



Foreign &  
Commonwealth  
Office

**CPG/1417/2016**

**CONTRACT FOR THE PROVISION OF MONITORING AND REPORTING  
SERVICES**

**CONTRACT DOCUMENTS**

The Contract documents consist of the following:

Section 1	Form of Contract
Section 2	Conditions of Contract
Section 3	Schedule of Prices & Rates
Section 4	Statement of Service Requirement and Schedules 1-4

## SECTION 1: FORM OF CONTRACT

THIS CONTRACT is made between **(1) The Secretary of State for Foreign & Commonwealth Affairs** represented by the Foreign & Commonwealth Office, acting as part of the Crown ("the Authority"), and

**(2) [REDACTED]** ("the Contractor") a company registered in England and Wales under company number [REDACTED], having his main or registered office at [REDACTED] (each a "**Party**" and together the "**Parties**").

IT IS AGREED THAT:

1. This Form of Contract (Section 1) together with the attached Sections 2 to 4 inclusive are the documents which collectively form "the Contract" (as defined in Section 2).

Section 1 – Form of Contract

Section 2 – Conditions of Contract

Section 3 – Schedule of Prices & Rates

Section 4 – Statement of Service Requirements

2. The Contract effected by the signing of this Form of Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Contract and supersedes all prior negotiations, representations or understandings whether written or oral.

SIGNED in duplicate on behalf of the Parties:

For [REDACTED]:

For the Authority:

By: .....

By: .....

Full Name: [REDACTED]

Full Name: .....

[REDACTED]

Position held on behalf of Authority:

Date:

Date:

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## SECTION 2: CONDITIONS OF CONTRACT

### A. GENERAL PROVISIONS

#### A1. DEFINITIONS AND INTERPRETATION

In these Conditions, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

**"ADR Notice"** means a notice served under Condition I2 (Dispute Resolution) requesting mediation.

**"Affiliate"** means 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.

**"Approval"** and **"Approved"** refer to the written consent of the Authority's Representative.

**"Authority"** means the Secretary of State for Foreign & Commonwealth Affairs and includes the Authority's Representative. In this Contract, the Authority is acting as part of the Crown.

**"Authority's Premises"** means land or buildings owned or occupied by the Authority where the Services are performed.

**"Authority's Property"** means any property, other than land and buildings, issued or made available to the Staff by the Authority in connection with the Contract.

**"Authority's Representative"** means the individual authorised to act on behalf of the Authority for the purposes of the Contract.

**"Charges"** the charges for the provision of the Services set out in or otherwise calculated in accordance with Section 3.

**"Commencement of Full Operations"** means the point in time when the Contractor becomes responsible for the provision of the Services following the completion of the Setting up Operations.

**"Commencement Date"** means the date when the period of the duration of the contract commences in accordance with Condition A2 (Initial Contract Period).

**"Commercially Sensitive Information"** means the subset of Confidential Information listed in Appendix D comprised of information:

- (a) which is provided by the Contractor to the Authority in confidence for the period set out in that schedule; and/or
- (b) that constitutes a trade secret.

**"Condition"** means a condition or Condition within the Contract.

**"Confidential Information"** means all Personal Data and any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how

of either Party and all personal data and sensitive personal data within the meaning of the DPA.

Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of Condition E3 (Confidential Information));
- (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information.

**"Contract"** means this agreement between the Authority and the Contractor consisting of these Conditions, Sections, attached Schedules and Appendices and the Contractor proposal dated [REDACTED].

**"Contracting Authority"** means any contracting authority as defined in Public Contracts Regulations 2015 other than the Authority.

**"Contractor"** means [REDACTED]

**"Contractor's Representative"** means the individual authorised to act on behalf of the Contractor for the purposes of the Contract.

**"Contract Period"** means the period of the duration of the Contract in accordance with Condition A2 (Initial Contract Period).

**"Contract Price"** means the price, exclusive of any applicable Value Added Tax, payable by the Authority to the Contractor, as set out in Condition C1 (Contract price).

**"Crown Body"** means any department, office or agency of the Crown.

**"Data Controller"** shall have the same meanings as set out in the Data Protection Act 1998.

**"Data Protection Legislation"** means the Data Protection Act 1998 and all other applicable laws and regulations relating to the processing of personal data and privacy, including without limitation, the guidance and codes of practice issued by the Information Commissioner.

**"Default"** means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental item) or any default, act, omission, negligence or statement of either Party, its employees, contractors, agents or Sub-Contractors in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other.

**"DfID"** means the Department for International Development.

**"Due Diligence Information"** any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;

**"Equality Enactments"** means the enactments defined in section 33(1) Equality Act 2006.

**"Equipment"** means all equipment, materials, consumables and plant and other items supplied, other than Authority's Property, to be used by the Staff in the provision of the Services.

**"Environmental Information Regulations"** means the Environmental Information Regulations 2004, as the same may be amended or updated 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 regulations.

**"Exit Management"** services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Contractor to the Authority and/or a replacement Contractor.

**"Exit Plan"** the plan produced and updated by the Contractor during the Term in accordance with the Terms of Reference.

**"FCO"** means the Foreign & Commonwealth Office.

**"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 in relation to such legislation.

**"Force Majeure"** has the meaning set out in Condition H7 (Force Majeure).

**"Good Industry Practice"** means at any time the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced provider of services similar to the Services seeking in good faith to comply with its contractual obligations and complying with all relevant laws.

**"Information"** has the meaning given under section 84 of the FOIA.

**"Intellectual Property Rights"** means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or not), applications for any of the above rights, copyright, database rights, domain names, know how, trade or business names, moral rights or other similar rights or obligations whether registerable or not in any country including but not limited to the United Kingdom.

**"Key Performance Indicators"** means a set of quantifiable measures that the Authority and Contractor will use to measure the performance of the Services provided by the Contractor under the Contract.

**"Key Personnel"** means all persons identified in Appendix C – Key Personnel.

**"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.

**"Month"** means calendar month.

**"Notice"** means information from either Party to the other Party about a particular action that has been taken;

**“Party”** means either the Authority or the Contractor and the **“Parties”** means the Authority and the Contractor;

**“Personnel”** means persons directly employed by the Authority.

**“Premises”** means land or buildings where the Services are performed.

**“Price”** means a price entered in Section 3 - Schedule of Prices and Rates

**“Private Security Companies and Private Security Service Providers”** means any Company (as defined in the International Code of Conduct for Private Security Service Providers) whose business activities include the provision of security services either on its own behalf or on behalf of another, irrespective of how such Company describes itself;

**“Proposal”** means the Contractor’s proposal submitted to the Authority to meet the requirement detailed in the Authority’s tender documentation dated 26<sup>th</sup> October 2016 and any subsequent clarifications dated 14<sup>th</sup> November 2016

**“Purchase Order”** or **“PO”** means the form, which the Authority sends to the Contractor confirming the contract and facilitating payment via the Authority Purchase to Pay System;

**“Rates”** means a rate entered in Section 3 - Schedule of Prices and Rates

**“Regulatory Bodies”** means those government departments and 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.

**“Requests for Information”** shall have the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations as relevant.

**“Setting Up Operations”** means the period of time, or periods of time where phased, during which the Contractor is required to mobilise itself and its Staff in preparation for delivering the Service and for the Commencement of Full Operations.

**“Services”** means all the services (including any works) which the Contractor provides to the Authority under the Contract.

**“Site”** means the area within the Premises in which the Services are performed.

**“Software”** Specially Written Software, Supplier Software and Third Party Software.

**“Staff”** means all persons used by the Contractor to deliver the contract.

**“Sub-contractor”** means any third party employed by the Contractor in the provision of the Services.

**“Successor Supplier”** means the Authority or a replacement contractor who takes over responsibility for all or part of the Services following expiry, termination or partial termination of the Contract.

**“Contractor’s Background IPRs”** means

- (a) Intellectual Property Rights owned by the Contractor before the Effective Date, for example those subsisting in the Contractor's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Contractor's know-how or generic business methodologies; and/or
- (b) Intellectual Property Rights created by the Contractor independently of this Agreement, which in ease 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 Contractor subsisting in the Contractor Software;

**“Contractor System”** the information and communications technology system used by the Contractor in implementing and performing the Services including the Software, the Equipment, configuration and management utilities, calibration and testing tools and related cabling.

**“Termination Transfer”** means the transfer of responsibility for delivery of the Contract from the Contractor to the Authority and/or a Successor Supplier on or following the termination or expiry of this Contract or any part thereof.

**“Termination Transfer Date”** means the date of a Termination Transfer.

**“Termination Transfer Employees”** means the Staff employed immediately before the Termination Transfer Date by the Contractor or any of its sub-contractors and who are providing the Services(s) to be transferred on the Termination Transfer Date (and to be carried out in the same, equivalent or broadly similar way after the Termination Transfer Date) and whose names are included in the list of transferring staff provided by the Contractor, less any person so listed whose employment with the Contractor or any of its sub-contractors ends prior to the Termination Transfer; and less any person so listed whose employment does not transfer pursuant to the TUPE Regulations by virtue of Regulations 4(7) and 4(8) of the TUPE Regulations (employees objecting to employment transferring).

**“the Crown”** means any central government department of the United Kingdom, including the Devolved Administrations, and other bodies which are legally defined as being Crown Bodies.

**“TUPE Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

**“Variation”** means a properly executed variation to the Contract in compliance with Condition F3 (Variation).

**“Variation to Contract Form”** means the form set out in [insert location e.g. Appendix A - Variation to Contract Form].

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



## A1.1. FURTHER PROVISIONS

The interpretation and construction of the Contract shall be subject to the following provisions:

- a) a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- b) the headings included in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract;
- c) references to Conditions are references to Conditions in the Conditions of the Contract in which they appear, unless otherwise stated;
- d) where the context allows, the masculine includes the feminine and the neuter, and the singular includes the plural and vice versa;
- e) reference to a Condition is a reference to the whole of that Condition unless stated otherwise;
- f) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees; and
- g) any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms and the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.
- h) These Conditions shall apply to the exclusion of all other terms and conditions including any terms and conditions which the Contractor may seek to apply under any purchase order, confirmation of order, invoice, delivery note or similar document.
- i) The Contractor shall be deemed to have accepted the terms and conditions of the Contract by delivering the Service.
- j) Time for delivery of provision of the Service shall be of the essence of the Contract.
- k) If either Party does not enforce any one or more of the terms or conditions of this Contract this does not mean that the Party has given up the right at any time subsequently to enforce all terms and conditions of this Contract.
- l) The Authority shall in no circumstances be liable for any claim, loss or damage whether arising in contract, tort (including negligence) or otherwise, for consequential, economic, special or other indirect loss and shall not be liable for any losses calculated by reference to profits, contracts, business, goodwill, income, production or accruals whether direct or indirect and whether or not arising out of any liability of the Contractor to any other person.

**A2. CONTRACT PERIOD**

A2.1 The Contract period begins on 4<sup>th</sup> September 2017 and ends on 30<sup>th</sup> November 2021. 4<sup>th</sup> September 2017 is also the date of Commencement of Full Operations. Any extensions to the Contract period shall be mutually agreed between Authority and Contractor and confirmed in writing in accordance with Condition F3 of the contract.

**A3. CONTRACTOR'S STATUS**

A3.1 At all times during the Contract Period, the Contractor shall be an independent contractor and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Contract accordingly:

- a) the Contractor shall not say or do anything that might lead any other Person to believe that the Contractor is acting as the agent of the Authority; and
- b) the Authority shall not incur any contractual liability to any other Person as a result of anything done by the Contractor in connection with the performance of the Contract.

**A4. AUTHORITY'S OBLIGATIONS**

A4.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Authority to the Contractor.

**A5. NOTICES**

A5.1 Except as otherwise expressly provided within this Contract, no communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter, or by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Condition A5.3 (Notices). If the other Party does not acknowledge receipt of any such letter, facsimile transmission or item of electronic mail, and, in the case of a letter, the relevant letter is not returned as undelivered, the notice or communication shall be deemed to have been given 3 Working Days after the day on which the letter was posted.

A5.3 For the purposes of Condition A5.2 (Notices), the address of each Party shall be:

- a) The Authority's Representative:  
Name - [REDACTED]

Telephone Number - [REDACTED]

Address - [REDACTED]

E-Mail Address - [REDACTED]

b) The Contractor's Representative:

Name - [REDACTED]

Telephone Number - [REDACTED]

Address - [REDACTED]

E-Mail Address - [REDACTED]

A5.4 Either Party may change its address for service by notice given in accordance with this Condition A5 (Notices).

**A6. MISTAKES IN INFORMATION**

A6.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein

**A7. CONFLICTS OF INTEREST**

A7.1 The Contractor shall establish and maintain appropriate business standards, procedures and controls to ensure that no conflict of interest arises between the Parties, howsoever arising.

A7.2 The Contractor 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 Contractor shall subject to any obligations of confidentiality it may have to third parties provide all information and assistance reasonably necessary (at the Contractor's cost) that the Authority may request of the Contractor 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.

A7.3 The Authority reserves the right to terminate this contract immediately by notice in writing and/or to take such steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of this contract. The actions of the Authority pursuant to this Article will not prejudice or affect any right of action or remedy which will have accrued or will thereafter accrue to the Authority.

A7.4 In addition to its obligations under Condition E5 (Publicity, Media and Official Enquiries), the Contractor shall:

- Avoid expressing views which may prejudice the position of the Authority;

- Make clear when it is expressing views on behalf of the Authority and/or the Government of the United Kingdom, and when it is expressing personal views;
- Check with the Authority first if they are unsure whether expressing views might be caught by (a) and (b); and
- Not carry out any acts on behalf of third parties in the course of performing the Services, without the Authority's permission.

A7.5 Pursuant to Condition A7.2 (Conflict of Interest), the Authority shall have the right to require that the Contractor puts in place "Ethical Walls" and will ensure and satisfy the Authority that all information relating to the Contract and to the Services and Deliverables completed pursuant to it (to include all working papers, draft reports in both tangible and intangible form) are not shared or made available to other employees, contractors or agents of the Contractor and that such matters are not discussed by the relevant staff with other employees, contractors or agents of the Contractor.

A7.6 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 Contractor and to pursue the Contractor for damages.

A7.7 To the extent that any of the Contractor's staff breach this Conflict of Interest Condition, the Contractor undertakes to keep the Authority fully and effectively indemnified in respect of all costs, losses and liabilities arising from any wrongful disclosure or misuse of the Confidential Information by the Contractor's staff. This indemnity shall be without prejudice to any other rights or remedies, including injunctive or other equitable relief, which the Authority may be entitled to, but for the avoidance of doubt shall be subject to the limitations of liability (including without limitation the cap on liability) set out in this Contract.

## **B. SUPPLY OF SERVICES**

### **B1. THE SERVICES**

B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Terms of Reference and the provisions of the Contract in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

B1.2 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

## **B2. PROVISION AND REMOVAL OF EQUIPMENT**

- B2.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.
- B2.2 The Contractor shall not deliver any Equipment nor begin any work on the Authority's Premises without obtaining prior Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- B2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- B2.5 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- B2.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

## **B3. MANNER OF CARRYING OUT THE SERVICES**

- B3.1 The Contractor shall at all times comply with the Quality Standards identified in Section 4, Statement of Service Requirements, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.1.1 On the request of the Authority's Representative, the Contractor shall provide proof to the Authority's satisfaction that the materials and processes used, or proposed to be used, conform to the Quality Standards identified in Section 4, Statement of Service Requirements. The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior Approval.

