or arising as a result of the performance of the Supplier’s obligations under this Contract and all updates and amendments to the same,

but shall not include the Supplier Background IPR;

“Projected Profit Margin” means the profit the Supplier expects to achieve over the Term as set out in Section 3 (Schedule of Prices & Rates);

“Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Clause 26 (Security Requirements);

“Reasonable Measures” has the meaning set out in Clause 50.1;

“Register” means a register which sets out full details of:

- (a) any assets used by the Supplier in connection with the provision of the Services, including details of:
 - (i) make, model and asset number;
 - (ii) ownership and status as whether the assets are used exclusively for the provision of the Services;
 - (iii) condition and physical location; and
 - (iv) use (including technical specifications); and
- (b) Sub-Contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

“Regulations” means the Public Contracts Regulations 2015 as amended or replaced from time to time;

“Regulatory Bodies” means those government departments, regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly;

“Relevant Authorities” means the same as Appropriate Authorities;

“Relevant Individuals” means Supplier Personnel or any other employees or persons engaged and controlled by the Supplier to perform any activities under this Contract;

“Relevant Requirements” all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

“Relevant Tax Authority” means HM Revenue & Customs, or, if applicable, a Tax Authority in the jurisdiction in which the Supplier is established.

“Relevant Transfer” means a transfer of employment to which the Employment Regulations applies;

“Relevant Transfer Date” means, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

“Replacement Services” any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or partial termination of this Contract, whether those services are provided by the Authority internally and/or by any third party;

“Replacement Sub-Contractor” means a Sub-Contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);

“Replacement Supplier” any third party service provider of Replacement Services appointed by the Authority from time to time;

“Request for Information” a request for information or an apparent request under the FOIA, the Environmental Information Regulations and associated codes of practice;

“Security Policy” means HMG’s security policy, as updated periodically by the Cabinet Office, which can be accessed at <https://www.gov.uk/government/collections/government-security>, or as notified to the Supplier from time to time;

“Serious Misconduct” has the meaning set out in Clause 50.1;

“Service Transfer” means any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;

“Service Transfer Date” means the date of a Service Transfer;

“Services” means the services set out in the Statement of Service Requirement, in Section 4 of this Framework Agreement and/or Annex 1 of any pursuant Call-Off Contract, as appropriate.

“Sexual Abuse” means the physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions, and all sexual activity with someone under the age of 18, regardless of the age of majority or age of consent under the laws of the territory in which it takes place and regardless of any mistaken belief (by the relevant individual) as to the age of a child, shall constitute Sexual Abuse;

“Sexual Exploitation” means any abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including profiting monetarily, socially, or politically from sexual exploitation of another;

“Sexual Harassment” means any unwelcome sexual advances (with or without touching), including requests for sexual favours, or other verbal or physical behaviour of a sexual nature, which may create a hostile or offensive environment;

“Sites” any premises (including the Authority premises, the Supplier’s premises or third party premises):

(a) from, to or at which:

(i) the Services are (or are to be) provided; or

(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or

(b) where:

(i) any part of the Supplier System is situated;

(ii) any physical interface with an Authority System takes place;

“Software” Specially Written Software, Supplier Software and Third Party Software;

“Specially Written Software” means any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications, configuration, customisation, or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract;

“Staffing Information” means in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

“Staff Vetting Procedure” means the Authority's procedures and departmental policies for the vetting of Personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989.

“Sub-Contract” means any contract or agreement (or proposed contract or agreement) to which a third party:

- a) provides the Services (or any part of them);
- b) provides facilities or goods and services necessary for the provision of the Services (or any part of them); and/or
- c) is responsible for the management, direction or control of the provision of the Services (or any part of them);

“Sub-Contractor” means any person other than the Supplier, who is a party to a Sub-Contract and the servants and agents of that person;

“Sub-processor” means any third party appointed to process Personal Data on behalf of the Processor related to this Contract;

“Successor Body” means a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority;

“Supplier” means the person(s), partnership(s) or company(ies) with whom this Contract is placed and as identified in Section 1 (Form of Contract);

“Supplier Background IPRs” means;

- a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or
- b) Intellectual Property Rights created by the Supplier independently of this Agreement, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;

“Supplier Personnel” means any person (including Key Personnel) instructed pursuant to this Contract to undertake any of the Supplier's obligations under this Contract, including the Supplier's employees, agents and Sub-Contractors.

“Supplier Provider” means persons engaged and/or controlled by or on behalf of the Supplier pursuant to any activities undertaken by the Supplier under this Agreement.

“Supplier Software” means any software which is proprietary to the Supplier (or an Affiliate of the Supplier which is or will be used by the Supplier or any Sub-Contractor for the purposes of providing the Services or is embedded in and in respect of such other software as required to be licensed in order for the Authority to receive the benefit of and/or make use of the Services;

“Supplier System” the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding an Authority System);

“Tender” means the tender submitted by the Supplier to the Authority in response to its Invitation to Tender;

“Term” means the term of this Agreement and/or any Call-Off Contract from the Commencement Date until the Expiry Date;

“Termination Notice” means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract on a specified date and setting out the grounds for termination;

“Third Party IPRs” means Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;

“Third Party Software” means any software which is proprietary to any third party (other than an Affiliate of the Supplier) or any open source which is or will be used by the Supplier for the purposes of providing the Services)

“Transferring Authority Employees” those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Former Supplier Employees” in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date;

“Transferring Supplier Employees” means those employees of the Supplier and/or the Supplier’s Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date;

“Valid Invoice” means an invoice issued by the Supplier to the Authority and containing the information set out in Clause 22.4;

“Variation” means a properly executed variation to the Contract in compliance with Clause 38;

“Variation Procedure” means the procedure set out in Clause 38;

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

“Working Day” means any day other than a Saturday, Sunday or public holiday in England and Wales.

SCHEDULE 2: STAFF TRANSFER

1. DEFINITIONS

In this Schedule 2, the following definitions shall apply:

“Admission Agreement”	An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Services;
“Eligible Employee”	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
“Fair Deal Employees”	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule 2 applies, any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);
“Former Supplier”	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such supplier (or any Sub-Contractor of any such Sub-Contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
“Notified Sub-Contractor”	a Sub-Contractor identified in the Annex to this Schedule 2 to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Sub-Contractor”	a Sub-Contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Schemes”	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 2 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

“Supplier's Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Supplier's Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
“Transferring Authority Employees”	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

Where a provision in this Schedule 2 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

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1. RELEVANT TRANSFERS

- 1.1 The Authority and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring Authority Employee .
- 1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

2. AUTHORITY INDEMNITIES

- 2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:
- 2.1.1 any act or omission by the Authority in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee occurring before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Authority before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Authority Employees; and/or
 - (b) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
 - 2.1.3 any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
 - 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
 - 2.1.5 a failure of the Authority to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees arising before the Relevant Transfer Date;
 - 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.7 any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission

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of the Authority in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and
 - 2.3.2 the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
 - 2.5.2 such offer has been made but not accepted; or
 - 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
 - (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
 - (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

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- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Authority within 6 months of the Commencement Date.
- 2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2 the Supplier shall indemnify the Authority against any Employee Liabilities arising from or as a result of:
 - 3.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;
 - 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Authority Employees; and/or
 - (b) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - 3.1.3 any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 3.1.4 any proposal by the Supplier or a Sub-Contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - 3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
 - 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date;
 - 3.1.8 any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
 - 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without

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limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.

- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

4. INFORMATION

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 5.2.4 the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

6. PENSIONS

The Supplier shall, and/or shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART A: PENSIONS

1. PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority:
 - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
 - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Supplier breaches any obligations it has under the Admission Agreement;
 - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Authority in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
 - 1.2.4 agree that the Authority may terminate this Contract in the event that the Supplier breaches the Admission Agreement:
 - (a) and that breach is not capable of being remedied; or
 - (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from the Authority giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

2. FUTURE SERVICE BENEFITS

- 2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Supplier and the Authority respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the

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Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

7. SUBSEQUENT TRANSFERS

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 7.3 for the applicable period either:
 - 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
 - 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8. BULK TRANSFER

- 8.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:
 - 8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
 - 8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
 - 8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and
 - 8.1.4 indemnify the Authority on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

- 1.1 The Authority and the Supplier agree that:
- 1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.
- 1.2 Subject to Paragraph 6, the Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2. FORMER SUPPLIER INDEMNITIES

- 2.1 Subject to Paragraphs 2.2 and 6, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:
- 2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
 - 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

SCHEDULE 2 – STAFF TRANSFER:

PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
- 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Commencement Date.
- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:
- 3.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;
 - 3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or
 - (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 3.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
 - 3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
 - 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
 - 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
 - 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including)

PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. INFORMATION

The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and/or at the Authority's direction, the Former Supplier, in writing such information as is necessary to enable the Authority and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to Paragraph 6, the Authority shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

5.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- 5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- 5.1.4 the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

6. PROCUREMENT OBLIGATIONS

Notwithstanding any other provisions of this Part B, where in this Part B the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7. PENSIONS

The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART B: PENSIONS

1. PARTICIPATION

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Authority:
 - 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
 - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Supplier breaches any obligations it has under the Admission Agreement;
 - 1.2.3 agree, notwithstanding Paragraph 1.2.2 of this Annex, the Supplier shall notify the Authority in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
 - 1.2.4 agree that the Authority may terminate this Contract for material default in the event that the Supplier breaches the Admission Agreement:
 - (a) and that breach is not capable of being remedied; or
 - (b) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from the Authority giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

2. FUTURE SERVICE BENEFITS

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3. FUNDING

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4. PROVISION OF INFORMATION

The Supplier and the Authority respectively undertake to each other:

- 4.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

- 4.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5. INDEMNITY

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6. EMPLOYER OBLIGATION

The Supplier shall comply with the requirements of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

7. SUBSEQUENT TRANSFERS

The Supplier shall:

- 7.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.3 for the applicable period either
- 7.3.1 after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Agreement or any part of the Services; or
- 7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8. BULK TRANSFER

- 8.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:
- 8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
- 8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- 8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Supplier agrees to pay the Shortfall to the Schemes; and
- 8.1.4 indemnify the Authority on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
 - 1.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
 - 1.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:
 - 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

2. INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
 - 2.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - 2.1.2 subject to paragraph 3, procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re-employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.
- 2.4 The indemnities in Paragraph 2.1:
 - 2.4.1 shall not apply to:

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 - in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
 - (b) any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to the Authority and, if applicable, Former Supplier within 6 months of the Commencement Date.

3. PROCUREMENT OBLIGATIONS

Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

PART D: EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract;
 - 1.1.3 the date which is twelve (12) months before the end of the Term; and
 - 1.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) month period),
- it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.
- 1.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-Contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
 - 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
 - 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
 - 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,
- and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.
- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which Services are organised, which shall include:
- 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services;

- 1.6.3 the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule 2 or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule 2 (as appropriate); and
 - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
- 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; and
 - 1.7.6 bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
 - 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
 - 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
 - (b) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
 - 2.7.2 such offer has been made but not accepted; or
 - 2.7.3 the situation has not otherwise been resolved
- the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising

SCHEDULE 2 – STAFF TRANSFER:

PART D: EMPLOYMENT EXIT PROVISIONS

out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.
- 2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-Contractor; and
- 2.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, where a Relevant Transfer occurs the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
- 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
- (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
- 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement

- Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX TO SCHEDULE 2: LIST OF NOTIFIED SUB-CONTRACTORS

[INSERT]

SCHEDULE 3: INSURANCE REQUIREMENTS

1.OBLIGATION TO MAINTAIN INSURANCES

- 1.1 Without prejudice to its obligations to the Authority under this Contract, including its indemnity obligations, the Supplier shall, in relation to each Call-Off Contract, take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the "Insurances"). The Supplier shall ensure that each of the Insurances is effective from no later than the date of commencement of the relevant Call-Off Contract.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent Contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

2.GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
 - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent Contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3.FAILURE TO INSURE

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4.EVIDENCE OF POLICIES

- 4.1 The Supplier shall upon the commencement date of each Call-Off Contract, and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule 3. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Agreement.

5.AGGREGATE LIMIT OF INDEMNITY

- 5.1 Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":
 - 5.1.1 if a claim or claims which do not relate to any Call-Off Contract are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:
 - (a) details of the policy concerned; and
 - (b) its proposed solution for maintaining the minimum limit of indemnity specified; and

- 5.1.2 if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to any Call-Off Contract are paid by insurers, the Supplier shall:
- (a) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to the relevant Call-Off Contract; or
 - (b) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

6.CANCELLATION

- 6.1 The Supplier shall notify the Authority in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

7.INSURANCE CLAIMS

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or any Call-Off Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services or any Call-Off Contract, the Supplier shall co-operate with the Authority and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of the applicable figure set out for the relevant Call-Off Contract in paragraphs 9 of Parts A and B of Annex 1 relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

ANNEX 1: REQUIRED INSURANCES

CALL-OFF CONTRACT REFERENCE: [INSERT]

PART A: THIRD PARTY PUBLIC & PRODUCTS LIABILITY INSURANCE

1.INSURED

1.1 The Supplier.

2.INTEREST

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 death or bodily injury to or sickness, illness or disease contracted by any person;

2.1.2 loss of or damage to property;

happening during the period of insurance (as specified in Paragraph 5 of this Annex 1 to this Schedule 3) and arising out of or in connection with the provision of the Services and in connection with this Call-Off Contract.

3.LIMIT OF INDEMNITY

3.1 Not less than [£sum to be determined by the Authority] in respect of any one occurrence, the number of occurrences being unlimited, but [£sum to be determined by the Authority] any one occurrence and in the aggregate per annum in respect of products and pollution liability.

4.TERRITORIAL LIMITS

4.1.1 [to be determined by the Authority]

5.PERIOD OF INSURANCE

5.1 From the commencement date of the Call-Off Contract for the term of the Call-Off Contract and renewable on an annual basis unless agreed otherwise by the Authority in writing.

6.COVER FEATURES AND EXTENSIONS

6.1 Indemnity to principals clause.

7.PRINCIPAL EXCLUSIONS

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

8.MAXIMUM DEDUCTIBLE THRESHOLD

8.1 Not to exceed [£ threshold to be agreed with Supplier] for each and every third party property damage claim (personal injury claims to be paid in full).

9. APPLICABLE FIGURE FOR PURPOSES OF PARAGRAPH 7.2 (INSURANCE CLAIMS) OF SCHEDULE 3

9.1 f[insert sum as determined by the Authority relative to its contract management requirement]

PART B: PROFESSIONAL INDEMNITY INSURANCE

1.INSURED

1.1 The Supplier.

2.INTEREST

2.1 To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the Period of Insurance by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

3.LIMIT OF INDEMNITY

3.1 Not less than **[Esum to be determined by the Authority]** in respect of any one claim and in the aggregate per annum.

[Guidance Note: In determining the sum, the financial limits on liability as set out in Clause 35 (Limit of Liability) should be taken into account.]