B3.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B3.3 The Contractor shall indemnify and keep indemnified the Authority in respect of:

- (a) any loss, damage or claim, howsoever arising out of, or relating to any act, omission or negligence by the Contractor, the Contractor's Personnel in connection with the performance of the Contract;
- (b) any claim, howsoever arising, by the Contractor's Personnel or any person employed or otherwise engaged by the Contractor, in connection with the performance of the Contract.

#### **B4. KEY PERSONNEL**

B4.1 The Contractor acknowledges that the Key Personnel identified in Appendix C are essential to the proper provision of the Services to the Authority. All Key Personnel and other Personnel deployed on work relating to this Contract shall be appropriately qualified. The Contractor shall supervise and manage all such Personnel properly.

B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

B4.3 If the Authority considers any member of the Contractor's Personnel unsuitable, the Contractor shall substitute such member as quickly as reasonably possible with a replacement acceptable to the Authority without direct or indirect charge to the Authority and the Contractor hereby agrees to fully indemnify and hold the Authority harmless against any claims of any kind that may arise with regard to the substitution of such Contractor Personnel considered to be unsuitable by the Authority.

B4.4 Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.5 The Authority shall not unreasonably withhold its agreement under Conditions B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

#### **B5. NOT USED**

#### **B6. INSPECTION OF PREMISES**

B6.1 The Services shall be subject to inspection at all times by the Authority's Representative and shall be done to a standard considered reasonable by it. The Contractor warrants that it has the experience and capability to execute the Services in a manner satisfactory to the Authority and in accordance with the Conditions of this Contract.

**B7. NOT USED**

**B8. NOT USED**

**B9. OFFERS OF EMPLOYMENT**

B9.1 For the duration of the Contract and for a period of 12 months thereafter neither the Authority nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

**B10. MEETINGS AND REPORTS**

B10.1 The Contractor shall upon receipt of reasonable notice and during normal office hours attend all meetings arranged by the Authority for the discussion of matters connected with the performance of the Services.

B10.2 Without prejudice to any other requirement in this Contract, the Contractor shall provide such reports on the performance of the Services as the Contract Manager may reasonably require.

**C. PAYMENT AND CONTRACT PRICE**

**C1. CONTRACT PRICE**

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with Condition C2 (Payment and VAT) and as set out in the Rates contained in Section 3, Schedule of Prices & Rates.

C1.2 From the Commencement of Full Operations and every month thereafter, the Contractor shall provide a brief narrative report of activities undertaken under the Project and an assessment of the progress made against project outputs as set out [insert location e.g. in Annex A]. This assessment should provide evidence that the quality and timing criteria have been met.

**C2. PAYMENT AND VAT**

C2.1 The Authority is committed to pay as soon as possible and shall pay all sums due to the Contractor within 30 days of receipt of a valid invoice, submitted monthly in arrears.

C2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice.

C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a subcontract which requires payment to be made of all sums due by the Contractor to the sub-contractor as soon as possible and in any event not exceeding 30 days from the receipt of a valid invoice. The Authority reserves the request information regarding payment performance and will provide a facility for sub-contractors to report poor performance to the Authority.

- C2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- C2.5 The Contractor 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 in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Condition C2.5 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under Condition H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.7 If the Authority, acting in good faith, has a dispute in respect of any invoice, the Authority shall be entitled to withhold payment of the disputed amount, provided that it has notified the Contractor of the disputed amount and the nature of the dispute prior to the due date for payment of the invoice, and has paid any undisputed portion of the invoice to the Contractor. The parties will negotiate in good faith to resolve the dispute, and, failing resolution within five working days after receipt by the Contractor of the Authority's notification, the dispute will be referred to dispute resolution in accordance with Condition I2 (Dispute Resolution). In the event of such dispute, the Contractor shall continue to perform all its obligations under this Contract notwithstanding any withholding or reduction in payment by the Authority.
- C2.8 The Authority may elect to pay for the Services by Government Procurement Card or such other method as the Parties may agree.

### **C3. RECOVERY OF SUMS DUE**

- C3.1 Any sum which is recoverable from or payable by the Contractor may be deducted from or reduced by any sum or sums then due or which may thereafter become due to the Contractor under or in respect of the Contract or any other contract with the Authority or any other government department or the Crown.
- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.



C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

#### **C4. PRICE ADJUSTMENT**

C4.1 The Contract Price shall, unless otherwise agreed in writing, be unchanged for a period of at least 2 years from the Commencement Date and shall then be subject to review, at one month's notice, by either party giving notice of such review to the other.

C4.2 In such review the Contract Price shall change by not more than the percentage change in the current (at the time of writing of the notice of the price review) Office of National Statistics' Consumer Prices Index (CPI) (or other such index specified in the Contract), from the same index 12 months earlier.

C4.3 Subsequent variations shall also be subject to one month's notice, as above, provided that each change is at least 12 months from the previous one. No price variation shall be retrospective.

C4.4 The Contractor may propose price reductions at any time.

#### **C5. MILESTONE PAYMENTS**

C5.1 Where the Parties have agreed in the Schedule of Prices that the Services will be provided on a fixed price basis, then the fixed price shall be paid according to the schedule of prices as detailed in the schedule of prices which may relate to the achievement of specific predefined milestones, dates or acceptance and shall be inclusive of all Contractor costs.

#### **C6. EXPENSES**

C6.1 Travel and living expenses will be paid at a rate consistent with the Schedule of Prices at Section C. All journeys by rail or air will be made by a class of travel that is no more than "standard economy"

C6.2 The budgets identified in the Terms of Reference represent the maximum payment to the Contractor under this Contract. The Authority reserves the right to ask for proof of purchase and refuse payment where this cannot be reasonably provided.

### **D. STATUTORY OBLIGATIONS AND REGULATIONS**

#### **D1 PREVENTION OF CORRUPTION**

D1.1 The Contractor shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

D1.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract.

D1.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by Conditions D1.1 or D1.2 or commits any offence under the Bribery Act 2010, the Authority may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
- (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of those Conditions.

## **D.2 PREVENTION OF FRAUD**

D2.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.

D2.2 The Contractor shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

D2.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
- (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this Condition.

## **D.3 DISCRIMINATION**

D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly on 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 Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of all relevant legislation including the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Contractor shall adhere to the current relevant codes of practice or recommendations published by the Equality and Human Rights Commission. The Contractor shall take all reasonable steps to

secure the observance of these provisions and codes of conduct by all contractors, employees or agents of the Contractor and all suppliers and Sub-contractors employed in the execution of this Contract.

D3.3 The Contractor 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 Contractor's compliance with its obligations under the Equality Act 2010.

D3.4 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 Contractor, its agents or sub contractors, or Staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor 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.

D3.5 Where in the reasonable opinion of the authority the Contractor has breached its obligations under Condition D3.1 or D3.2 (Discrimination) the Authority may terminate this Contract with immediate effect.

#### **D.4 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

D4.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This Condition does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

#### **D.5 ENVIRONMENTAL REQUIREMENTS**

D5.1 The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and 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.

D5.2 All written work, including reports, delivered in connection with this Contract shall (unless otherwise specified) be produced on recycled paper containing 100% post consumer waste and used on both sides where appropriate. Paper used for printed publications must contain at least 75% recycled fibre paper in accordance with the UK government's timber procurement policy.

#### **D.6 HEALTH AND SAFETY**

D6.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the

Premises and which may affect the Contractor in the performance of its obligations under the Contract.

- D6.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- D6.3 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- D6.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- D6.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

**D.7 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 1981 (TUPE)**

- 7.1 The Contractor shall provide the Department, or any other person authorised by the Department who is to be invited to submit a tender in relation to the provision of similar Services, with such information (including any changes to and interpretations thereof) in connection with TUPE as the Department may require. The Contractor shall provide the information within 10 days of the Department's request.
- D7.2 During the 8 month period preceding the Expiry Date or any notice period, the Contractor shall not without the prior consent of the Department (which shall be in writing, but shall not be unreasonably withheld or delayed) move or deploy any Key Personnel away from the performance of the Services under this Contract.
- D7.3 Save where the Services comprise the provision of a consultancy service, during the 8 month period preceding the date of expiry set out in condition A2 (initial contract period) or any notice period, the Contractor shall not without the prior consent of the Authority (which shall be in writing, but shall not be unreasonable withheld or delayed):
- (a) materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Contract; or
  - (b) materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract; or
- D7.4 The Contractor shall not knowingly do, or omit to do, anything which may adversely affect the orderly transfer of responsibility for provision of the Services.

**D.8 ANTI-TERRORISM REGULATIONS**

- D8.1 In accordance with the Terrorism Act 2000 and all subsequent regulations pursuant to this Act, the Contractor 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.
- D8.2 The Contractor represents and warrants that neither it, nor the best of its knowledge any Contractor's 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 Organisation List.
- D8.3 The Contractor shall immediately notify the Authority in writing if it becomes aware of any breach of Clause D8.1 and or D8.2 or has reason to believe that it has or any Contractor's Personnel, Servants, Agents or Sub-contractors, or any person acting on their behalves have:
- (a) been subject to an investigation or prosecution which relates to an alleged infringement of these clauses D8.1 and/or D8.2;
  - (b) 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.
- D8.4 Where the Contractor or any of its employees, servants, agents or Sub-contractors, or any person acting on their behalf, breaches any of the acts mentioned in Clauses D8.1 or D8.2 commits any offence under the Terrorism Act 2000, with or without the knowledge of the Contractor, in relation to this Contract or any other contract with the Crown, the Authority shall be entitled:
- (a) to terminate the Contract with immediate effect by written notice to the Contractor and recover from the Contractor the amount of any loss resulting from the termination;
  - (b) to recover from the Contractor any other loss sustained as a result of any breach of this Clause D8, whether or not the Contract has been terminated.

## **E. PROTECTION OF INFORMATION**

### **E1 DATA PROTECTION ACT**

- E1.1 For the purposes of this Condition E1, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing shall have the meaning prescribed under the DPA.
- E1.2 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- E1.3 Notwithstanding the general obligation in Condition E1.2, where the Contractor is processing Personal Data (as defined by the DPA) as a Data Processor for the Authority the Contractor shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Authority;
- (b) comply with all applicable laws;
- (c) Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider's obligations under this Contract or as is required by Law or any Regulatory Body;
- (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (e) take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
- (f) obtain prior written consent from the Authority in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
- (g) not cause or permit the Personal Data to be transferred, stored, accessed, viewed or processed outside of the United Kingdom without the prior written consent of the Authority;
- (h) ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition E1;
- (i) ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority;
- (j) not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Authority or in compliance with a legal obligation imposed upon the Authority; and

E1.4 notify the Authority (within five Working Days) if it receives:

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

E1.5 The provision of this Condition E1 shall apply during the Contract Period and indefinitely after its expiry.

## **E2 OFFICIAL SECRETS ACTS 1911, 1989, S182 OF THE FINANCE ACT 1989**

E2.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

E2.2 In the event that the Contractor or its Staff fail to comply with this Condition, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

### **E3 CONFIDENTIAL INFORMATION**

E3.1 Except to the extent set out in this Condition or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

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

E3.2 Condition E3.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Condition E4 (Freedom of Information);
- (b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other party's Confidential Information.
- (f) disclosure may be necessary for the performance of this Contract;
- (g) disclosure is required to comply with E8 of this Contract.

E3.3 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E3.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Agreement.

E3.5 At the written request of the Authority, the Contractor shall procure that those members of the Staff identified in the Authority's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.

- E3.6 Nothing in this Agreement shall prevent the Authority from disclosing the Contractor's Confidential Information (including the Management Information obtained under F7):
- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - (b) to any consultant, contractor or other person engaged by the Authority;
  - (c) for the purpose of the examination and certification of the Authority's accounts; or
  - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
  - (e) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - (f) To the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (g) 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 Agreement
- E3.7 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to Condition E3.6 is made aware of the Authority's obligations of confidentiality.
- E3.8 Nothing in this Condition E3 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement 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.

#### **E4 FREEDOM OF INFORMATION**

- E4.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- E4.2 The Contractor shall and shall procure that any sub-contractors shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- (a) provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days of the Authority's request; and



- (b) 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.

E4.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement 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 or the Environmental Information Regulations

E4.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

E4.5 The Contractor acknowledges that (notwithstanding the provisions of Condition E2) the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“**the Code**”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where E4.5(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

E4.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

E4.7 The Contractor acknowledges that the Commercially Sensitive Information listed Appendix D is of indicative value only and that the Authority may be obliged to disclose it in accordance with this Condition E4.

## **E5 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

E5.1 Without prejudice to the Authority’s obligations under the FOIA, the Contractor shall not make any press announcement or publicise the Contract or any part thereof in any way, except with the prior written consent of the Authority.

E5.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with Condition E5.1.

## **E6 SECURITY**

E6.1 The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security which may be applicable to the Contractor in the performance of the Services.

- E6.2 The Contractor shall take all reasonable measures, by the display of notices or other appropriate means, to ensure that Staff have notice that all provisions referred to in Condition E6.1 (Security) will apply to them and will continue to apply to them, if so applicable, after the expiry or earlier termination of the Contract.
- E6.3 The Contractor shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible to the Authority for security matters and when required by the Authority's Representative -
- a) shall make any Staff identified by the Authority's Representative available to be interviewed by the Authority's Representative, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. Staff shall have the right to be accompanied by the Contractor's Representative and to be advised or represented by any other person whose attendance at the interview is acceptable to both the Authority's Representative and the Contractor's Representative; and
  - b) shall provide all documents, records or other material of any kind which may reasonably be required by the Authority or by a person who is responsible to the Authority for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from performing the Services. The Authority shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.

## **E7 INTELLECTUAL PROPERTY RIGHTS**

- E7.1 Intellectual Property Rights in all material (including but not limited to reports, data, designs whether or not electronically stored) produced by the Contractor or the Contractor's Personnel pursuant to the performance of the Services shall be the property of the Contractor.
- E7.2 The Contractor will grant the Authority a perpetual, non-exclusive, transferable, worldwide, royalty-free licence in respect of Intellectual Property Rights in the Services or any Deliverables under this Contract (including for the purposes of their adaptation, modification and/or reproduction).
- E7.3 The Contractor warrants, represents and undertakes that its provision of Services and Deliverables under this Contract will not infringe any Intellectual Property Rights of which a third party is the proprietor and that the Contractor is free to grant the license set out in condition E7.2 (Intellectual Property Rights). The Contractor agrees to indemnify and hold harmless the Authority against any and all liability, loss, damage, costs and expenses (including legal costs) which the Authority may incur or suffer as a result of any claim of alleged or actual infringement of a third party's Intellectual Property Rights by reason of either its or the Contractor's possession or use in any manner of any Deliverables or Services.

## **E8 AUDIT**

- E8.1 The Contractor shall keep secure and maintain until six years after the final payment of all sums due under the Contract, or such other period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.
- E8.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.
- E8.3 For the purposes of the examination and certification of the Authority's accounts, or any examination under section 6(1) of the National Audit Act 1983 or annual re-enactment thereof as to the economy, efficiency and effectiveness with which the Authority has used its resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral or written explanations as he may reasonably require for those purposes. The Contractor shall give all reasonable assistance to the Comptroller and Auditor General for those purposes.
- E8.4 Condition E8.3 (Right of Audit) applies only in respect of documents relating to the Contract and only for the purpose of the auditing of the Authority. It does not constitute an agreement under section 6(3)(d) of the National Audit Act 1983 such as to make the Contractor the subject of auditing under that Act.
- E8.5 Except where an audit is imposed on the Authority by a Regulatory Body (in which case the Authority may carry out the audit required without prejudice to its other rights) the Authority may conduct an audit:
- a) to review the integrity, confidentiality and security of the Authority Data;
  - b) to review the Contractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with Condition 30 (Data Protection Act and Freedom of Information Act) and any other legislation applicable to the Services.
- E8.6 Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- a) all information requested by the Authority within the permitted scope of the audit;
  - b) reasonable access to any Sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - c) access to the Contractor's system; and
  - d) access to the Contractor's Staff.

**E9 AUTHORITY DATA**

- E9.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- E9.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- E9.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority.
- E9.4 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- E9.5 The Contractor shall perform secure back-ups of all Authority Data. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request.
- E9.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is an appropriately secure system that complies with Good Industry Practice.

**E10 NOT USED**

**E11 TRANSPARENCY**

- E11.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The 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.
- E11.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Authority to publish the Contract in its entirety, including from time to time agreed changes to the Agreement, to the general public.
- E11.3 The Authority may consult with the Contractor to inform its decision regarding any redactions but the Authority shall have the final decision in its absolute discretion.
- E11.4 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

**F. CONTROL OF THE CONTRACT**

**F1 TRANSFER AND SUB-CONTRACTING**

- F1.1 Except where F1.4 and 5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

- F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- F1.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.
- F1.4 Notwithstanding Condition F1.1, the Contractor may assign to a third party (“**the Assignee**”) the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Authority incurs under Condition C2.6). Any assignment under this Condition F1.4 shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under Condition C3 (Recovery of Sums Due);
  - (b) all related rights of the Authority under the contract in relation to the recovery of sums due but unpaid; and
  - (c) the Authority receiving notification under both Conditions F1.5 and F1.6.
- F1.5 In the event that the Contractor assigns the right to receive the Contract Price under Condition F1.4, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee’s contact information and bank account details to which the Authority shall make payment.
- F1.7 The provisions of Condition C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the approval of the Authority.
- F1.8 Subject to Condition F1.10, the Authority may assign novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
  - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - (c) any private sector body which substantially performs the functions of the Authority, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor’s obligations under the Contract.
- F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Condition F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Condition F1.6 to a body which is not a Contracting Authority or if there is a change in the

legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this Condition both such bodies being referred to as the “**Transferee**”):

- (a) the rights of termination of the Authority in Conditions H1 (Termination on change of control and insolvency) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F1.11 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

F1.13 Nothing in the Contract shall be construed to create a partnership, joint venture, agency or employer/employee relationship between the parties.

F1.14 In carrying out the Services the Contractor will be acting as principal and not as the agent to the Authority. Accordingly:

- (i) The Contractor will not (and will procure that its agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority, and
- (ii) Nothing in this Contract will impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this will not be taken to exclude or limit any liability of the Authority to the Contractor that might arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, its staff or agents.

F1.15 Where the Contractor enters into a sub-contract for the provision of any part of the Services, the Contractor shall ensure that a term is included in the sub-contract which requires the Contractor to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.

F1.16 The sub-contract shall also include a provision enabling the Authority to have the ability to directly enforce the benefit of the sub-contract under the Contracts (Rights of Third Parties) Act 1999, obligations in respect of security and secrecy, intellectual property and audit rights for the benefit of

the Authority corresponding to those placed on the Contractor, but with such variations as the Authority reasonably considers necessary. The Contractor shall not include in any sub-contract any provision the effect of which would be to limit the ability of the Sub-contractor to contract directly with the Authority or a replacement provider of Services.

F1.16 For the avoidance of doubt, in this Contract all persons engaged by the Services Provider and used under this Contract (whether permanent or temporary) will be used as part of the Services provision offered by the Service Provider. Any and all persons engaged by the Services Provider shall sign terms of engagement with the Service Provider and shall not be deemed to have an employment or co-employment relationship with the Authority. In respect of its staff and all other persons engaged by it to deliver the Services under the Contract, the Services Provider is responsible for ensuring the payment of remuneration, for making statutory deductions and for payment of all statutory contributions in respect of earnings related National Insurance and the administration of income tax (PAYE) which is applicable by law. All Parties shall adhere to all employment legislation.

## **F2 WAIVER**

- F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Condition A5 (Notices).
- F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **F3 VARIATION**

- F3.1 Subject to the provisions of this Condition F3, the Authority may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereinafter called a "Variation".
- F3.2 The Authority may request a Variation by notifying the Contractor in writing of the "Variation" and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Authority shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor agrees with the proposed Variation it shall confirm the same in writing.
- F3.2.1 The Authority shall request a variation to the Contract in writing by means of a Variation to Contract Form as set out at Appendix A - Variation to Contract Form.

**F4 SEVERABILITY**

- F4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

**F5 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

- F5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with Condition H2 (Termination on Default) of the Contract.
- F5.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Authority may, without prejudice to its rights under Condition H2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
  - (c) terminate, in accordance with Condition H2 (Termination on Default), the whole of the Contract.
- F5.3 Without prejudice to its right under Condition C3 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- F5.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage



resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

F5.5 In the event that:

- a) the Contractor fails to comply with Condition F5.4 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
  - (b) the Contractor persistently fails to comply with Condition F5.4 above,
- the Authority may terminate the Contract with immediate effect by notice in writing.

## **F6 REMEDIES CUMULATIVE**

F6.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **F7 MONITORING OF CONTRACT PERFORMANCE**

F7.1 Prior to the Commencement Date the Authority shall agree in consultation with the Contractor the arrangements for the purpose of monitoring of performance by the Contractor of its obligations under this Contract, based on the requirements detailed in Section 4 - Statement of Service Requirements and any Key Performance Indicators agreed between the Authority and the Contractor.

F7.2 These arrangements may include without limitation:

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

F7.3 All such arrangements will be carried out by the Contractor in a timely manner, as reasonably required by the Authority, and in line with Good Industry Practice.

## **F8 ENTIRE AGREEMENT**

F8.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Condition shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F8.2 If there is any conflict between the Sections and the Schedules and/or any appendices or other documents referred to in the Agreement, the following order or precedence shall apply:

Form of Contract

Section 1

Conditions of Contract	Section 2
Schedule of Prices and Rates	Section 3
Statement of Service Requirements and KPI's	Section 4

## **G. LIABILITIES**

### **G1 LIABILITY, INDEMNITY AND INSURANCE**

G1.1 Neither Party excludes or limits liability to the other Party for:

- (a) Death or personal injury caused by its negligence; or
- (b) Fraud; or
- (c) Fraudulent misrepresentation; or
- (d) Any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- (e) breach of Condition E3 (Confidentiality); or
- (f) breach of Condition E7 (Intellectual Property Rights); or
- (g) breach of Condition E1 (Data Protection Act); or
- (h) breach of Condition E4 (Freedom of Information)

G1.2 Subject to Conditions G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.3 The Contractor 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 by breach by the Authority of its obligations under the Contract.

G1.4 Subject always to Condition G1.1, the liability of either Party for Defaults shall be subject to the following financial limits:

- (a) the annual aggregate liability of either Party for Default resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed [REDACTED] or [REDACTED] (whichever is higher) unless otherwise agreed; and
- (b) the annual aggregate liability under the Contract of either Party for Default (other than a Default governed by Conditions E7.3 (Intellectual Property Rights) or G1.4(a)) shall in no

event exceed [REDACTED] or [REDACTED] (whichever is higher) unless otherwise agreed.

G1.5 Subject always to Condition G1.1, in no event shall either Party be liable to the other for any:

- (a) loss of profits, business, revenue or goodwill; and/or
- (b) loss of savings (whether anticipated or otherwise); and/or
- (c) indirect or consequential loss or damage.

G1.6 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

G1.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period [and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract].

G1.8 The Contractor shall hold employer's liability insurance and public liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

G1.9 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this Condition or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Condition G1.2.

## **G2 PROFESSIONAL INDEMNITY**

G2.1 The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this Condition and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than [REDACTED] for each individual claim [or such other limit as

the Authority may reasonably require (and as required by law) from time to time]. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

### **G3 WARRANTIES AND REPRESENTATIONS**

G3.1 The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract; The Contractor warrants that the Services which it provides under the Contract correspond to the Authority's requirements and is consistent with the standards that are referred to in Condition 3.1 and any other standards which may be implied by statute or common law that apply to this Contract may not be excluded.
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) 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 the Contract;
- (f) 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 Contractor 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 Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under this Contract;
- (i) in the three 3 years prior to the date of the Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

## **H. DEFAULT, DISRUPTION AND TERMINATION**

### **H1 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL**

H1.1 The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.
- (i) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or

H1.2 The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or

- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Contractor shall seek the prior Approval of the Authority to any change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**change of control**"). Where an Approval has not been granted prior to the change of control the Authority may terminate the Contract by notice in writing with immediate effect within six months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the change of control.

## **H2 TERMINATION ON DEFAULT**

H2.1 The Authority may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is a material breach of the Contract.

H2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

- H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Condition C3.1 (Recovery of Sums Due).
- H2.4 The Authority reserves the right to terminate the Contract should the Contractor be found to be in breach of any aspect of the law that would, in the opinion of the Authority, bring the Authority into disrepute, including but not limited to, relevant aspects shown in Regulation 23 of Public Contract Regulations 2006 (as amended) relating to rejection criteria.

### **H3 BREAK**

- H3.1 The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving three months' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension. Termination under this provision shall not affect the rights of the Parties that have accrued up to the date of termination.
- H3.2 The rights to terminate set out in Conditions H1 (Termination on Insolvency or Change of Control), H2 (Termination on Default) and H3 (Break) are the only circumstances in which this Contract may be terminated and the Contractor acknowledges that it shall have no right to terminate or treat itself as discharged at law. Furthermore, in circumstances where the Authority is entitled to terminate this Contract, it may also terminate this Contract in part.

### **H4 CONSEQUENCES OF EXPIRY OR TERMINATION**

- H4.1 Where the Authority terminates the Contract under Condition H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Condition H2 (Termination on Default), no further payments shall be payable by the Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this Condition.
- H4.2 Subject to Condition G1, where the Authority terminates the Contract under Condition H3 (Break), the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully

itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Condition H3 (Break).

H4.3 The Authority shall not be liable under Condition H4.2 to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or
- (c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

H4.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under Conditions C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), E1 (Data Protection Act), E2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E3 (Confidential Information), E4 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), F6 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Termination), H6 (Recovery upon Expiry or Termination) and I1 (Governing Law and Jurisdiction).

## **H5 DISRUPTION**

- H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H5.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.



- H5.4 If the Contractor's proposals referred to in Condition H5.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.
- H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## **H6 RECOVERY UPON TERMINATION**

- H6.1 On the termination of the Contract for any reason, the Contractor shall:
- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;
  - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor under Condition B8. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - (c) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.
  - (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.
- H6.2 If the Contractor fails to comply with Condition H6.1 (a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- H6.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under Condition H6(c) and (d) free of charge. Otherwise, the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

## **H7 FORCE MAJEURE**

- H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of

such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

- H7.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- H7.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Condition H7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

## **I. DISPUTES AND LAW**

### **I1 GOVERNING LAW AND JURISDICTION**

- I1.1 Subject to the provisions of Condition I2, this Contract will be governed by and construed in accordance with English law and the Contractor hereby irrevocably submits to the jurisdiction of the English courts. The submission to such jurisdiction will not (and will not be construed so as to) limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, nor will the taking of proceedings by the Authority in any one or more jurisdictions preclude the taking of proceedings by the Authority in any other jurisdiction, whether concurrently or not.

### **I2 DISPUTE RESOLUTION**

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract by use of the following escalation procedure:

	<u>Authority</u>	<u>Contractor</u>
Level 1	[REDACTED]	[REDACTED]
Level 2	[REDACTED]	[REDACTED]

- I2.2 If the dispute cannot be resolved by the Parties pursuant to Condition I2.1 (Dispute Resolution), the dispute may, by agreement between the Parties, be referred to mediation pursuant to Condition I2.4 (Dispute Resolution).
- I2.3 The performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Condition I2.2 (Dispute Resolution).
- I2.4 The procedure for mediation and consequential provisions relating to mediation are as follows:

- a) If the dispute or difference is not resolved pursuant to the escalation procedure set out above, either Party may (within fourteen (14) days of the last meeting pursuant to the escalation procedure), before resorting to litigation, propose to the other in writing that the dispute be settled by mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) Model Mediation Procedure (the “Model Procedure”).
- b) To initiate mediation, a Party must give notice in writing (an “ADR Notice”) to the other Party requesting mediation in accordance with the Model Procedure. A copy of the ADR Notice should be sent to CEDR.
- c) If there is any point on the conduct of the mediation (including as to the nomination of the mediator) upon which the Parties cannot agree within fourteen (14) days from the date of the ADR Notice, CEDR will, at the request of any Party, decide that point for the Parties, having consulted with them.
- d) Mediation will commence no later than twenty-eight (28) days after the date of the ADR Notice.

## **J. FLEXIBLE OPERATIONS**

### **J1. FLEXIBLE OPERATIONS**

- J1.1 The Contractor accepts that the Authority has made it clear throughout the procurement which led to this Contract that the nature of this Contract is such that flexibility will be key to successfully delivering the Services detailed in the Statement of Service Requirements. The Contractor accepts that the volumes of usage detailed in Section 4, Statement of Service Requirement, are indicative based on anticipated usage and may fluctuate during the Contract Period.

## **K CATEGORY SPECIFIC CONDITIONS**

### **K1 COMMENCEMENT OF FULL OPERATIONS**

- K1.1 The Authority shall authorise the Commencement of Full Operations as of [REDACTED], if the Contractor either:
- a) has complied fully with the requirements set out in the Statement of Service Requirements relating to the Setting up Operations; or
  - b) has otherwise demonstrated to the satisfaction of the Authority his capacity to deliver the Services to be provided following the Commencement of Full Operations.
- K1.2 If the Authority has not authorised the Commencement of Full Operations in accordance with Condition K1.1 (Commencement of Full Operations), the Authority shall have the right, after taking into account all representations made by the Contractor, either:
- a) to extend the Setting up Operations for such period as may be specified by the Authority, during which period the Contractor shall correct the fault or deficiency which caused the Authority to withhold authorisation for the Commencement of Full Operations; or

- b) to terminate the Contract, or to terminate the provision of any part of the Services, in accordance with Condition H2 (Termination on Default).

K1.3 Where the Authority has not authorised the Commencement of Full Operations on the expiration of any extension of the Setting up Operations under Condition K1.2(a) (Commencement of Full Operations), the Authority shall have the right to repeat the exercise of the options set out in Condition K1.2 (Commencement of Full Operations).