4.TERRITORIAL LIMITS

4.1 **[To be determined by the Authority]**

5.PERIOD OF INSURANCE

5.1 From the date of this Call-Off Contract and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the term of the Call-Off Contract or until earlier termination of the Call-Off Contract and (b) for a period of 6 years thereafter.

6.COVER FEATURES AND EXTENSIONS

6.1 Retroactive cover to apply to any claims made policy wording in respect of this Call-Off Contract or retroactive date to be no later than the commencement date of the Call-Off Contract.

7.PRINCIPAL EXCLUSIONS

7.1 War and related perils

7.2 Nuclear and radioactive risks

8.MAXIMUM DEDUCTIBLE THRESHOLD

8.1 Not to exceed **[insert threshold set out in the Supplier's Tender]** each and every claim.

9.APPLICABLE FIGURE FOR PURPOSES OF PARAGRAPH 7.2 (INSURANCE CLAIMS) OF SCHEDULE 3

9.1 **£[insert sum as determined by the Authority relative to its contract management requirement]**

PART C: UNITED KINGDOM COMPULSORY INSURANCES

10. GENERAL

10.1 The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

APPENDIX A. VARIATION TO CONTRACT FORM

CONTRACT NUMBER: CPG/___/201_
CONTRACT TITLE: PROVISION OF ___
VARIATION NUMBER:

BETWEEN The Secretary of State for Foreign & Commonwealth Affairs (hereinafter called ‘the Authority’) and [INSERT CONTRACTOR NAME] (hereinafter called ‘the Contractor’)

1. The Contract is varied as follows:

In consideration of [insert] the Parties agree to [insert]

- 2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
- 3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

SIGNED by the Parties in duplicate:

For the Authority

For the Contractor

By:

By:

Full Name:

Full Name:

Title:

Title:

Date:

Date:

SIGNED by the Parties in duplicate

APPENDIX B. SUPPLIER CODE OF CONDUCT

Part A: Non-Programme Spend

[Not used]

Part B: Programme Spend

1. The Supplier shall comply with the Supplier Code of Conduct as set out in this Appendix B and any changes made to the Code thereafter from time to time by the Authority.
2. The Supplier shall submit a Declaration of Compliance, as set out at Sub-Appendix B (Declaration of Compliance) of this Appendix B to the Agreement, within one (1) month of the Award of this Agreement and thereafter annually on the anniversary of the date of Award of this Agreement via the Authority's Bravo eSourcing Portal.
3. The Authority shall notify the Supplier during any Call-Off, made pursuant to this Framework Agreement, of the level of compliance required for the Call-Off, the level of compliance to be determined at the sole discretion of the Authority and taking into consideration the risk and value of the Services.
4. The Supplier shall ensure that the evidence outlined in Sub-Appendix A (Compliance Level Matrix) to this Annex for the required level of compliance is made available at the Call-Off stage where appropriate and at the frequency set out herein. The Authority reserves the right to request further evidence demonstrating the Supplier's compliance with the Code and to conduct spot checks from time-to-time.

Compliance Area 1: Value for Money and Governance

Value for Money is an essential requirement of all Authority commissioned work. All Suppliers must seek to maximise results, whilst driving cost efficiency, throughout the life of commissioned programmes. This includes budgeting and pricing realistically and appropriately to reflect delivery requirements and levels of risk over the life of the programme. It also includes managing uncertainty and change to protect value in the often-challenging environments that we work in.

Suppliers must demonstrate that they are pursuing continuous improvement to reduce waste and improve efficiency in their internal operations and within the delivery chain. The Authority expects suppliers to demonstrate openness and honesty and to be realistic about capacity and capability at all times, accepting accountability and responsibility for performance along the full delivery chain, in both every-day and exceptional circumstances.

Specific requirements include:

- ✓ Provision of relevant VfM and governance policies and a description of how these are put into practice to meet the Authority's requirements (e.g. codes on fraud and corruption, due diligence);
- ✓ A transparent, open book approach, which enables scrutiny of value for money choices, applies pricing structures that align payments to results and reflects an appropriate balance of performance risk;
- ✓ Processes for timely identification and resolution of issues and for sharing lessons learned.

Compliance Area 2: Ethical Behaviour

Suppliers and their Sub-Contractors act on behalf of government and interact with citizens, public

sector/third sector organisations and the private sector These interactions must therefore meet the highest standards of ethical and professional behaviour that upholds the reputation of government.

Arrangements and relationships entered into, whether with or on behalf of the Authority, must be free from bias, conflict of interest or the undue influence of others. Particular care must be taken by staff who are directly involved in the management of a programme, procurement, contract or relationship with the Authority, where key stages may be susceptible to undue influence. In addition, Suppliers and their Sub-Contractors must not attempt to influence an Authority member of staff to manipulate programme monitoring and management to cover up poor performance.

Suppliers and their Sub-Contractors must declare to the Authority any instances where it is intended that any direct or delivery chain staff members will work on Authority funded business where those staff members have any known conflict of interest or where those staff members have been employed by the Crown in the preceding two years. Suppliers and their Sub-Contractors must provide proof of compliance with the HMG approval requirements under the Business Appointment Rules.

Suppliers and their Sub-Contractors must have the following policies and procedures in place:

- ✓ Recruitment policy (which must address circumstances where there may be potential or actual conflict of interest);
- ✓ Ongoing conflict of interest, mitigation and management;
- ✓ Refresher ethical training and staff updates (including awareness of modern day slavery and human rights abuses);
- ✓ A workforce whistleblowing policy;
- ✓ Procedures setting out how, staff involved in FCO funded business, can immediately report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism finance to FCO's Anti-Fraud and Corruption Unit (AFCU) at afcu@fco.gov.uk or on +44(0)7771 573944/ +44(0)7881 249938.

Compliance Area 3: Transparency and Delivery Chain Management

The Authority requires full delivery chain transparency from all Suppliers. All delivery chain partners must adhere to wider HMG policy initiatives including the support of micro, small and medium sized enterprises (MSMEs), prompt payment, adherence to human rights and modern slavery policies and support for economic growth in developing countries.

Suppliers must engage their delivery chain supply partners in a manner that is consistent with the Authority's treatment of its Suppliers. This includes, but is not limited to: pricing; application of delivery chain risk management processes; and taking a zero tolerance approach to tax evasion, corruption, bribery and fraud in subsequent service delivery or in partnership agreements.

Specific requirements for Suppliers include:

- ✓ Provide assurance to the Authority that the policies and practices of their delivery chain supply partners and affiliates are aligned to this Code;
- ✓ Maintaining and sharing with the Authority up-to-date and accurate records of all downstream partners in receipt of Authority funds and/or Authority funded inventory or assets. This should map how funds flow from them to end beneficiaries and identify risks and potential risks along the delivery chain;
- ✓ Ensuring delivery chain partner employees are aware of the FCO's Anti-Fraud and Corruption Unit (AFCU) and how to contact them at afcu@fco.gov.uk or on +44(0)7771 573944/ +44(0)7881 249938.

- ✓ Publication of Authority funding data in accordance with the International Aid Transparency Initiative (IATI)¹
- ✓ Suppliers shall adhere to HMG prompt payment policy² and shall not use restrictive exclusivity agreements with sub-partners.

Compliance Area 4: Environmental Issues

Suppliers must be committed to high environmental standards, recognising that the Authority's activities may change the way people use and rely on the environment, or may affect or be affected by environmental conditions. Suppliers must demonstrate they have taken sufficient steps to protect the local environment and community they work in, and to identify environmental risks that are imminent, significant or could cause harm or reputational damage to the Authority.