## Appendix A: VARIATION TO CONTRACT FORM

See Condition F3

CONTRACT NUMBER:

CONTRACT TITLE:

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

Full

Name:

Name:

Title:

Title:

Date:

Date:

*SIGNED by the Parties in duplicate*

## **Appendix B: CONFIDENTIALITY UNDERTAKING**

*See Condition E3.5*

(To be signed by persons employed in providing the services before being given access to Government information).

This Confidentiality Undertaking is made as a Deed by me, [insert full name] to the Secretary of State for Foreign & Commonwealth Affairs (the "FCO") in connection with a contract between [REDACTED] and the FCO for the provision of Monitoring and Reporting Services.

I am employed by [REDACTED] and provide consulting Services through [REDACTED]. I have been informed that I may be required to work through [REDACTED] in providing services to the Secretary of State for Foreign & Commonwealth Affairs.

I understand that information in the possession of the FCO or obtained from the FCO must be treated as confidential, [and my access to this information will be subject to my achieving and retaining the necessary security clearance].

I hereby give a formal undertaking, as a solemn promise to my employer and to the FCO, that:

1. I will not communicate any of that information, or any other knowledge I acquire about the FCO in the course of my work, to anyone who is not authorised to receive it in connection with that work; and
2. I will not make use of any of that information or knowledge for any purpose apart from that work;
3. I will not make use of any information or knowledge pertaining to my security clearance;

I acknowledge that this applies to all information that is not already a matter of public knowledge and that it applies to both written and oral information.

I also acknowledge that this undertaking will continue to apply at all times in the future, even when the work has finished and when I have left my employment.

I have also been informed that I will be bound by the provisions of the Official Secrets Acts 1911 to 1989. I am aware that under those provisions it is a criminal offence to disclose information that has been given to me or my employer by the FCO. I am

.....  
aware that serious consequences (including criminal sanctions) may follow any  
breach of those provisions.

EXECUTED AS A

Contract Reference:

DEED by:

Surname:

Forenames:

Date of Signature:

In the presence of (a)

(Witness)

In the presence of (b)

(Witness)

Contractor's Name:

## Appendix C: KEY PERSONNEL

*See Condition B4*

Name	Position/Role Held	Period of involvement in the Contract
[REDACTED]	[REDACTED]	Contract Period
[REDACTED]	[REDACTED]	Contract Period
[REDACTED]	[REDACTED]	Contract Period
[REDACTED]	[REDACTED]	Contract Period
[REDACTED]	[REDACTED]	Contract Period
[REDACTED]	[REDACTED]	Contract Period
[REDACTED]	[REDACTED]	Contract Period



## Appendix D: COMMERCIALLY SENSITIVE INFORMATION

*See Condition E4.7*

Note suitability of this Condition - “Commercially Sensitive Information” means the subset of Confidential Information listed in Appendix D comprised of information:

- (a) which is provided by the Contractor to the Authority in confidence for the period set out in that schedule; and/or
- (b) that constitutes a trade secret.
- (c) is listed in the below embedded document “1.2.23”



Commercially  
Sensitive Information.i

### SECTION 3: SCHEDULE OF PRICES AND RATES

*See Condition C4*

- 1.1 In this Schedule the following terms shall have the following meanings:
  - 1.1.1 **“Charges”** refers to the Combined Rates and the Operational Costs and Expenses invoiced pursuant to this Contract.
  - 1.1.2 **“Combined Rates”** means the Maximum Day Rates plus the Management Fee;
  - 1.1.3 **“Financial Model”** means the spreadsheet titled “[REDACTED]” submitted to the Authority as part of the Contractor’s bid and which sets out the Maximum Day Rates; Management Fee and Operational Costs and Expenses;
  - 1.1.4 **“Management Fee”** means [REDACTED]% which is added to the Maximum Day Rates to give the “Combined Rates”. This [REDACTED]% mark up represents the Supplier’s profit on the costs included in the Maximum Day Rates;
  - 1.1.5 **“Maximum Day Rates”** means the day rates set out in the Financial Model, which are inclusive of all indirect labour costs. This means all costs associated with those employed, including all taxes and contributions required by law and employer's liability and insurance (including life insurance and Medevac); all costs associated with the Contractor's standard employment benefit such as sick leave with pay, pension, non-working days, travel days, health and life assurance; all costs associated with the recruitment and dismissal of Staff, HR , training (such as HEAT/SAFE) and any other consumable costs associated with their employment; all contributions to any Head Office overheads, management and administration of the Contractor, which includes (if appropriate) management information costs, area management and account management costs, operational finance function, management/financial accounting function including banking department, information technology and specialist consultancy advice. The rates do not include mobilisation/deployment costs, or transport which are captured by Operational Costs and Expenses. The Maximum Day Rates are exclusive of profit.
  - 1.1.6 **“Operational Costs and Expenses”** means any costs and/or expenses incurred by the Contractor in the provision of the Services which are not captured by the Maximum Day Rates. This includes flights, transport, accommodation, and any other living costs associated with this requirement. These costs will be identified and agreed at the monthly contract review meeting.
- 1.2 This Schedule sets out the Charges payable under this Contract.
- 1.3 The Contractor submitted the Financial Model as part of the tendering process, and such Financial Model has been accepted by the Authority as the

basis of the Charges under this Contract. The Financial Model details the indicative resource levels, Maximum Day Rates and the Management Fee, both together giving the Combined Rates quoted in the table at paragraph 1.4 of this Section 3. The Combined Rates will remain fixed for the Contract Period subject to the parties' right to give notice to vary the Maximum Day Rates in accordance with the provisions of C4. Any change shall not be more than the percentage change in the current Office of National Statistics' Consumer Prices Review (CPI), from the same index 12 months earlier.

1.4 The Combined Rates are:

<b>Grade of Contractor Personnel</b>	<b>Combined Rate</b>
	<b>£</b>
Junior Analyst/Consultant	[REDACTED]
Analyst/Consultant	[REDACTED]
Senior Analyst/Consultant	[REDACTED]
Principal Analyst/Consultant	[REDACTED]
Managing Analyst/Consultant	[REDACTED]
Director/Consultant	[REDACTED]
Junior Developer	[REDACTED]
Developer	[REDACTED]
Senior Developer	[REDACTED]
Research Director	[REDACTED]
Research Manager	[REDACTED]
Research Analyst	[REDACTED]
Section Head	[REDACTED]
Section Deputy	[REDACTED]
Help Desk Senior Analyst	[REDACTED]
Help Desk Analyst	[REDACTED]
Help Desk Junior Analyst	[REDACTED]

- Note the Director/Consultant rate is an agreed discounted rate which is lower than the rate that would be calculated using the methodology used for calculating Maximum Day Rates in the Financial Model.

- 1.5 The Management Fee shall remain fixed for the Contract Period.
- 1.6 In addition to the Combined Rates, the Contractor will invoice the Authority for the Operational Costs and Expenses at cost, providing evidence of cost when requested by the Authority.
- 1.7 The Maximum Day Rates, Management Fee and Operational Costs and Expenses are exclusive of VAT.

#### **Charging Basis – inception phase**

- 1.8 The Contractor and Authority have agreed a 7 month inception phase, which will start on the Commencement Date. During the inception phase, and in addition to other time and materials based activities during the inception phase, the Contractor will develop a number of Deliverables as set out in paragraph 1.11. These Deliverables will be subject to acceptance criteria which the Contractor and the Authority will develop and agree following the Commencement Date. The work required to deliver these Deliverables will equate to approximately 30% of the total amount invoiced during the inception phase, with the remaining approximately 70% being invoiced on a time and materials basis.
- 1.9 Once completed, each Deliverable will be presented to the Authority for acceptance in accordance with the agreed acceptance criteria. If the presented Deliverable is found to conform to the acceptance criteria, or if the Authority does not provide any written comments within 20 Working Days, the Deliverable shall be accepted, and the Contractor may invoice the time incurred in developing that Deliverable in accordance with clause C4.
- 1.10 If any Deliverable fails in any material respect to meet the agreed acceptance criteria, the Authority shall give the Contractor a detailed description of any such non-conformance in writing, within the 20 Working Day review period. The Contractor shall, at its own cost, use reasonable endeavours to correct

any non-conformance within a reasonable time and, on completion, re-submit the Deliverable to the Authority for acceptance.

1.11 The inception phase Deliverables are:

- Inception Report
- Definition of core indicators, including baseline data
- Monitoring and Reporting System described in the MRS Operating Manual / Playbook
- Online, searchable database and dashboard (MRS Observatory)
- System Flow of Monitoring Data
- Definition of MR Hub Operating Model, including roles and responsibilities
- Details of databases and dashboards available to the Fund
- A detailed risk assessment and risk mitigation plan, and other necessary governance and control documentation
- Reports Catalogue - details of the regular and periodic reports; suggestions on in-depth and tailored analysis of data; and the process for determining bespoke analysis
- Training Plan and Curriculum
- Stakeholder Map and Strategy and Communication Plan

1.12 At the end of the inception phase, the Contractor will provide the Authority with a revised resource plan for the remainder of the Contract Period. At each monthly governance meeting, the Contractor will provide a summary of all Charges invoiced to date together with an updated resource plan for the remainder of the Contract Period.

**Charging basis – Contract Period**

1.13 Following completion of the inception phase and acceptance of the Deliverables, the Contractor shall continue to provide the Services on a time and materials basis in accordance with the indicative resource levels in the Financial Model. However, the parties acknowledge that the precise number and level of seniority of the provided resources shall be subject to adjustment in order to provide the Services under this Contract. Subject to the operation

of indexation in accordance with clause C4, the Contractor and the Authority acknowledge that the Contractor will provide the Services under this Contract within an overall cap of [REDACTED]. Reporting of spend, and allocation of resources, will remain under regular review between the parties in accordance with the reporting requirements of clause F7, and as more particularly set out in the Statement of Service Requirements.

- 1.14 During Contract Period, and in accordance with clause C2.2, the Contractor will provide the Authority with a monthly invoice and breakdown of the Charges, being:
- (a) the days expended by Contractor Personnel, per grade, multiplied by the appropriate Combined Rate on a time and materials basis;
  - (b) any applicable Operational Costs and Expenses;
  - (c) (during inception only) any Milestone payments that are due and payable in accordance with paragraph 1.9 above;
  - (d) (during inception only) an analysis of the days expended by Contractor Personnel, per grade, utilised in the development of the Deliverables but which have not yet been delivered and/or achieved the acceptance criteria.
- 1.15 The Charges, unless expressly provided otherwise:
- (a) will be calculated and invoiced monthly; and
  - (b) are the only charges payable for the Services and for the Contractor's compliance with its other obligations under this Agreement.
- 1.16 The Contractor shall keep records of hours worked, and it shall submit summaries of this information to the Authority with the invoice submitted in accordance with clause C2.

## **Financial Model**



ATTACHMENT 4 -  
CPG-1417-2016 - SCH

	Inception Phase (September 17 - March 18) (Months 1 - 7)	Year 1 (April 18 - March 19) (Months 8 - 19)	Year 2 (April 19 - March 20) (Months 20 - 31)	Year 3 (April 20 - March 21) (Months 32 - 43)	Year 4 (April 21 - Nov 21) (Months 44 - 51)	TOTAL
PA Consulting	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

## **Open Book Accounting**

- 1.14 The Maximum Day Rates in the Financial Model were calculated for the bid on an open book basis to include reasonable estimates of future costs. Over the duration of the Contract Period, actual costs will be impacted by variable factors such as individual staff changes, turnover changes compared to overhead and different actual costs of overheads. As a result, the corresponding actual costs for those items used to calculate the Maximum Day Rate and Management Fee may not reflect the estimates and assumptions provided in the Financial Model. Notwithstanding this, and to provide the Authority with certainty over costs, the Combined Rates will remain fixed for the Contract Period subject to the parties' right to give notice to vary the Maximum Day Rates (in accordance with clauses C4.1 and C4.3 of the Contract).
- 1.15 Upon request of the Authority, the Contractor shall promptly provide the following information in relation to the Maximum Day Rates in the Financial Model:
- (a) the calculation the Contractor used to reach the Maximum Day Rates;
  - (b) the indirect employment costs included in the Maximum Day Rates;
  - (c) details of the Operational Costs and Expenses for all activities to be undertaken;
  - (d) explanation of any underlying assumptions in the Maximum Day Rates regarding:
    - overtime rates;
    - standard hours;
    - indirect employment costs;
    - accommodation charges; and
    - discounts applied;
  - (e) a detailed resource model to provide a breakdown of manpower resources by the number and type of Contractor staff required for each Service and free of any contingency together with their day rates, and any travel and subsistence expenses incurred outside the UK. This shall also apply to third party costs;
  - (f) the total price broken down by volume, unit cost and Management Fee;



(g) any additional activities, costs and risks that may impact the Authority and which are not already covered by the Charges.

1.16 If the Authority disputes any aspect of the Contractor's information provided in relation to the Maximum Day Rates, or the Operational Costs and Expenses, the matter shall be referred for determination to the Dispute Resolution Process.

### **Co-ordination with others**

1.17 The Contractor acknowledges that the Authority has also appointed a service provider to deliver Fund Level Evaluation and Learning Services ("WYG"), and that successful delivery of the Contractor's Services will be subject to certain dependencies on WYG (and WYG will have dependencies on the Contractor). Whilst there is no contractual relationship between the Contractor and WYG, the Contractor and WYG intend to enter into a Memorandum of Understanding setting out the basis of the parties' mutual co-operation. The Contractor will co-operate with WYG in good faith to produce a joint project plan which will highlight the assumptions and dependencies that the Contractor and WYG has on the other, and any assumptions and dependencies each have on the Authority. The Authority will be responsible for the overall management of the joint project plan and will provide both the Contractor and WYG with separate feedback on their respective performance as against the joint project plan. The Contractor will work in good faith to ensure that it meets any such dependencies on it and the Authority will procure that WYG enters into a reciprocal arrangement through the Authority's contract with WYG. Should the Authority become aware of any slippage in the joint project plan, it will notify both the Contractor and WYG as soon as reasonably practicable and the parties (as appropriate) will meet to discuss the implications of such slippage and any mitigation the parties can introduce to reduce the impact of the slippage. Notwithstanding this, it is acknowledged that the Contractor cannot directly influence WYG meeting WYG's dependencies. Therefore to the extent that any failure by WYG to meet its dependencies causes the Contractor to miss a milestone, or to be late in delivering an output, such failure should not prevent the Contractor from being able to submit the relevant invoice, or prevent the Authority from paying such invoice.



## SECTION 4: STATEMENT OF SERVICE REQUIREMENT

### 1. Introduction and background

- 1.1. The 2015 Strategic Defence and Security Review [1] announced a [REDACTED] cross-government Prosperity Fund to run over the [REDACTED] to promote the economic reform and development needed for growth in partner countries. Priorities include improving the business climate, competitiveness and operation of markets; energy and financial sector reform; and increasing the ability of partner countries to tackle corruption. As well as contributing to a reduction in poverty in recipient countries, it is expected that these reforms will create opportunities for international business including UK companies. The role of the Fund is also set out in the UK aid strategy, Tackling Global Challenges in the National Interest [2]. The cross-government Prosperity Fund promotes the economic reform and development needed for growth in partner countries.

#### *Theory of change*

- 1.2. Although the Fund is currently still being developed and designed, it has an indicative theory of change which shows that the Prosperity Fund is primarily a funding mechanism or portfolio (Figures 1 and 2) not a unitary programme. The Fund will support a number of medium-sized/large multi-year projects/programmes in priority countries and a number of medium-sized/large multi-year projects/programmes across priority themes. Large programmes/ projects are [REDACTED] and medium-sized programmes/projects are [REDACTED]. Medium-sized and large projects/programmes will operate from Years 2-5. In the Fund's first year, an indicative budget of [REDACTED] was set aside for relatively small, single year projects. Smaller projects may be supported in other ways, e.g. through funds for scoping and a possible Strategic Opportunities Fund. Although priority themes are yet been finalised, some such themes have been identified and are indicated in Figure 2.

# PROSPERITY FUND THEORY OF CHANGE

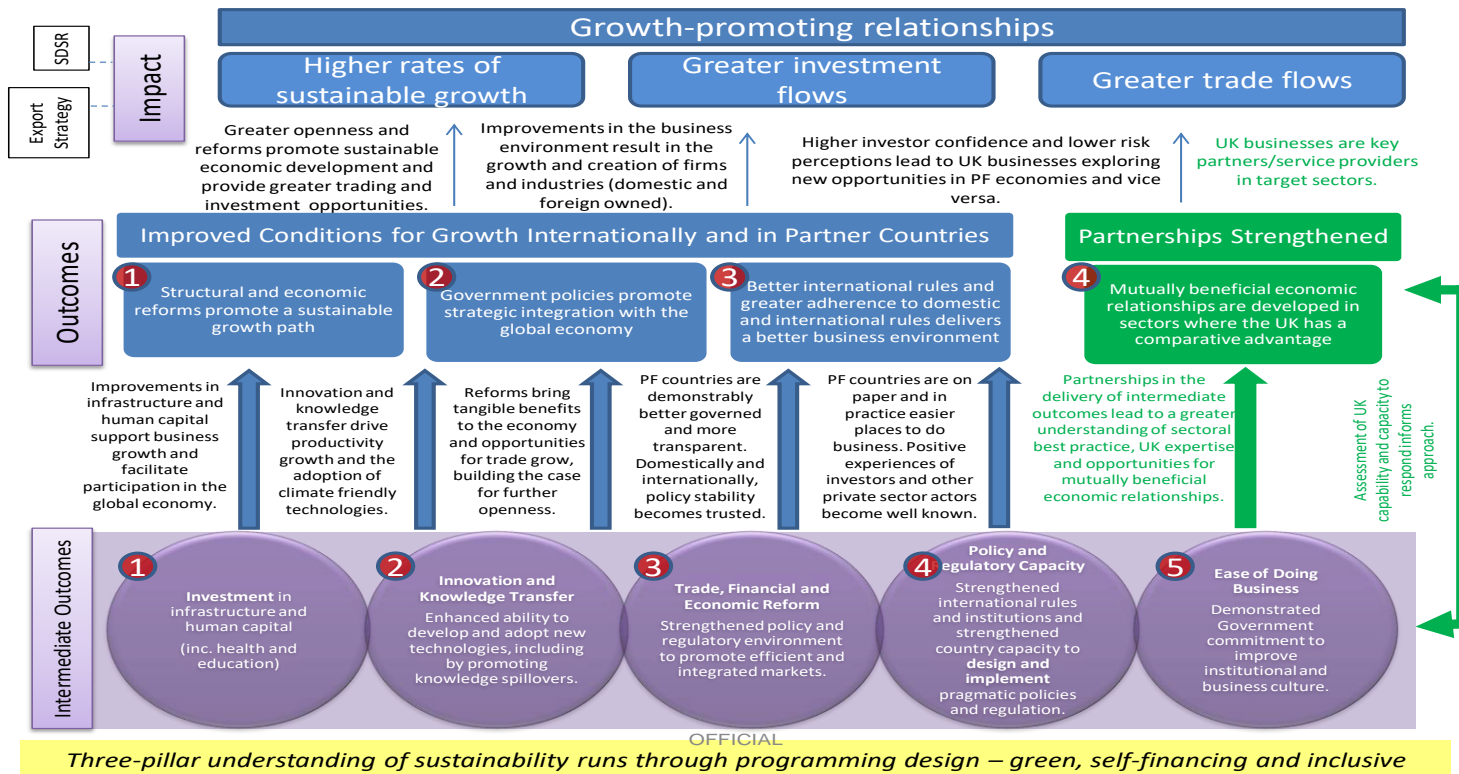
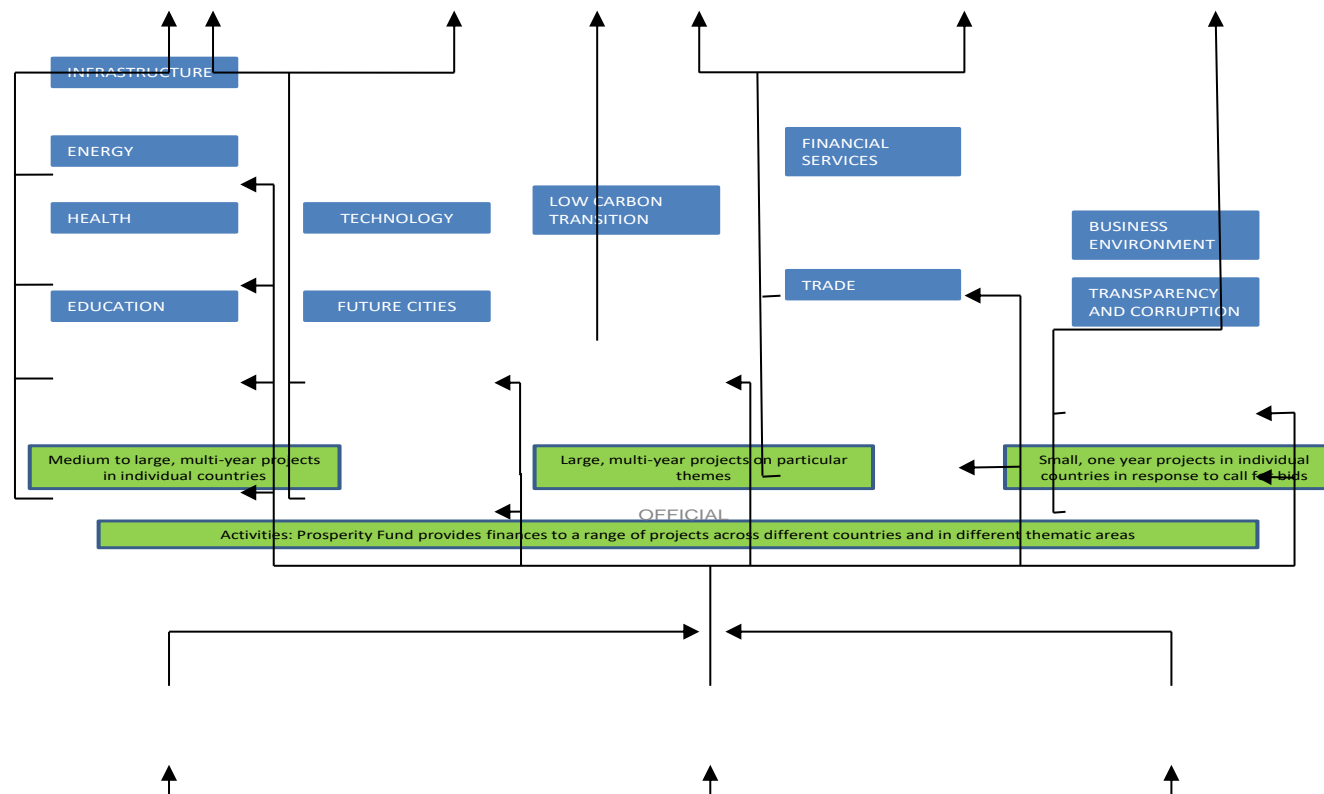


Figure 1: Theory of Change for the Prosperity Fund: Intermediate Outcome to Impact



## Partnerships Strengthened

Mutually beneficial economic relationships are developed in sectors where the UK has a comparative advantage



Assumption 1: Prosperity Fund uses inputs to produce outputs in a way that represents best value for money

Assumption 2: Outputs are produced in ways which, through progress in key identified sectors, contribute to intermediate outcomes

Assumption 3: Appropriate and relevant programmes are designed guided by evidence generated through the diagnostic process

Assumption 4: UK benefits substantially from progress on areas of primary purpose

- 1.3. Similarly, the countries in which the Prosperity Fund will work have not yet been finalised but it is expected that priority will be given to middle-income countries based on development potential and UK economic interests. Large, multi-year programmes are likely to focus on those countries with the greatest potential in both of these areas. The range of countries and topics covered by the Prosperity Fund in the first year can be seen from the various calls for bids for Y1 [3].
- 1.4. It is expected that projects and programmes would support activities in identified sectors based on tailored diagnostics and proposals developed in priority countries and themes. It is expected that these activities would contribute to progress on five intermediate outcomes which are shown as purple circles in Figures 1 and 2. These intermediate outcomes are considered to represent the Fund's primary or developmental benefits. In addition, it is expected that such progress would be made in ways which would promote mutually beneficial partnerships in areas in which the UK has comparative advantage (green box in Figures 1 and 2). This secondary or UK benefit is a key element of the Prosperity Fund's approach. However, this is clearly secondary to the primary developmental benefit.
- 1.5. A number of key assumptions are shown in Figure 2, including that the Fund uses inputs to produce outputs in a way that represents value for money. Ensuring value for money is a key and critical requirement within the Prosperity Fund alongside the requirements of the primary benefit of producing positive developmental outcomes and the secondary benefit relating to promoting partnerships which benefit the UK.
- 1.6. It is expected that as a result of achieving intermediate outcomes, the Fund's outcome would be that, internationally and in partner countries, there would be improved conditions for growth, namely structural and economic reforms that promote a sustainable growth path; government policies that promote strategic integration with the global economy; and better international rules and greater adherence to domestic and international rules delivering a better business environment.
- 1.7. It is expected that this outcome would contribute to ultimate developmental impact in terms of growth-promoting relationships leading to higher rates of sustainable growth; greater investment flows and greater trade flows.

### *Available evidence*

- 1.8. There are a number of areas where there are evidence gaps and it is expected that the Prosperity Fund, in general, and its monitoring and evaluation, in particular, would contribute to filling those gaps. While it is expected that official development assistance can be used to promote economic development in middle income countries in ways which promote mutually beneficial partnerships with the UK, evidence is needed not only that this can be done in practice but also about the best ways of doing this in different contexts

### *Implementation arrangements*

- 1.9. The Prosperity Fund is a cross-government programme involving a number of Government Departments including the Foreign and Commonwealth Office (FCO), the Department for International Development (DFID), the Treasury, the Cabinet Office, the Department for International Trade (DIT) and the Department for Business, Energy and Industrial Strategy (BEIS). The Fund is being managed by a cross-government Prosperity Fund Management Office located at the Foreign and Commonwealth Office. It is expected that Government Departments and FCO Posts will bid for Prosperity Fund finances. The majority of funds for large and medium-sized multi-year projects and programmes are expected to be allocated over the Fund's first year of operations ([REDACTED]) through three funding windows.

### *The previous FCO Prosperity Fund*

- 1.10. The cross-government Prosperity Fund is building on work conducted by a smaller Prosperity Fund which was operated previously by FCO. This FCO Fund disbursed around [REDACTED] per year through FCO Posts. It was broadly similar in size and nature to the first year's operations of the cross-government Prosperity Fund. Most projects supported through this Fund were valued at [REDACTED] or less and were single year in nature. Although this Fund has not yet been formally evaluated overall, the Cabinet Office Implementation Unit is currently conducting a review of this Fund. In addition, individual projects and programmes within the FCO Prosperity Fund did undergo internal evaluations.

### *Other relevant work*

- 1.11. A number of organisations are doing work which is relevant and related to the work of the Prosperity Fund. This includes economic development work being conducted by DFID, particularly in low income countries, and activities of international financial institutions, including the World Bank, particularly in relation to investment climate [4]. It is expected that the Prosperity Fund Management Office's monitoring and evaluation team would lead on interacting with other relevant programmes on matters relating to monitoring and evaluation.

### *Learning from similar funds*

- 1.12. In addition, the Prosperity Fund, in general, and its monitoring, evaluation and learning systems, in particular, have been designed based on lessons learned from similar financing mechanisms and portfolios. In particular, the monitoring, evaluation and learning system has been designed based on the experiences of and lessons learned by the International Climate Fund (ICF) [5], including, for example, their experiences of developing and measuring a number of key performance indicators. Bidders<sup>1</sup> are expected to comment on where the Prosperity Fund's approach to monitoring should be similar to or diverge from ICF.

## **2. Purpose**

- 2.1. The Prosperity Fund is establishing a number of mechanisms and systems for monitoring, reporting, evaluation and learning (MREL). Details are provided in an MREL strategic framework and business case [6, 7]. In principle, although the Prosperity Fund Management Office is establishing an MREL team, it is expected that much of the MREL work will be carried out through a number of contractors. Specifically, there will be three main central contracts – this one focused on monitoring & reporting and two others focused on (i) programme level evaluations and (ii) Fund level evaluation & learning respectively. In addition, there may be other central contracts on matters relevant to MREL, including a contract for economic modelling of secondary/UK benefit and a contract for operational

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<sup>1</sup> Please note that these terms of reference use the term “bidder” to refer to firms submitting proposals to carry out this work, i.e. something required of a bidder would be required in their proposal. The term “contractor” is used to refer to the firm selected to carry out the work, i.e. the successful bidder. Where something is required of a contractor this would be expected during implementation, including during inception in some cases.



research studies to address key, practical questions relating to the Fund's operations.

- 2.2. Through this contract, the Fund is seeking to identify a contractor whose purpose will be to lead on the development and implementation of the Fund's monitoring & reporting systems.

*Focus on accountability*

- 2.3. The main focus of the Fund's monitoring and reporting systems will be on accountability, that is, identifying and explaining how the Prosperity Fund finances have been spent and what results have been achieved. This accountability function will operate at project, programme and Fund levels. The monitoring and reporting contractor will play a critical role in providing information and data for the Fund's strategic communications products for a range of audiences (see paragraphs 2.5-2.7). More details on the expected accountability functions under these terms of reference are provided in the section on scope (p67). Within the Prosperity Fund Management Office the lead for strategic communications sits within the communications team and the contractor would be expected to work with that team to help develop the visual products that will be required for the Fund's communications.
- 2.4. This does not mean that the monitoring and reporting will have no contribution to learning. Data and findings from monitoring and reporting activities will be a key data input into project/programme and Fund level evaluations which will be the main way of learning lessons across the Fund and its programmes.

*Audiences*

- 2.5. The Fund's monitoring and reporting activities have a number of key intended audiences. These are divided into primary and secondary audiences in relation to monitoring and reporting data. Bidders may comment on this material making suggestions for changes and additions, if necessary. Bidders are expected to indicate how relevant monitoring and reporting data would be made available to different identified audiences. In particular, bidders are expected to explain how they would contribute data and evidence to be used in the Fund's strategic communications on results achieved. The selected contractor will develop a detailed system for flow of monitoring data during inception with this being revised and refined during implementation.

2.6. Identified primary audiences for monitoring and reporting data include:

- Government Departments and FCO Posts managing and implementing projects and programmes.
- Other organisations involved in implementing projects and programmes including contractors.
- Ministers and officials of relevant UK Government Departments including FCO, DFID, DIT, BEIS, Cabinet Office and Treasury.
- UK general public, Parliament and civil society organisations.