Commitment to environmental sustainability may be demonstrated by:

- ✓ Formal environmental safeguard policies in place;
- ✓ Publication of environmental performance reports on a regular basis
- ✓ Membership or signature of relevant Codes, both directly and within the delivery chain such as conventions, standards or certification bodies (eg the Extractive Industries Transparency Initiative³).

Compliance Area 5: Terrorism and Security

Suppliers must implement due diligence processes to provide assurance that UK Government funding is not used in any way that contravenes the provisions of applicable terrorism legislation.

Specific requirements:

- ✓ Suppliers must safeguard the integrity and security of their IT and mobile communications systems in line with the HMG Cyber Essentials Scheme⁴. Award of the Cyber Essentials or Cyber Essential Plus badges would provide organisational evidence of meeting the UK Government-endorsed standard;
- ✓ Suppliers who manage aid programmes with a digital element must adhere to the global Principles for Digital Development⁵, which sets out best practice in technology-enabled programmes
- ✓ Ensure that Authority funding is not linked to terrorist offences, terrorist activities or financing.

Compliance Area 6: Safeguarding, Social Responsibility and Human Rights

Safeguarding, social responsibility and respect for human rights are central to the Authority's expectations of its Suppliers. Suppliers must ensure that robust procedures are adopted and maintained to eliminate the risk of poor human rights practices within their complex delivery chain environments funded by the Authority. These practices include sexual exploitation, abuse and harassment; all forms of child abuse and inequality or discrimination on the basis of race, gender, age, religion, sexuality, culture or disability. Suppliers must place an emphasis on the control of these and further unethical and illegal employment practices, such as modern day slavery, forced and child labour and other forms of exploitative and unethical treatment of workers and aid recipients. The Authority will expect a particular

¹ <https://www.aidtransparency.net/>

² <https://www.gov.uk/guidance/prompt-payment-policy>

³ <https://eiti.org/>

⁴ <https://www.gov.uk/government/publications/cyber-essentials-scheme-overview>

⁵ <https://digitalprinciples.org/>

emphasis on management of these issues in high risk fragile and conflict affected states (FCAS), with a focus on ensuring remedy and redress if things go wrong.

Specific requirements:

- ✓ Development and proof of application and embedding of a Safeguarding Policy;
- ✓ Delivery of Social Responsibility, Human Rights and Safeguarding training throughout the delivery chain;
- ✓ All Supply Partners must be fully signed up to the UN Global Compact⁶;
- ✓ Practices in line with the International Labour Organisation (ILO) 138⁷ and the Ethical Trading Initiative (ETI) Base Code⁸ are to be encouraged throughout the delivery chain;
- ✓ Policies to embed good practice in line with the UN Global Compact Guiding Principles 1 & 2 on business and human rights as detailed in Sub-Appendix C to this Appendix B;
- ✓ Compliance level 1 Suppliers to submit a Statement of Compliance outlining how the organisation's business activities help to develop local markets and institutions and contribute to social and environmental sustainability, whilst complying with international principles on Safeguarding and Human Rights labour and ethical employment, social inclusion and environmental protection;
- ✓ Overarching consideration given to building local capacity and promoting the involvement of people whose lives are affected by business decisions.

⁶ <https://www.unglobalcompact.org/what-is-gc/mission/principles>

⁷ http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138

⁸ <https://www.ethicaltrade.org/eti-base-code>

Sub-Appendix A: Compliance Level matrix

The table below sets out the evidence that Suppliers are required to make available when requested by the Authority to demonstrate compliance with the Code.

For Call-Off Contracts requiring adherence to Compliance Level 1 (CL1) or Compliance Level 2 (CL2) the Supplier shall provide the evidence below at the frequency stated below to the Authority.

Compliance Area and requirement		Evidence Required	Frequency	CL1	CL2	CL3
i.	Declaration of compliance with the Supplier Code of Conduct	Declaration set out at Sub-Appendix B provided.	Annually	X	X	X
ii.	Declaration of sign up to the UN Global Compact	Certificate/Confirmation of membership	Annually	X	X	X
1. Value for Money (VfM) and Governance						
a.	Economic and governance policies in practice	Relevant organisation policies, including detailed annual financial breakdown related to the contract	Annually	X	X	0
b.	VfM being maximized over the life of a contract.	Relevant documentation to include: <ul style="list-style-type: none"> - Confirmation of annual profit level fluctuations since contract award; - Evidence of timely resolution of identified issues; - Evidence of lessons learned 	Annually	X	X	0
c.	Tax declaration (HMRC format)	<ul style="list-style-type: none"> - Tax the organisation paid on profits made in the last 3 years, and in which countries; - Compliance with relevant country level tax regulations fully understood and met 	Annually	X	X	0
2. Ethical Behaviour						
a.	Adherence to conflict of interest management procedures	Relevant organisation policies, including recruitment policy which must address circumstances where there may be potential or actual conflict of interest	Annually	X	X	0
b.	Ethical training and staff updates	Copy of training programme; Training logs; Relevant communication to staff	Annually	X	X	0
c.	A workforce whistleblowing policy	Relevant organisation policy and evidence of continuous staff awareness maintained.	Annually	X	X	0

APPENDIX B – SUPPLIER CODE OF CONDUCT

d.	Staff involved in Authority funded programmes are aware of how to report all suspicions or allegations of aid diversion, fraud, money laundering or counter terrorism to the Authority.	Relevant organization policy and evidence of regular communication to staff.	Annually	X	X	0
e.	Declaration of direct or delivery chain staff members proposed to work on Authority funded programmes if employed by the Crown in the preceding two years.	Proof of compliance with the HMG approval requirements under the business appointments rules.	Annually (and when a new member of staff who this applies to joins the project team)	X	X	0
3. Transparency and Delivery Chain Management						
a.	IATI compliance for Suppliers and delivery chain partners	Proof of compliance with IATI	Annually	X	0	0
b.	Provision of up-to-date and accurate records of all downstream supply partners provided within the required frequencies, including annual contractual spend on MSME's, women owned businesses and apprenticeships in place	Record of all downstream supply partners	Annually	X	0	0
c.	Policies and practices for the management of delivery chain partners and affiliates aligned to the Supplier Code of Conduct	Verification that policies and practices for the management and governance of delivery chain supply partners is in place	Annually	X	0	0
d.	Tax evasion, bribery, corruption and fraud compliance	Statement of assurance that there has been no change to previous statements	Annually	X	X	0
e.	HMG prompt payment policy adhered to by all delivery chain partners	Confirmation of adherence to HMG prompt payment policy	Annually	X	0	0
4. Environmental Issues						
a.	Processes in place to identify environmental risks (e.g. by maintaining a risk register) ensuring legislative requirements are met and context specific environmental issues addressed	Documentation demonstrating how environmental risks are identified (e.g. risk register) with formal context specific environmental safeguarding policies in place	Annually	X	0	0
b.	Annual environmental performance reports	Published reports	Annually	X	0	0

5. Terrorism and Security						
a.	Reporting of terrorist offences or offences linked to terrorist activities or financing	Status declaration	Annually	X	X	0
b.	Confirmation that no engaged employees or deliver chain personnel appears on the Home Office Prescribed Terrorist Organization List.	Appropriate certification or documentation	Annually	X	X	0
c.	Data is managed in accordance with DFID security policy and all systems are in accordance with the HMG cyber essentials scheme	Appropriate certification or documentation	Annually	X	X	0
d.	Adherence to best practice global principles for digital development	Appropriate certification or documentation	Annually	X	0	0
6. Safeguarding, Social Responsibility and Human Rights						
a.	Compliance with key legislation on international principles on labour and ethical employment	Confirmation of UN Global Compact Membership; Internal documentation demonstrating best practice and compliance	Annually	X	X	0
b.	Measures in place and cascaded to assure the prevention of actual, attempted or threatened sexual exploitation or abuse or other forms of inequality or discrimination by Relevant Individuals. Robust procedures for the reporting of suspected misconduct, illegal acts or failures to investigate in place.	Proof of application and embedding of a safeguarding policy	Annually	X	X	X
c.	Membership of the International Labour Organisation or Ethical Trading Initiative	Membership Number	Annually	X	0	0
d.	Principles cascaded to employees and sub-contractors via an internal policy or written outline of good practice service deliver approaches to Human Rights and Safeguarding reflecting UN Global Compact Principles 1 & 2	Internal policies or communication demonstrating communication to staff and delivery chain partners showing appropriate level of commitment to the UN Compact Report on number and details of organization safeguarding allegations reported.	Annually	X	0	0