2.7. Other audiences (secondary) that have an interest in the Fund's monitoring and reporting data include:

- Businesses and private sector companies in the UK and elsewhere.
- Governments, civil society and citizens in partner countries.
- Development partners, including the World Bank and other international financial institutions; multilateral organisations and bilateral agencies.
- Media including print and broadcast media.

### *Justification of timing*

- 2.8. The monitoring and reporting contractor will work over years 2 to 5 of the Fund, i.e. from April 2017 to March 2021. The justification for starting in year 2 is largely practical, i.e. it has taken time to design and develop the Fund's MREL system and contracting service providers will also take time. However, this timing also makes sense as the Fund's first year's activities are likely to be relatively small-scale focused on quite small projects that are broadly similar to those supported by the previous FCO Prosperity Fund (see paragraph 1.10).

## **3. Scope and objectives**

- 3.1. As stated above (see section 2), the purpose of these terms of reference is to lead on the development and implementation of the Fund's monitoring and reporting systems.

### *Objectives*

- 3.2. Specifically, the contract has the following five objectives:
- To design and develop the Prosperity Fund's monitoring and reporting system, including the finalisation of core, Fund level indicators.
  - To support implementation of the Prosperity Fund's monitoring and reporting system.
  - To work with programmes to develop indicators and associated baselines that will be used to aggregate cross Fund work against the theory of change.
  - To conduct routine Fund level analysis and reporting of data generated through the monitoring and reporting system.
  - To conduct in-depth and tailored analysis of data generated through the monitoring and reporting system.

### *Designing and developing the Fund's monitoring and reporting system*

- 3.3. The Prosperity Fund will monitor a number of quantitative indicators to give information as to where and how Fund finances have been spent, what activities have been carried out and what results have been produced. The monitoring and reporting contractor will finalise the development of these indicators and ensure these are monitored across the Fund's activities.

- 3.4. Based on, in particular, the experiences of the ICF, it is proposed that core Fund indicators should be as few as possible and that it should be obligatory for Fund programmes and projects to report on all relevant indicators. The indicators that are relevant in a particular context will be agreed between the programme/project and the Prosperity Fund Management Office depending on the sectors in which the programme/project is working.
- 3.5. Work on indicator development is ongoing. Bidders are expected to explain how they would approach this including how they would finalise the process of indicator identification and selection. During inception, the selected contractor would finalise the identification and selection of indicators to track.
- 3.6. Indicators will be included at a number of levels. First, there is need to be able to track and report on how Fund finances have been allocated and spent. Second, there is need to be able to track progress towards the Fund's achievement of its primary purpose through tracking outputs achieved and contribution to intermediate outcomes. It is not expected that the Fund's monitoring and reporting system would seek to measure progress above the level of intermediate outcome and expected secondary (UK) benefit, i.e. it would not be expected to assess contribution to ultimate outcomes or impact, although these may be assessed through the Fund's evaluations.
- 3.7. Some measures that are needed are identified in the MREL strategic framework [6] and include
- Spending by country and sector programme
  - Spending by theme/sector
  - Spending by Department
  - Spending by intermediate outcome
  - Value for money
  - Primary benefits
  - Secondary benefits (direct commercial, indirect economic and global public good)
  - Portfolio/fund management quality covering spend, return and risk

- Risk reporting.

3.8. Data generated through the Fund's monitoring and reporting systems will be used for a process of contribution analysis in evaluations of the Fund. This will involve:

- Collecting evidence of what the Fund has done
- Assessing the extent to which expected outcomes have occurred
- Assessing the extent to which Fund actions have contributed to observed outcomes and/or the extent to which those outcomes are due to other factors

3.9. It is therefore important for the Fund to have indicators of both its activities and its intended (intermediate) outcomes. The latter do not necessarily have to be directly causally linked to the Fund or its activities. The existence (or otherwise) of these links will be examined through the process of contribution analysis described above. Suggested indicators at these levels are proposed in Annex 1 (p89). These indicators are not fixed or finally decided at this stage. Indeed, there is an ongoing process of consultation about these which is likely to result in changes prior to the monitoring and reporting contractor being appointed. Bidders can suggest changes and should, in particular, explain the process they would follow to finalise these indicators.

3.10. Some of the indicators that the Fund may track at the intermediate outcome level may depend on existing indices and/or sub-components of these, e.g. perceptions of corruption index [9]; trade openness index [10]; open markets index [11]; trade logistics performance index [12]; and ease of doing business index [13]. At this stage, these indices are not formally agreed as Prosperity Fund indicators. Some may be removed or added or sub-components of some indices may be used. There are concerns that these indices may be at too high a level to document Prosperity Fund effects. However, they could be useful as measures of intended outcomes as part of the contribution analysis approach mentioned earlier.

3.11. The uses to which monitoring information will be put are many. In particular, they will form the basis of the quarterly monitoring reports that are required from the Fund. Bidders should outline their experience in developing reporting products for senior management and oversight groups. The information will also be used to feed into our evaluations and success will depend on how well the contractors for

evaluation and for MR cooperate and coordinate. Bidders are asked to outline how they will support cooperative working. The information and its analysis will also be used to feed the outward communications of the Fund and the bidder should outline its experience in creating external communications products from gathered data.

3.12. Bidders are expected to indicate quality standards that they would expect indicators to meet. For example, they could use the standards developed by UNAIDS with DFID support [14]. These require indicators to meet five quality standards, namely that they should:

- Be needed and useful.
- Have technical merit.
- Be fully defined.
- Be feasible to use to collect and analyse data.
- Have been used in practice or be field tested.

3.13. There is a sixth standard for a set of indicators which is that this should be coherent and balanced. The standards come with a tool and a proposed process for peer review of indicators through the establishment of indicator review panels. Application of these standards means that the common problem of choosing an indicator, based solely on a short title, which then proves impossible to measure consistently in practice, should be avoidable.

3.14. The selected contractor will present, during inception, details of the core indicators that would be tracked by the Prosperity Fund. These details should include:

- Explanation of how data from the indicator would be used and by whom.
- Explanation of the process followed to ensure the technical merit of each indicator.
- A full definition of each indicator including a title and definition; the purpose and rationale; the method of measurement (including numerator and denominator where applicable); the collection method; the measurement frequency; details of how the indicator would be disaggregated and interpreted; strengths and weaknesses of the indicator; and any sources of further information about the indicator.
- Evidence that it will be feasible to track this indicator.

- Evidence that the indicator has been used previously or there are plans to field test the indicator.

3.15. Bidders are expected to propose a reporting system for the Prosperity Fund. This should include provision for:

- Monthly financial reporting covering the measures outlined in paragraph 3.6.
- Quarterly reporting of results. It is expected that this would largely be quantitative reporting against output level indicators.
- Annual reviews – it is expected that the Prosperity Fund would operate a system of internal annual reviews similar to that used by DFID for its projects. It is possible that this could be lighter touch than the one operated by DFID because of the system of quarterly reporting referred to above. Bidders should explain how annual reviews would be designed and delivered so that they allow:
  - Scoring of overall project/programme performance. It is proposed that the Prosperity Fund use the same scoring system as that used by DFID (A++, A+, A, B, C) although bidders may suggest alternatives if they consider this appropriate provided that justifications and explanations are given.
  - Scoring of project/programme risk. It is proposed that the Prosperity Fund score risk on either a three point (high; medium; low) or five point (high; medium/high; medium; low/medium; low) scale. Bidders should suggest which scale they would use considering the pros and cons of these (and perhaps other) approaches.
  - Scoring of project/programme value for money. It is proposed that the Prosperity Fund score value for money on a three or five point scale rather than the yes/no rating used by DFID. Bidders should comment on this explaining in some detail how projects/programmes might assess value for money in annual reviews.

- Important qualitative questions to be answered by project/programme managers and implementers (see Annex 1). It is not proposed that managers/implementers should answer all questions but only those that are relevant to the sector(s) in which they are working and the intermediate outcomes to which they are seeking to contribute. Such questions could be incorporated into an annual review template which should be based on that used by DFID.

- 3.16. In order to develop these systems, the selected contractor would be expected to consider any systems developed for Y1 of the Prosperity Fund; to discuss expectations and needs with identified stakeholders; and to prepare, introduce and support the use of any templates required for reporting purposes. The contractor will need to develop clear operational guidelines for monitoring and reporting in the Prosperity Fund.
- 3.17. Bidders are expected to explain how data from the Prosperity Fund's monitoring and reporting system would be stored and made available to relevant stakeholders, including Prosperity Fund Management Office staff and ministers/officials of different Government Departments. A key requirement will be the development and introduction of a database and data dashboard (see section 7.4). Bidders should outline how they would approach this. Details would need to be discussed and agreed with stakeholders during inception. Bidders should explain the process they would follow including identifying any databases/dashboards that might be considered as models; who the key stakeholders might be; and what their data needs are likely to be. When explaining databases and dashboards, bidders should include details of the software they would use including details of intellectual property of the software, the products (database and dashboard) and the data contained.

#### *Supporting the implementation of the Fund's monitoring and reporting system*

- 3.18. While it is expected that the actual process of monitoring and reporting on the Fund's activities would be carried out by Government Departments and FCO Posts



managing and implementing projects/programmes, the selected contractor will work actively with Departments, Posts and their implementers to support this process by:

- Providing technical support to the process including troubleshooting problems that might occur.
- Building the capacity of those using the monitoring and reporting system including, in particular, Government Departments and FCO Posts managing and implementing projects and programmes.
- Checking and verifying the accuracy of reported data. Given that the data will be self-reported and that reporting on core indicators will be mandatory for Fund projects and programmes, there will be a need for the contractor to verify and assure the quality of reported data.

3.19. Bidders should explain in detail how they would address these matters, particularly:

- The provision of technical support to monitoring and reporting.
- The provision of capacity building support to Government Departments and FCO Posts that are monitoring and reporting data.
- Verification and quality assurance of reported data.

#### *Conducting routine Fund level analysis and reporting of data*

3.20. The selected contractor will analyse reported data to inform the Prosperity Fund's regular and periodic reporting. This is likely to include monthly financial and quarterly results reports and provision of data to allow responses to questions from different stakeholders, including ministers, Parliament and the general public. The monitoring and reporting contractor will also provide data and evidence to inform the Fund's strategic communications products.

- 3.21. Bidders should explain how they would approach this with particular focus on what might be the responsibility of the contractor and what might be the responsibility of others, e.g. Government Departments, FCO Posts and the Prosperity Fund Management Office. Details regarding these matters will be finalised with the selected contractor during inception.

#### *Conducting in-depth and tailored analysis of data*

- 3.22. It is expected that there might be need to conduct some in-depth and tailored analysis of data generated from the monitoring and reporting systems. For example, there might be need to examine the extent to which programme or project performance is related to perceived risk. Currently, there are no fixed views as to the likely areas of focus of such analyses nor on when or how frequently they might be needed. Bidders are invited to make proposals and suggestions on these matters with a final decision being made during inception.

#### *Coordination with others*

- 3.23. The contractor will be expected to coordinate with others who will be contributing in a variety of different ways, to the Prosperity Fund's monitoring, reporting, evaluation and learning (MREL). Effective coordination among those contributing to the Fund's MREL will be critical to the success of the Prosperity Fund, in general, and its monitoring, reporting, evaluation and learning, in particular. Expectations for this have been set out in a document entitled "[REDACTED]" [7].
- 3.24. First, the monitoring and reporting contractor will need to coordinate effectively with both the programme level and the Fund level evaluation contractors. Bidders should explain how they will approach this and how they will embed the cooperative values that will underpin successful delivery. It is not expected that bidders on the monitoring and reporting contract would bid on either of the evaluation contracts or vice versa.
- 3.25. The monitoring and reporting contractor will work with programme managers and their implementers to determine the indicators that will be most appropriate for determining success and for managing the programmes effectively. The contractor

will also be asked to ensure that baselines are appropriately constructed. Note that establishing baselines and reporting from programmes will be the responsibility of the programme implementer and this is being separately funded.

- 3.26. Due to the need to aggregate across programmes to determine portfolio results, we anticipate the development of reportable indicators for each intermediate outcome that all programmes working to that intermediate outcome will be required to report against. We also anticipate operational indicators that programme managers will need to be able to judge the effectiveness of delivery within their programming streams. There is a requirement on the Fund to report quarterly and the monitoring and reporting contractor will produce detailed analysis of results to feed into these reports. The precise nature of the analysis and the products that will support it (slides, tables, graphics etc.) will be finalised in the inception phase. Bidders for the monitoring and reporting contract should demonstrate their experience and skill at developing these types of reporting analytics. A further requirement for the monitoring and reporting contractor is the development of a searchable online database for programme results. This will need to be consistent with FCO/UK government systems and requirements and should allow a user to develop their own analysis and presentational products based on the results information. At the very least this should allow users to build queries around: location, theme, expenditure; and results.
- 3.27. The monitoring and reporting contractor will also be required to provide technical advice to programme managers on indicators and baselines. The monitoring and reporting contractor will need to work with the evaluation and learning contractor to ensure the collection of information appropriate to the evaluation and learning methodologies that are devised.
- 3.28. Values of cooperation and coordination are also important when working with other departments, posts (UK overseas offices) and their programme teams. These programme teams will contract work out to implementers to deliver the programmes. A feature of the monitoring and reporting contract is that the contractor should work with the project owner (either a Government Department or FCO post) to support them in their monitoring and reporting activities. The bidder should explain how they will build a relationship with programme managers so that this support can be most capably offered.

- 3.29. With such a range of cooperative working required for success it will be important to develop an agreed dispute resolution process to manage any conflicts or problems that might arise. The Prosperity Fund Management Office governance group shall be the final adjudicator of disputes between contractors over responsibilities and performance.

### *Risks*

- 3.30. Bidders are expected to identify risks associated with these terms of reference and present them in a standard risk matrix, i.e. showing likelihood of occurrence, impact if the risk occurs and their mitigation strategy. Risks identified in the business case [8] may be considered but these are not exhaustive. Bidders are encouraged to identify and present a comprehensive assessment of the risks in the contract that will be awarded on the basis of these terms of reference. A definitive risk matrix will be developed by the contractor and agreed by the Prosperity Fund during inception. This will need to be reviewed and updated periodically during implementation.

## **4. Evaluation criteria**

- 4.1. It is proposed that evaluations carried out of the Prosperity Fund and its projects/programmes will be expected to consider the OECD-DAC criteria of relevance, effectiveness, efficiency, impact and sustainability [15]. The contractor who will provide Fund level evaluation and learning services will be expected to explain in detail how they will approach these criteria. However, there is no expectation that these should be used as a rigid or mechanistic template for Fund evaluations. Annex 1 shows how the proposed strategic evaluation questions map to the OECD-DAC evaluation criteria.
- 4.2. Bidders for the monitoring and reporting contract would be expected to comment very briefly on any relevance these criteria have (if any) to the monitoring and reporting work of the Prosperity Fund. The successful contractor will work closely and cooperatively with both Fund and Programme level evaluation contractors and with Posts/Departments and their implementers. Cross-cutting issues should be

identified through the inception phase and a plan put in place to provide learning across the issues.