Sub-Appendix B: Declaration of Compliance

<i>Signed on behalf of the supplier</i>	
Full Name	
Position held on behalf of Supplier	
Date	

Sub-Appendix C: UN Global Compact –Principles

Principle 1: businesses should support and respect the protection of internationally proclaimed Human Rights

Principle 2: businesses should ensure they are not complicit in Human Rights abuse

Organisations should do this by giving attention to vulnerable groups including women, children, people with disabilities, indigenous groups, migrant workers and older people.

Organisations should comply with all laws, honouring international standards and giving particular consideration to high risk areas with weak governance.

Examples of how suppliers and partners should do this are set out below:

In the Community

- by preventing the forcible displacement of individuals, groups or communities
- by working to protect the economic livelihood of local communities
- by contributing to the public debate. Companies interact with all levels of government in the countries where they operate. They therefore have the right and responsibility to express their views on matters that affect their operations, employees, customers and the communities of which they are a part
- through differential pricing or small product packages create new markets that also enable the poor to gain access to goods and services that they otherwise could not afford
- by fostering opportunities for girls to be educated to empower them and also helps a company to have a broader and more skilled pool of workers in the future, and
- perhaps most importantly, a successful business which provides decent work, produces quality goods or services that improve lives, especially for the poor or other vulnerable groups, is an important contribution to sustainable development, including human rights
- If companies use security services to protect their operations, they must ensure that existing international guidelines and standards for the use of force are respected

In the Workforce

- by providing safe and healthy working conditions
- by guaranteeing freedom of association
- by ensuring non-discrimination in personnel practices
- by ensuring that they do not use directly or indirectly forced labour or child labour
- by providing access to basic health, education and housing for the workers and their families, if these are not provided elsewhere
- by having an affirmative action programme to hire victims of domestic violence
- by making reasonable accommodations for all employees' religious observance and practices

APPENDIX C: SAMPLE DRAFT CALL OFF CONTRACT

Framework Agreement with:	[INSERT SUPPLIER NAME]
Company Number:	[INSERT COMPANY CORPORATION NUMBER]
Sub Contractors/Consortia:	[INSERT CONSORTIA / SUB CONTRACTORS]
Framework Agreement for:	CONFLICT STABILITY & SECURITY FUND 2018
Framework Agreement Number:	CPG/2350/2018
Call-off Contract For:	[INSERT TITLE OF REQUIREMENT]
Contract Number:	CPG/0000/201_
Call-off Contract PSAB Reference Number:	0000000

I refer to the following:

1. The above mentioned Framework Agreement.

Capitalised terms used in this Call-Off Contract shall (save where specified otherwise) have the meaning set out in the Framework Agreement.

2. Your proposal of [INSERT DATE PROPOSAL WAS RECEIVED].

2.1 The Foreign & Commonwealth Office (“the Authority”) requires [Insert Company] (“the Supplier”) to provide the Services as stated in the *Statement of Requirement* at Annex 1 and, under the Terms and Conditions of the Framework Agreement, which shall apply to this Call-off Contract as if expressly incorporated herein.

3. Commencement and Duration of the Services

3.1 The Supplier shall start the Services no later than [Insert Start Date and Month] 201_ (“the Start Date”) and Services shall be completed by [Insert Start Date and Month] 20__ (“the End Date”) unless the Call-off Contract is terminated or extended in accordance with the terms and conditions of the Framework Agreement and by contract variation.

3.2 The Authority reserves the right, without prejudice to its termination rights under the Framework Agreement, to terminate this Call-Off Contract (where it is a multi-year contract) at the end of each United Kingdom (UK) financial year, if the Supplier’s performance is not deemed satisfactory or the fund available to the CSSF programme is no longer sufficient to continue financing the programme.

4. Recipient

4.1 Authority requires the Supplier to provide the Services to the [Insert Recipient of Service] (“the Recipient”).

5. Financial Limit

5.1 Payments under this Call-off Contract shall not exceed [Insert Value of Contract] £0,000,000.00 (Insert in words) (“the Financial Limit”) and is exclusive of any government tax, if applicable as detailed in the Framework Agreement and the Statement of Requirements (Annex 1) and Schedule of Prices and Rates (Annex 2).

5.2 To support invoicing the Supplier shall provide monthly financial statements, covering activities delivered together with the Contract reference number.

5.3 Payment of invoices will be made monthly in arrears on receipt of an itemised invoice.

6. Milestone Payments and Charges

6.1 Any Supplier Personnel employee fees payable are deemed to cover the cost of salary, overseas inducements, leave allowances, bonuses, profit, taxes, insurances, superannuation, non-working days and all other costs including, but not limited to, clothing, passports, visas and vaccinations, overheads and expenses of whatsoever nature that may be incurred except those otherwise specifically provided for in this Call-off Contract.

6.2 Where applicable Milestone Payments, will be made on satisfactory performance of the Services, at the payment points defined as per Schedule of Prices and Rates. At each payment point set criteria will be jointly agreed as part of the payments. Payment will be made if the criteria are met to the satisfaction of the Authority when the relevant Milestone is achieved in its final form by the Supplier or following completion of the Services, as the case may be, indicating both the amount or amounts due at the time and cumulatively. Payments are subject to the satisfaction of the Project Officer in relation to the performance by the Supplier of its obligations under the Call-off Contract and to verification by the Project Officer that all prior payments made to the Supplier under this Call-off Contract were properly due.

Fixed Price

6.3 Where the Parties have agreed in the Schedule of Prices and Rates, that the Services will be provided on a fixed price basis, then the fixed price shall be paid according to the Schedule of Prices and Rates, which may relate to the achievement of specific Milestones as defined, dates or acceptance and shall be inclusive of all Supplier costs.

Time and Material

6.4 Where the Parties have agreed in the Schedule of Prices and Rates Annex 2 that the Services will be provided on a time and materials basis, then:

- a) the Services shall be provided in accordance with the rate card set out in the Schedule of Prices and Rates;
- b) the Parties shall agree a maximum price, which shall include but not be limited to a resource profile, a fixed date to start and to complete and a set of deliverables, further details of which shall be agreed by the Parties in the Schedule of Prices and Rates;
- c) the Supplier shall attach to each invoice, records of the time spent and materials used in providing the Services, together with all supporting documentation including but not limited to all relevant timesheets, receipts (if applicable), a list of Services to which the invoice relates and a reference to the Contract and Schedule of Prices and Rates, as well as any other information as reasonably requested by the Authority from time to time;
- d) the Supplier must notify the Authority immediately if it becomes apparent that the cost to complete the Services will be in excess of the maximum price, and shall only proceed with and be paid for Services in excess of the maximum price with the prior written consent of the Authority.

7. Officials

7.1 The Authority Project/Contract Officer is as follows:

Title:	Name:	Contact Number:	Email Address:

8. Key Personnel

8.1 The following Supplier Personnel are the key Personnel of the purposes of this Call-Off Contract:

Title:	Name:	Contact Number:	Email Address:

9. Monitoring and Contract Performance Reports

9.1 For the purpose of monitoring of performance, the Supplier shall submit project reports in accordance with the agreements and timescales contained in the Statement of Requirement at Annex 1.

9.2 These provisions will include without limitation:

- i. random inspections;

- ii. regular meetings;
- iii. the regular delivery of written management reports;
- iv. monthly report on Key Performance Indicators.

9.3 All such agreements will be carried out by the Supplier in a timely manner, as reasonably required by the Authority, and in line with Good Industry Practice.

10. Duty of Care

10.1 Unless otherwise agreed, all Supplier Personnel (as defined in Section 2 of the Framework Agreement) engaged in connection with the performance of this Call-off Contract will come under the duty of care of the Supplier. The Supplier will be responsible for all security arrangements and Her Majesty's Government accepts no responsibility for the health, safety and security of individuals or property.

10.2 Unless otherwise agreed, the Supplier will be responsible for taking out insurance in respect of death or personal injury, damage to or loss of property, and will indemnify and keep indemnified the Authority in respect of any claim, howsoever arising, by the Supplier Personnel or any person employed or otherwise engaged by the Supplier, in connection with their performance under this Call-off Contract.

10.3 The Supplier will ensure that such insurance arrangements as are made in respect of the Supplier Personnel, or any person employed or otherwise engaged by the Supplier are reasonable and prudent in all circumstances, including in respect of death, injury or disablement, and emergency medical expenses.

10.4 The costs of any insurance specifically taken out by the Supplier to support the performance of this Call-off Contract in relation to duty of care may be included as part of the management costs of the project, and must be separately identified in all financial reporting relating to the project.

10.5 Where the Authority is providing any specific security arrangements for Suppliers in relation to the Call-off Contract, these will be detailed in the Statement of Requirements at Annex 1 and the Security Risk Disclaimer Annex 3. [Delete Annex 3 if not required]

11. Third Party Rights for Sub-Contractors

11.1 The Supplier shall ensure that all Sub-Contracts contain provisions") to the effect of "in respect of security and secrecy, intellectual property and audit rights corresponding to those placed on the Supplier under this Contract (subject to such variations as the Authority may reasonably specify), which the Authority shall have the ability to directly enforce under the Contracts (Rights of Third Parties) Act 1999.

12. Call-off Contract Signature

12.1 If the original Form of Call-off Contract is not returned to the Contract/Project Officer (as identified at paragraph 7 above) duly completed, signed and dated on behalf of the Supplier within 10 working days of the date of signature on behalf of the Authority, the Authority will be entitled, at its sole discretion, to declare this Call-off Contract void.

For and behalf of:

The Secretary of State for Foreign & Commonwealth Affairs

Name:.....

Position:

Signature:

Date:

For and behalf of:

Company Name:

[Insert Company Address in full]:

Authorised Signatory:

Position:

Signature:

Date:

Annex 1 – Statement of Requirements

[Insert Statement of Requirement for Call-Off requirement]

By signing here the Supplier confirms they have opened and checked the embedded document in Annex 1 and it represents the Supplier's Tender submitted in response to the CSSF [Insert Title of Requirement] under reference tender ITT_000 dated [Insert Date, Month and Year].

Signed.....

Date.....

Annex 2 – Schedule of Prices & Rates

[Insert Commercial document]

By signing here the Supplier confirms they have opened and checked the embedded document in Annex 2 and it represents the Supplier's Tender submitted in response to the CSSF [Insert Title of Requirement] under reference tender ITT_0000 dated [Insert Date, Month and Year].

Signed.....

Date.....

Annex 3 – Security Risk Disclaimer

By signing here the Supplier confirms they have opened and checked the embedded document in Annex 3 and it represents the Security Risk Disclaimer requested by the Authority and submitted by the Supplier, under reference tender ITT_0000 dated [Insert Date, Month and Year].

Signed.....

Date.....

Annex 4 – Processing, Personal Data & Data Subjects

[DN: this Schedule is likely to need populating / adapting on a case-by-case basis depending on the subject matter of the proposed Call-Off Contract (or group of related Call-Off Contracts)] This Annex 4 shall be completed by the Controller, where required on a Call-Off Contract by Call-Off Contract basis, who may take account of the view of the Processor, however the final decision as to the content of this Annex 4 shall be with the Controller at its absolute discretion.

1. The contact details of the Controller’s Data Protection Officer are: [DN: insert “contact details”]
2. The contact details of the Processor’s Data Protection Officer are: [DN: insert “contact details”]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Annex 4.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, and in relation to [all Call-Off Contracts] [Call-Off Contracts [TBC]], the Customer is the Controller and the Supplier is the Processor in accordance with Clause 32.1.</p> <p>Guidance: You may need to vary this section where (in the rare case) the Customer and Supplier have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</p> <p><i>“Notwithstanding Clause 32.1 the Parties acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <p>[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Parties]</p> <p><i>In respect of Personal Data under Joint Control, Clauses 32.1-32.15 will not apply and the Parties agree to put in place a Joint Controller Agreement as outlined in Annex A – Part 3: Schedule for Joint Controller Agreements (Schedule Y) of PPN 02/18 instead.”</i></p>
Subject matter of the processing	<p><i>[This should be a high level, short description of what the processing is about i.e. its subject matter of the Call-Off Contract. As above, it could vary on a Call-Off Contract by Call-Off Contract basis.</i></p> <p><i>Example: The processing is needed in order to ensure that the Processor can effectively deliver the Call-Off Contract to provide a service to members of the public.]</i></p>
Duration of the processing	<p><i>[Clearly set out the duration of the processing including dates]</i></p>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data being Processed	<p><i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i></p>
Categories of Data Subject	<p><i>[Examples include: Supplier Personnel (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i></p>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>

APPENDIX D: SAMPLE DRAFT CALL OFF ITT

Dear Sir / Madam,

Suppliers on the CSSF Framework are invited to submit a tender to the Secretary of State for Foreign & Commonwealth Affairs, hereinafter referred to as the "Authority", for the provision of:

The requirement will be tendered in accordance with the following attachments:

- Attachment 1:** Information on Tendering Procedures, Scoring Methodology and Evaluation Criteria;
- Attachment 2:** Statement of Requirements/Terms of Reference;
- Attachment 3:** Sample Call-off Contract;
- Attachment 4:** Commercial/Schedule of Prices & Rates;

- i. The Authority reserves the right to amend the enclosed tender documents at any time prior to the deadline for receipt of tenders. Any such amendment will be numbered, dated and issued via the Bravo portal. In the event of amendments, the Authority may at its discretion extend the deadline for receipt of tenders.
- ii. By issuing this invitation the Authority is not bound in any way and does not have to accept the lowest or any tender and reserves the right not to award any contract or to accept the whole or any specified part of the tender.
- iii. If you have any questions about the tendering procedure or the information provided, please use the BRAVO Solution messaging function **ONLY**. Any direct contact with HMG staff including the Programme/Projects Team may result in disqualification from the tendering process.

Please read the instructions on the tendering procedures carefully as failure to comply with them may invalidate your Tender.

Your Tender must be submitted electronically via the FCO's e-Procurement Portal (BRAVO Solution)

<https://fco.bravosolution.co.uk> by **[time] on [date]**.

Closing date for responses to Clarification questions is **[date] hours on [date]**.

Tenders not submitted via the BRAVO eProcurement portal will not be considered.

If you have any questions about the tendering procedure, please use the BRAVO Solution messaging function.

I look forward to your response.