## **5. Methodology**

- 5.1. Bidders are expected to explain how they would approach the implementation of these terms of reference if selected. Bidders are asked to explain how they would interpret and apply, in practice, the principles outlined in the MREL strategic framework. In particular, bidders should focus on how they would approach indicator development such that indicators can be aggregated at the intermediate outcome level within each strand.
- 5.2. Bidders are expected to outline approaches and methods they would use to meet the objectives specified in these terms of reference. It is recognised that these may be general outlines at this stage, more detail will be finalised with the selected contractor during inception. Bidders should outline the approach and methods they would use to:
- Design and develop the Prosperity Fund's monitoring and reporting system.
  - Deliver implementation of the Prosperity Fund's monitoring and reporting system. Bidders are expected to explain in some detail the approaches and methods they would use to provide technical support, capacity building and data verification.
  - Conduct routine Fund level analysis and reporting of data generated through the monitoring and reporting system.
  - Conduct in-depth and tailored analysis of data generated through the monitoring and reporting system.
  - Ensure close cooperation with other contractors and with the management team within the Fund.

## **6. Data**

- 6.1. Bidders are encouraged to comment in some detail on the likely quality of data that would be produced by the monitoring and reporting system they will establish. Any

assumptions or risks underpinning this assessment must be identified. Bidders should be familiar with the claims and statements made on this in programme documentation, including the terms of reference for the evaluation and learning contractor. If there are any issues with any of these materials or claims about them, bidders should identify them in their proposals.

## **7. Outputs**

- 7.1. The contract that will be developed based on these terms of reference will expect a number of outputs or deliverables over the four year period that it operates (2017/18 to 2020/2021).
- 7.2. There will be an inception phase of seven months which will run from 4<sup>th</sup> of September 2017 to 31<sup>st</sup> March 2018. The output of this phase will be an inception report which will in detail how the selected contractor will fulfil these terms of reference. Specifically, the inception report will include:
- A detailed system for flow of monitoring data.
  - Explanation of the roles and responsibilities of the monitoring and reporting contractor vis a vis others, particularly the Prosperity Fund Management Office and Government Departments/FCO Posts managing or implementing programmes and projects.
  - Details of core indicators that the Fund will monitor and report on.
  - Details of database(s) and dashboard(s) available to the Fund.
  - Details of the regular and periodic reports the contractor would produce.
  - Suggestions as to the in-depth and tailored analysis of data that the contractor might produce. The inception report should include details as to the process of deciding on what kinds of detailed analysis are needed and when.
  - A detailed risk assessment and risk mitigation plan.
- 7.3. Bidders will explain in some detail the approach, process and methods they will use in the inception phase. It is expected that Departments and Posts would be key stakeholders to be consulted in this process.
- 7.4. Expected monitoring and reporting outputs in the operational phase will include:

- Functional monitoring and reporting system, including core indicators, database(s), dashboard(s) and operational guidelines for using the system. This system will:
  - Be accessible through the Internet, i.e. as a digital gateway.
  - Be searchable by a selection of agreed criteria so that tailor-made reports can be generated.
  - Be compatible with existing systems used by Government Departments, particularly FCO and DFID.
  - Comply with Cabinet Office requirements on digital and technology spending [16,17].
- Systematic provision of technical support and capacity building. The estimated level for this might be two days per programme per year.
- Verification of reported data resulting in high quality, credible monitoring data.
- Good quality, timely and credible monthly and quarterly reports. These reports and the underlying data used to compile them will support the Fund's development of strategic communications products.
- An annual monitoring and reporting report for the Prosperity Fund (i.e. as of March 2018, March 2019, March 2020 and March 2021). These annual reports will summarise monitoring data to present what has been spent and where (using graphs, maps etc) and the results achieved for this expenditure. These annual reports are intended to influence Prosperity Fund operations and the design of any continuation of the Fund after 2021.
- Final overall monitoring and reporting report by March 2021. This report will cover how well the indicators used have captured Prosperity Fund performance and the extent to which anything important has not been captured. It will also review the data collected and the extent to which there were issues with data collection and/or quality. It will include a specific focus on how secondary (UK) benefit has been calculated. The report will identify key lessons learned and any remaining evidence gaps. It is expected that this

report will inform the implementation of any continuation of the Prosperity Fund after 2021.

7.5. Bidders should demonstrate their understanding of the need for different products for different audiences. As part of the inception phase, the management team will work with the contractor to delivery necessary clarity on the audiences and their likely needs. These audiences are likely to include:

- Government Ministers
- The Portfolio Management Board (official level)
- The Prosperity Fund Management Office
- Participating Government Departments, particularly the Treasury
- Oversight and Accountability Bodies (such as the Independent Commission for AID Impact [ICAI], the National Audit Office [NAO], and the Infrastructure and Projects Authority [IPA])
- Communications team within the Prosperity Fund Management Office
- Parliamentary committees (such as the Foreign Affairs Committee [FAC], the Development Assistance Committee [DAC], and the Public Accounts Committee [PAC])
- Public audiences

7.6. The appointed contractor will adhere to DFID ethics principles for research and evaluation [18] particularly principle number 8 which emphasises that DFID and, in this case, the UK Government is committed to publication and communications of all evaluation studies. It is therefore expected that all monitoring and reporting outputs would be made publicly available without intellectual property restrictions. In particular, UK Government Departments would have unlimited access to all material produced by the Contractor under the contract arising from these terms of reference. Bidders are expected to explain in their proposals how they would approach this and other ethical matters.



## 8. Workplan

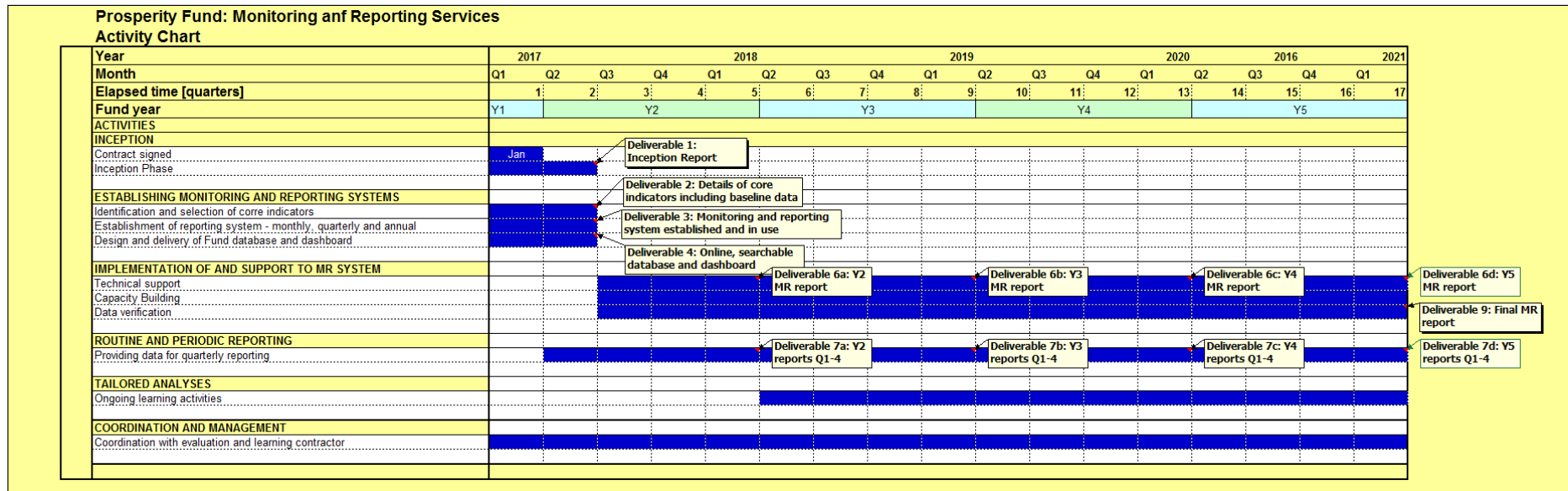
### *Timeline*

- 8.1. A tentative timetable is presented in these terms of reference and this is shown diagrammatically in Figure 3. This shows groups of monitoring and reporting activities including inception; establishment of monitoring and reporting systems; implementation of and support to monitoring and reporting systems; routine analysis and reporting of data; tailored analysis of data; and coordination and management activities. It also shows indicative deliverables and expected deadlines for these for each activity group. These are shown in summary form in Table 2.

**Table 2: Monitoring and reporting deliverables (indicative only)**

No.	Deliverable	Deadline
1	Inception report	End June 2017 (assuming contract starts January 2017)
2	Details of core indicators including baseline data	End June 2017
3	Monitoring and reporting system established	End June 2017
4	Online, searchable database and dashboard	End June 2017
5	Technical assistance to Departments and Posts	To be determined in inception report
6a-d	Annual monitoring and reporting report	End March 2018, 2019, 2020, 2021
7a-d	Quarterly reports and dashboard at Fund level	End March 2018, 2019, 2020, 2021
8	Tailored reports using monitoring data (perhaps minimum one per year)	As required
9	Final monitoring and reporting report	End March 2021

**Figure 3: Proposed timetable for Prosperity Fund monitoring and reporting services**



- 8.2. Bidders are invited to comment on this proposed timeline and the identified deliverables. Bidders should seek to provide more detail and to also flag areas needing more clarification and discussion. In particular, it is expected that bidders will propose more specific deliverables related to technical support, capacity building and data verification activities that they propose. It is expected that the monitoring and reporting timeframe and deliverables would be specified and agreed with the selected contractor during inception.

### *Budget*

- 8.3. In principle, five per cent of the Fund's finances (approximately [REDACTED]) are available for monitoring and evaluation activities. The maximum budget available for the activities described in these terms of reference is given here. These figures are provided to give bidders an idea of the scale and scope of activities planned. However, part of the assessment criteria of bids (30%) will be according to proposed cost.
- 8.4. The maximum budget available for activities described in these terms of reference is as follows:
- Monitoring and reporting - [REDACTED]
- 8.5. Bidders are expected to submit detailed financial proposals which cover all their expected costs. The bidders should assume that they will need to be in close contact with programme managers and their implementing contractors during the inception phase and should factor travel and/or international communications within this budget. The list of countries where we expect programmes to operate is given at 8.11. The budget figure provided is expected to cover all costs including professional fees, travel expenses etc. However, the maximum budget figures are exclusive of VAT.

### *Composition and skills of team(s)*

- 8.6. Bidders are expected to explain in some detail how they would establish and provide a team (or teams) to carry out the work outlined in these terms of reference. Precise arrangements are for bidders to determine but provisions would be expected to cover all the objectives of these terms of reference including establishing monitoring and reporting systems; supporting the implementation of monitoring and reporting within the Fund; analysing data and providing material for routine and periodic reports; and conducting tailored analyses of monitoring data as required.
- 8.7. Given the scale and scope of expected activities under these terms of reference, proposals based on consortium arrangements, for example with different organisations leading on different areas, are welcome.
- 8.8. Bidders will identify and propose specific individuals for posts and roles identified. Should bidders consider that some human resources may need to be identified during implementation, explanation should be given for this and proposals should indicate the available mechanisms to bidding organisations and consortia to identify people required to fulfil such roles.
- 8.9. Given the nature of the countries in which the Prosperity Fund will be operating, proposals which include roles for regional and national organisations and individuals are welcome. It is expected that some roles, such as provision of technical support, capacity building and data verification might be conducted by regional or national consultants.
- 8.10. Bidders should indicate the nature of any agreements reached with organisations and individuals in relation to services to be provided under these terms of reference, particularly where these involve exclusivity requirements. In general, the Prosperity Fund recognises that there will be a limited pool of organisations and individuals with the skills required for the activities described in these terms of reference. Therefore, the Prosperity Fund neither requires nor encourages the use of exclusivity arrangements for bids. This is particularly the case for regional and national organisations and consultants.
- 8.11. The team or teams proposed will be expected to have the following skills, experience and qualifications:

- A willingness to work with uncertainty within a start-up environment and build effective communications to ensure client contractor expectations are aligned and that the teams work well together.
- Proven capacity and track record in working supportively and collaboratively with other organisations (essential) particularly Government Departments and FCO Posts (desirable).
- Experience of designing monitoring and reporting systems for large, complex, multi-country programmes (essential) such as the portfolio arising from a financing mechanism (desirable).
- Experience of identifying and developing indicators (essential) based on a recognised set of indicator standards (desirable).
- Experience of providing technical support (including troubleshooting) to a range of actors and countries implementing a common monitoring and reporting system (essential).
- Experience of building the monitoring and reporting capacity of implementing partners (essential) including Government Departments and FCO Posts (desirable).
- Experience of verifying data from a monitoring system (essential) particularly when such data comes from multiple sectors and countries (desirable).
- Expertise and understanding of all sectors in which the Prosperity Fund is likely to support programmes – including infrastructure, energy, health, education, future cities, low carbon transition, financial services, trade, business environment, transparency and corruption (desirable).
- Experience in regions and countries in which the Prosperity Fund is likely to support large and medium-sized programmes – including Bangladesh, Brazil, China, Egypt, India, Indonesia, Iran, Kenya, Libya, Malaysia, Mexico, Nigeria, Pakistan, South Africa, Thailand, Turkey and Ukraine (desirable).
- Experience in analysis of quantitative monitoring data and providing material for purposes of routine monitoring and answering specific questions (essential)
- Experience in conducting detailed and tailored analyses of quantitative monitoring data (essential) including focusing on project/programme performance, risk and value for money (desirable).
- Proven capacity and track record in managing large, complex programmes including logistics of in-country activities (essential).

- Proven capacity and track record in producing high quality communication products, including technical reports (essential).
- Access to a range of language skills including English (essential), Spanish (essential), Portuguese (essential), Arabic (desirable), Chinese (desirable) and Russian (desirable).

### *Logistics*

- 8.12. The contractor conducting work under these terms of reference will be self-supporting in terms of logistical arrangements for all activities, particularly any interaction with Government Departments and FCO Posts, such as technical support, capacity building and data verification. While it is expected that Government Departments and FCO Posts implementing programmes would cooperate fully with any activities conducted under these terms of reference, the contractor is responsible for their own logistical arrangements including making their own travel and accommodation arrangements, and organising their own schedules, arranging training venues etc.
- 8.13. Bidders should explain how they would handle these matters. In particular, bidders are expected to explain how they would ensure the security and safety of any individuals working for them under these terms of reference.
- 8.14. The Contractor is responsible for all acts and omissions of the Contractor's personnel and for the health, safety and security of such persons and their property. The provision of information by any UK Government Department shall not in any respect relieve the Contractor from responsibility for its obligations under any contract issued under these terms of reference. Positive evaluation of proposals and award of this contract (or any future contract amendments) is not an endorsement by FCO or any other UK Government Department of the Contractor's security arrangements. Contractor personnel are defined under the contract as any person instructed pursuant to this contract to undertake any of the Contractor's obligations under this contract, including the Contractor's employees, agents, and sub-contractors.