Yours faithfully,

Joint Procurement Hub (JPH)

INSTRUCTIONS AND INFORMATION ON TENDERING PROCEDURES

- 1 These instructions are designed to ensure that all tenders are given equal and fair consideration. It is important therefore that you provide all the requested information and in the format and order specified. All enquiries, questions or requests for clarification by Tenderer should be submitted through the FCO's Bravo Portal ONLY.

INDICATIVE PROCUREMENT TIMETABLE

The indicative timetable for the award of a Contract is as follows:

Issue Invitation to Tender	[date]
Closing date for clarification questions	[date]
Submission of Tenders	[date]
Completion of Stakeholder Tender Evaluation	[date]
Award of Contract	[date]

- 2 The above timetable is indicative and the Authority reserves the right to vary it during the course of the process.
- 3 Please note that the Authority may circulate the answers to any clarification questions raised by Tenderer to all tenderers subject to considerations of commercial confidentiality. When submitting the questions, Tenderer should indicate, with reasons, whether all or part of the question is commercially confidential.
- 4 The Authority accepts no responsibility for any estimate or assumptions made by the Tenderer of the resources which may be needed to meet the assignment specified in these documents or the exact volume of business that will arise out the assignment.

CONDITIONS APPLYING TO THIS TENDER**Contract period**

- 5 The Contract duration is for a period commencing [date] until [date].
- 6 The Authority reserves the right to terminate any agreement at the end of each UK financial year if the supplier's performance is not deemed satisfactory or the fund available to the CSSF programme is no longer sufficient to continue financing the project.

Format of Your Tender

- 7 All questions **MUST BE** answered in English.
- 8 Your Tender must be submitted electronically through the BRAVOSolution eProcurement Portal <https://fco.bravosolution.co.uk> The Tender shall be signed with all blanks in the Documents, Appendices and Schedules if any, filled in. No alteration shall be made in the Form of Tender, Contract Conditions, Services Scope or other documents.
- 9 **Page and text limits:** Where a word or page limit is provided your response should not exceed the limit. Any words/pages over the limit will not be evaluated. Tables and diagrams are included in the page numbers – but graphics and images will not be included in the page limit. A page is one side of A4, with the smallest font size being limited to 10pt. Flagrant disregard for stated limits will result in content being disregarded.
- 10 **Document formats:** Bidders should upload documents either in standard Microsoft Office formats (Word, Excel, etc), or PDF only. Other formats (eg Microsoft Project, and other "free formats") are not installed as standard on UK government IT networks and such attachments may be rendered inaccessible to the Authority for evaluation purposes. Similarly, documents containing macros, and documents submitted using the .rar format are automatically blocked by default from UK government IT platforms and will therefore be inaccessible to evaluators.

Incomplete Tender

- 11 Tenders may be rejected if the complete information called for is not given at the time of tendering.

Return of Tenders

- 12 This ITT is split into 2 main sections:

a. **Technical Specification document**

b. Commercial/Pricing

- 13 Both sections must be uploaded through the Bravo Portal as separate documents. No publicity material is required. All prices must be for the duration of the Call-off Contract and priced in Sterling. Please note that Her Majesty's Government policy places the burden of exchange rate fluctuations on the supplier, who will be expected to absorb the impact of these within and across their contracts.
- 14 Your Commercial Tender should be structured to include relevant narrative for **financial methodology and planning**: explaining the rationale of the Commercial Tender and how it offers best value in the long term and should clearly link costs to the activities and outputs detailed in the Technical Specification document. Pricing details should include all aspects of the project demonstrate the cost breakdown of payments and achieving value for money.

Receipt of Tenders

- 15 Tenders will be received electronically up to the time and date stated. Tenders submitted after the deadline will not be accepted. Tenderer are strongly advised to submit their tenders by no later than the deadline. The Authority may not consider tenders received after that time.

Acceptance of Tenders

- 16 By issuing this invitation the Authority is not bound in any way and does not have to accept the lowest priced of any tender and reserves the right not to award any Contract or to accept the whole or any specified part of the tender.

Period for which Tenders shall Remain Valid

- 17 Tenders shall constitute offers capable of acceptance by the Authority and shall remain valid for 3 months from the closing date for receipt of tenders.

Amendments to the Tender Documents

- 18 The Authority reserves the right to amend the enclosed tender documents at any time prior to the deadline for receipt of tenders. Any such amendment will be numbered, dated and issued via the FCO's Bravo Portal <https://fco.bravosolution.co.uk>. Where amendments are significant, the Authority may at its discretion extend the deadline for receipt of tenders.

Conditions of Tender and Rejection of Non-Compliant Tenders

- 19 The instructions contained in this ITT Pack constitute the Conditions of Tender. Participation in the Tender process confirms that the Tenderer accepts these Conditions of Tender. Non-compliant tenders may be rejected.
- 20 The Tenderer must ensure that each and every employee, sub-contractor, consortium member and any other person / organisation the Tenderer involves in their response to this ITT, abides by the Conditions of Tender. The Tenderer shall be responsible for any breach of the Conditions of Tender by anyone they have involved in their response to this ITT.

Conflict of Interest

- 21 Tenderer must disclose in their Tender any circumstances, including personal, financial and business activities that will, or might, give rise to a conflict of interest by taking part in this competition or if awarded the Call-off Contract. This also applies to any sub-contractor proposed by the Tenderer. Where Tenderer identifies any potential conflicts they should state how they intend to avoid such conflicts. The Authority reserves the right to reject any Tender which, in The Authority's opinion, gives rise, or could potentially give rise to, a Conflict of Interest.

Personnel

- 22 Tenderer must:
 - i. Confirm that all personnel will be available to provide the required services for the duration of the contract;
 - ii. Give the name of their employer, clearly state if self-employed or if any of the personnel is not a member of the Tenderer staff;
 - iii. If nominating a member of Her Majesty Government (HMG) who is in service, or on leave of absence, or has been a staff member of HMG within the past 2 years, the individual should obtain prior written agreement from HMG Human Resources Department. A copy of this agreement must be provided to the Contract Officer;
 - iv. If nominating an ex-UK Crown Servant who has left the service within the past 2 years, include a letter from their Crown Service employer granting permission for them to undertake the services.

Disclosures

- 23 The Tenderer must disclose:
 - a) If they or any of the Tenderer sub-contractor

- are or have been the subject of any proceedings or other arrangements relating to bankruptcy, insolvency or financial standing.
- has been convicted of any offence concerning professional misconduct.
- has not fulfilled any obligations relating to the payment of social security contributions.
- has a policy of equality for all in the workplace with no discrimination on the basis of race, caste, religion, nationality, age, gender, marital status, sexual orientation, disability, union membership or political affiliation.

b) If they or any of the Tenderer sub-contractor have been convicted of, or are the subject of any proceedings, relating to:

- participation in criminal organisation;
- corruption including the offence of bribery;
- fraud including theft, and not fulfilling any obligations relating to payment of taxes;
- money laundering.

- 24 Disclosure extends to any company in the same group of the Tenderer (including but not limited to parent, subsidiary and sister companies, and companies with common shareholders whether direct or indirect and parties with whom the Tenderer is associated in respect of this Tender). The Tenderer should undertake due diligence in the supply chain to help prevent inclusion of organisations which are linked to terrorist activity.
- 25 Where any misconduct or complaint is disclosed, it will be assessed as to whether the Tenderer should be excluded from this ITT. Mandatory exclusion for certain categories under the requirements of the Defence & Security Public Contracts Regulations and/or the Public Contract Regulations will be applied where appropriate. The Authority may seek additional information from the Tenderer or other competent authorities where The Authority deems it necessary in order to make a decision on eligibility.
- 26 The Authority wishes to work with suppliers who embrace the values, and can demonstrate Corporate Social Responsibility (CSR) by taking account of economic, social and environmental factors. These practices, whether operated locally, regionally or internationally, should also comply with International Labour Organisation (ILO) core standards on labour and social matters.
- 27 Where a Wider Market sub-contractor is used in the supply of goods and/or services. A non-disclosure agreement is to be signed prior to the transfer of any information.

CONSORTIA AND SUB-CONTRACTING

- 28 Consortia and Sub-contracting are allowed under this ITT. Details should be included to the Authority of companies that will make up the Consortia, or are being used as sub-contractors. The Authority will be expecting to work with a single Operating Manager, who will take full responsibility for the contract as a whole.
- 29 Sub-contractors should not be legally tied in to one particular bidder, but have the right to collaborate with other suppliers as necessary. Exceptions will be made to where legal agreements are already in place with the suppliers and the supply chain.
- 30 Where the Tender is submitted by the Tenderer in conjunction with one or more associates then, in the absence of a Joint venture agreement, the 'Associate' shall be deemed to be a sub-contractor to the Tenderer and shall not be a party to the Contract.

CONFIDENTIALITY

- 31 All material issued in connection with this ITT shall remain the property of The Authority and shall be used only for the purpose of this procurement exercise. All information provided shall be either returned or securely destroyed by unsuccessful Tenderer at the conclusion of the procurement exercise. The confidentiality of the Framework Agreement shall be reflected in this call off contract.
- 32 The Tenderer shall ensure a Non-Disclosure is signed by all Third Parties prior to the release of any Authority information.

RIGHT TO CANCEL, CLARIFY OR VARY THE PROCESS

- 33 The Authority shall not be committed to any course of action as a result of:
- issuing this ITT or any invitation to participate in this procurement exercise;
 - communicating with a Tenderer or a Tenderer representatives in respect of this procurement exercise; or
 - any other communication between the Authority (whether directly or by its agents or representatives) and any other party.

- 34 By taking part in this competitive exercise, the tenderer accepts that the Authority shall not be bound to accept any Tender and reserves the right not to conclude a Contract for some or all of the services for which Tenders are invited, and clarifications to Tenderer may be required after the tender deadline.
- 35 The Authority reserves the right to explore other options if this ITT does not provide what the Authority considers to be the best value option available. The Authority reserves the right to amend, add to or withdraw all or any part of this ITT at any time during the procurement exercise.

COSTS OF THE ITT

- 36 The Tenderer will remain responsible for all costs and expenses incurred by them, their staff, and their advisors or by any third party acting under their instructions in connection with this ITT. This will be regardless of whether such costs arise as a result of any direct or indirect amendments made to this ITT by the Authority at any time. For the avoidance of doubt, the Authority shall have no liability whatsoever to respondents for the costs of any amendments, changes, discussions or communications.

QUALIFICATION

- 37 The Tenderer is reminded that his Tender shall be strictly in accordance with the Authority Statement of Service Requirements, Conditions of Contract and Instructions to Tenderer, and shall not be qualified in any way. The Tenderer shall ensure, therefore, that any explanatory or descriptive matter included in his Tender does not constitute a qualification to the Authority requirements and terms and conditions as stated in the Invitation to Tender document.

INDUCEMENTS

- 38 Offering an inducement of any kind in relation to obtaining this or any other Contract with the Authority will automatically disqualify your tender from being considered and may constitute a criminal offence.

DEBRIEFING

- 39 Following the award of Contract, debriefing will be offered to the Tenderer, if requested.

SCORING METHODOLOGY AND EVALUATION CRITERIA

COMMERCIAL EVALUATION

- 40 The Commercial Tender should therefore be clear on whole life costs over the duration of the Call-off Contract, or over the specified period. Scores will be calculated based on an inverse percentage difference from most financially attractive offer, thus lowest (credible) price will awarded full marks within the weighting of that section with eg 10% more expensive scoring 10% lower.

TECHNICAL SPECIFICATION EVALUATION

- 41 The Commercial and Technical Evaluation places emphasis on the degree of confidence the Evaluation Team have in the Tender content and the Tenderer capability to deliver the programme outputs effectively. A higher degree of confidence is gained where:
- A deep understanding of key issues is clearly demonstrated. Merely providing general statements of information and a can-do attitude will not generate high scores. The proposal should include clear links to performance outcomes and where appropriate should highlight where it continues to add value beyond the life of the Call-off Contract.
 - Strong examples demonstrate the proposed methodology has been applied successfully in similar environments relevant to this ITT. Evidence of working in similar/same environments and within the thematic will be important.
 - Suppliers will need to ensure they have read and understood the Gender note for suppliers that was issued 19 May 2016 (Bravo Solution) and how gender considerations affect your methodology.
 - Staff that provide the right level of skills and experience, with assured availability at the right time and with the right number of days.
 - How the project is to be managed, including any key subcontractors or partners.

EVALUATION SCORING AND CRITERIA

42 The Evaluation Team will apply the following scoring methodology:

Score Key Assessment	Definition	Interpretation
8	Excellent	Meets and exceeds: Demonstration by Potential Provider with evidence of its ability to deliver a solution over and above the Authority’s minimum requirement. Response demonstrates factors that will offer potential added value .
6	Good	Meets: Demonstration by Potential Provider with evidence of its ability to deliver a solution for the Authority’s requirement.
4	Minor Reservations	Almost meets or minor reservations only: Some minor reservations and/or limited evidence of Potential Provider’s ability to deliver a solution for the Authority’s requirement.
2	Serious Reservations / Potentially Non Compliant	Serious Reservations: Serious reservations and/or lack of evidence of Potential Provider’s ability to deliver a solution for the Authority’s requirement. The Authority reserves the right to consider bidders scoring this rating as being non-compliant.
0	Unacceptable/ Non-Compliant	Unacceptable: No demonstration and/or no evidence of Potential Provider’s ability to deliver a solution for the Authority’s requirement. The Authority reserves the right to consider bidders scoring this rating as being non-compliant.

The above scoring methodology will be applied to each of the Sub Criteria detailed within the table below. The Total Score for each Sub Criteria will comprise of the score awarded converted against the weighted % of each Sub Criteria.

Tenderers should aim to demonstrate that their overall Tender offers the best mix of quality and effectiveness during the life of the Contract. The tender process will be conducted to ensure that tenders are evaluated fairly to ascertain the most economically advantageous tender (MEAT).

Qualification: Sub-Criteria	Weight	Technical: Sub-Criteria	Weight	Commercial: Sub-Criteria	Weight
Mandatory Acceptances (eg)	Pass/ Fail	Bespoke to requirement (eg)	%	Pricing elements (eg)	Score awarded on inverse percentage difference from lowest (credible) price.
• Acceptance of Authority Terms & Conditions		1. Ability to mobilise quickly and demonstration of local capacity	%	1. Total staff costs	
• Bespoke Duty of Care Conditions		2. Quality of resources available to deliver requirement	%	2. Total Operational costs	
• Acceptance/Compliance with Supplier Code of Conduct		3. Approach and methodology to deliver requirement	%	3. Total equipment costs	
• Open book accounting (application subject to financial threshold and if novel/contentious nature of requirement)		4. Supply chain management, quality control and customer liaison	%		
Total	Pass/ Fail	Total (eg)	70%	Total (eg)	30%

SECTION 3 – SCHEDULE OF PRICES & RATES (FRAMEWORK AGREEMENT)

Schedule of Prices & Rates (Framework Agreement)

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(Insert rates from supplier's tender submission)

SECTION 4 – STATEMENT OF SERVICE REQUIREMENT (FRAMEWORK)

Statement of Service Requirement (Framework)

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(Inserted from Attachment 5 of ITT)