## **9. Responsibilities**

- 9.1. Bidders are expected to explain how their team or teams would be managed and organised, for example, through the provision of a proposed organisational chart or organogram. Bidders should be clear as to where different responsibilities (e.g. technical, contractual) lie within their proposed structures.
- 9.2. The monitoring and reporting team will be managed by and will report to the Monitoring and Evaluation Manager within the Prosperity Fund Management Office ([REDACTED]).
- 9.3. The Prosperity Fund is establishing a monitoring and evaluation advisory group with representation from different UK Government Departments and independent technical experts. The monitoring and reporting contractor will engage extensively with this group on a wide range of matters, including overall technical direction and quality of the work being conducted under these terms of reference. However, formal management direction and decisions would come through the Prosperity Fund Management Office's M&E Manager and not from this group collectively or from any individual member of the group.
- 9.4. It is expected that the Fund's M&E advisory group will interact with the Fund's overall management and governance structures, e.g. the Programme Board. It is likely that the monitoring and reporting contractor may also need to have such interactions.
- 9.5. Bidders should explain their own internal arrangements for ensuring the quality of any products they will produce under these terms of reference. This should cover written reports, such as annual progress reports but should also include the quality of other products including indicators, database(s), dashboard(s), technical support, capacity building and data verification.
- 9.6. Given the nature and scale of the Prosperity Fund, it is likely that many stakeholders will need to review and comment on draft products produced by the contractor. These would include staff of the Prosperity Fund Management Office, members of the M&E advisory group from other Government Departments and independent technical experts. The Prosperity Fund's M&E Manager will provide

such comments as consolidated feedback with clear direction as to what elements the contractor needs to act on, particularly where conflicting comments are given.

- 9.7. The contractor may make recommendations that are relevant to a number of different actors. It is likely that many of these recommendations will be verbal and informal. However, it is also likely that the contractor may need to make more formal, written recommendations from time to time. The Fund's M&E Manager will ensure that a management response is produced in relation to any such recommendations made and will be responsible for ensuring that appropriate implementation arrangements are made for those recommendations that are accepted by the Prosperity Fund's management.



## Annex 1: Possible indicators and questions for the Prosperity Fund monitoring and evaluation framework

Element	Possible indicator(s)	Possible review questions <sup>2</sup>	Possible evaluation questions <sup>3</sup>	OECD DAC criteria				
				Relevance	Effectiveness	Efficiency	Impact	Sustainability
<b>Impact</b>	<i>Monitoring and reviews only focused up to intermediate outcome level – but may need metrics at impact level</i>		<b>OVERARCHING</b> To what extent is the Prosperity Fund contributing to the sustainable economic growth and development of partner countries, and in doing so generating direct and indirect benefit for the UK?					
Higher rates of sustainable growth								
Greater investment flows								
Greater trade flows								
<b>Outcomes</b>								
Structural and economic reforms produce a sustainable growth path								
Government policies promote strategic integration with the global economy								
Better international rules and greater adherence to domestic and international rules deliver a better business environment								
<b>Secondary UK benefits</b>								
Commercial	Export wins	To what extent has the reputation of the UK and UK						

<sup>2</sup> These have been derived explicitly from the theory of change using the contribution analysis approach

<sup>3</sup> Identified as part of the evaluation strategy

Element	Possible indicator(s)	Possible review questions <sup>2</sup>	Possible evaluation questions <sup>3</sup>	OECD DAC criteria				
				Relevance	Effectiveness	Efficiency	Impact	Sustainability
		firms changed over time? To what extent has access by UK firms to markets changed over time? To what extent has the Prosperity Fund played a role in such changes?						
Economic		To what extent have regulatory improvements taken place? To what extent have government processes improved? To what extent have new policies been adopted that increase the ease of doing business? To what extent has the Prosperity Fund played a role in such changes?						
Global public goods	Perceptions of corruption index	To what extent have there been gains on anti-corruption, the environment and trade policy? To what extent has the Prosperity Fund played a role in such changes?						
<b>Intermediate outcomes</b>								
Investment in infrastructure and human capital	Levels of investment in a) infrastructure; b) energy; c) health; and d) education	To what extent have levels of investment in infrastructure and human capital changed over time? What are the main factors						

Element	Possible indicator(s)	Possible review questions <sup>2</sup>	Possible evaluation questions <sup>3</sup>	OECD DAC criteria				
				Relevance	Effectiveness	Efficiency	Impact	Sustainability
	OR Energy capacity/MW of energy installed	behind any such changes? To what extent has the Prosperity Fund played a role in such changes?						
Innovation and knowledge transfer		To what extent has innovation and knowledge transfer improved over time? What are the main factors behind any such changes? To what extent has the Prosperity Fund played a role in such changes?						
Trade, financial and economic reforms	Trade openness index Open markets index Trade logistics performance index	To what extent have trade, financial and economic reforms occurred over time? What are the main factors behind any such changes? To what extent has the Prosperity Fund played a role in such changes?						
Policy and regulatory capacity – international and national		To what extent have policy and regulatory capacity changed over time? What are the main factors behind any such changes? To what extent has the Prosperity Fund played a role in such changes?						

Element	Possible indicator(s)	Possible review questions <sup>2</sup>	Possible evaluation questions <sup>3</sup>	OECD DAC criteria				
				Relevance	Effectiveness	Efficiency	Impact	Sustainability
Ease of doing business	Ease of doing business index	To what extent has the ease of doing business changed over time? What are the main factors behind any such changes? To what extent has the Prosperity Fund played a role in such changes?						
<b>Outputs</b>								
Infrastructure	Levels of PF investment in a) infrastructure; b) energy; c) health; and d) education	To what extent has the Prosperity Fund supported infrastructure needs? What were the main factors promoting and hindering success?	<p>Which types of interventions, and in which sectors and types of country settings, have been most successful in leading to outcomes in the areas of investment; innovation and knowledge transfer; trade, financial and economic reform; policy and regular capacity, and ease of doing business?</p> <p>In the short-to-medium term, what evidence is there that the Fund has been or is likely to contribute to intended outputs and intermediate outcomes as suggested in the Fund's Theory of Change, as well as unintended or unexpected effects at any level?</p>					
Energy		To what extent has the Prosperity Fund supported energy needs? What were the main factors promoting and hindering success?						
Health		To what extent has the Prosperity Fund supported health needs? What were the main factors promoting and hindering success?						
Education		To what extent has the Prosperity Fund supported						

Element	Possible indicator(s)	Possible review questions <sup>2</sup>	Possible evaluation questions <sup>3</sup>	OECD DAC criteria				
				Relevance	Effectiveness	Efficiency	Impact	Sustainability
		education needs? What were the main factors promoting and hindering success?	<p>What lessons can be learned from the experiences of individual programmes as well as that of the Prosperity Fund overall for improving ongoing and future efforts at supporting innovation and increasing inclusive economic growth and in a way that also can lead to UK benefit?</p> <p>What factors have contributed to certain programme approaches having an impact at any level? In which types of situations/contexts are given approaches most appropriate?</p> <p>Are there certain types of settings or contexts where support through the Prosperity Fund is most likely to be appropriate and to have the greatest chance of contributing to the Fund's objectives without undesired side effects?</p> <p>What good practices can be identified from experiences of</p>					
Future cities	Number of people benefitting from PF investment in future cities	To what extent have the future cities supported by the Prosperity Fund been successful? What were the main factors promoting and hindering success?						
Low carbon transition	Numbers of people supported by PF programmes to cope with the effects of climate change.	To what extent has the country taken successful steps towards low carbon transition? What were the main factors behind doing (or hindering) this? To what extent has the Prosperity Fund played a role in this?						
Financial services		To what extent have financial services been supported and reformed in the country? What were the main factors behind doing (or hindering) this? To what extent has the Prosperity Fund played a role in this?						
Trade		What ways have been identified to engage on economic and						

Element	Possible indicator(s)	Possible review questions <sup>2</sup>	Possible evaluation questions <sup>3</sup>	OECD DAC criteria				
				Relevance	Effectiveness	Efficiency	Impact	Sustainability
		trade policy? How has the Prosperity Fund used these?	Prosperity Fund programmes that might be considered in other settings?					
Business environment	Countries supported to improve business environment	What ways have been identified to improve the business environment? How has the Prosperity Fund used these?	How can the Fund best work in combination with other partners, including with other initiatives also attempting to support economic growth and prosperity, and/or with themes (for example, education) of the Fund?					
Transparency and corruption	Number of countries receiving PF support that are EITI compliant	What steps have been identified to improve transparency and reduce corruption? How has the Prosperity Fund used these?	<p>What can be learned from initial experiences of the Fund overall, as well as of ongoing programmes, in order to make adjustments so that the intervention will be more likely to succeed?</p> <p>Are there approaches or strategies that might be more appropriate or more effective?</p> <p>What are the implications of the experiences of the Prosperity Fund for the UK to consider continuing with a similar approach in the future?</p> <p>Who benefits the most, directly and indirectly, through programmes supported by the</p>					

Element	Possible indicator(s)	Possible review questions <sup>2</sup>	Possible evaluation questions <sup>3</sup>	OECD DAC criteria				
				Relevance	Effectiveness	Efficiency	Impact	Sustainability
			Fund? Which types of initiative, and under which sets of circumstances, are most likely to lead to growth and development that benefits the poor and to cross-cutting themes, such as gender equality, human rights and respect for minority populations, reductions in corruption, respect for the environment?					
Assumptions			How valid are the assumptions in the theory of change (ToC)? Are there refinements or changes that should be made, based upon early experiences with programmes and activities supported through the Fund?					
Value for money	VFM index (tailor made for PF)	To what extent does the mix of inputs, outputs and outcomes of the Prosperity Fund represent value for money?	To what extent does Prosperity Fund funding represent value for money? Which approaches have provided the best value for money (VfM)?  Which types of programmes are most efficient and represent better value for money?					
Outputs lead to intermediate outcomes			Which types of interventions, and in which sectors and types of country settings, have been most					

Element	Possible indicator(s)	Possible review questions <sup>2</sup>	Possible evaluation questions <sup>3</sup>	OECD DAC criteria				
				Relevance	Effectiveness	Efficiency	Impact	Sustainability
			successful in leading to outcomes in the areas of investment; innovation and knowledge transfer; trade, financial and economic reform; policy and regular capacity, and ease of doing business? In the short-to-medium term, what evidence is there that the Fund has been or is likely to contribute to intended outputs and intermediate outcomes as suggested in the Fund's Theory of Change, as well as unintended or unexpected effects at any level?					
Programmes guided by diagnostics			What factors have contributed to certain programme approaches having an impact at any level? In which types of situations/contexts are given approaches most appropriate?					
Prosperity Fund produces substantial secondary benefits for the UK			What are the characteristics of programmes and interventions that have led to strengthened partnerships that show evidence of likely contributing to improved economic growth and development and to UK benefit?					



Element	Possible indicator(s)	Possible review questions <sup>2</sup>	Possible evaluation questions <sup>3</sup>	OECD DAC criteria				
				Relevance	Effectiveness	Efficiency	Impact	Sustainability
<b>Inputs</b>			Which funding modalities work best in contributing to the Fund's aims?					
Medium to large country projects	Number and funding value of projects							
Large thematic projects	Number and funding value of projects							
Small, one year projects	Number and funding value of projects							

## **Schedule 1 – Exit Management**

### **Overview**

- 1.1 The Contractor is required to ensure the orderly and efficient ending of Service provision and, where applicable, transition of the Services from the Contractor to any Contracting Authority and/or any Replacement Contractor in the event of termination (including partial termination) or expiry of this Service Agreement. This Schedule sets out the principles of the exit and service transfer arrangements which the Contractor should comply with in order to achieve such orderly and efficient transition and which shall form the basis of the Exit Plan.

### **Obligations to assist on re-tendering of Services**

- 1.2 The Contractor agrees to assist, support and co-operate (fully and in good faith) with the Authority with regard to: any review carried out by the Authority as to whether to transfer Services to the Authority; or any possible Procurement Process being considered by the Authority for the purposes of such review or Procurement Process.
- 1.3 On reasonable notice, the Contractor shall provide to the Authority and/or to each potential Replacement Contractor (subject to the potential Replacement Contractor entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any review as to whether to transfer Services to the Authority any possible Procurement Process and/or to facilitate any potential Replacement Contractor undertaking due diligence:
- 1.3.1 details of the Service(s) including details of how Services are carried out and performance against Service Levels;
  - 1.3.2 copies of the Registers, updated by the Contractor up to the date of delivery of such Registers;
  - 1.3.3 an inventory of all Authority Data in the Contractor's possession or control;
  - 1.3.4 details as to key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - 1.3.5 a list of on-going and/or threatened disputes in relation to the provision of the Services; and
  - 1.3.6 all information relating to any Transferring Employees required to be provided by the Contractor under this Service Agreement (together, the "Exit Information").

1.4 The Contractor shall:

1.4.1 notify the Contracting Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Services and shall consult with the Authority regarding such proposed material changes; and

1.4.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 2 weeks of a request in writing from a Authority. The Contractor may charge the Authority for its reasonable additional costs to the extent the Authority requests more than one (1) update in any two month period.

1.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Contractor shall be such as would:

1.5.1 in circumstances where the Authority has communicated the possibility of it transferring the Services or part of them back to a Contracting Authority, enable the relevant Authority to come to an informed view as to whether it is appropriate and viable for it to take back the Services or part of them;

1.5.2 in circumstances where the Authority is looking to appoint a Replacement Contractor, be reasonably necessary to enable a third party to:

(a) prepare an informed offer for those Services; and

(b) not be disadvantaged in any subsequent Procurement Process compared to the Contractor (if the Contractor is invited to participate).

**Exit Plan**

1.6 The Contractor shall, within 3 months after the Effective Date, deliver to the Authority a draft Exit Plan which sets out the Contractor's proposed methodology for achieving an orderly and efficient transition of Services from the Contractor to the relevant Contracting Authority and/or Replacement Contractor on the expiry or termination of this Contract;

1.7 Within 10 Working Days after the submission of the draft Exit Plan, the Authority and the Contractor will use their respective reasonable endeavours to agree the contents of the Exit Plan. If the Authority and the Contractor are unable to agree the contents of the Exit Plan

then such dispute shall be resolved in accordance with the Service Dispute Resolution Procedure.

1.8 The Exit Plan must contain, as a minimum:

- 1.8.1 how the Exit Information is obtained;
- 1.8.2 separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Contractor may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Contractor of all such reasonable assistance as the Authority shall require to enable the Contracting Authority or Replacement Contractor to provide the Services or services replacing or equivalent to the Services;
- 1.8.3 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit; and
- 1.8.4 a detailed description of both the transfer and cessation processes, including a timetable, a list of activities and resources to carry out the transfers, applicable in the case of an Ordinary Exit and an Emergency Exit.

1.9 In addition, the Exit Plan shall:

- 1.9.1 document how the Services will transfer to the Replacement Contractor and/or the Contracting 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 Contractor or its Subcontractors (where applicable);
- 1.9.2 specify the scope of the Termination Services that may be required for the benefit of the Contracting Authority and the services as are applicable and detail how such services would be provided (if required), during the Termination Assistance Period;
- 1.9.3 set out procedures to deal with requests made by the Contracting Authority and/or a Replacement Contractor for information relating to employees who may transfer to a Replacement Contractor pursuant to Clause D.7 (TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 1981 (TUPE));
- 1.9.4 address each of the issues set out in this Schedule to facilitate the transition of the Services from the Contractor to the Replacement Contractor and/or the Contracting

Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period;

1.9.5 provide a timetable and identify critical issues for providing the Termination Services.

1.10 The Parties acknowledge that the migration of the Services from the Contractor to the Authority and/or its Replacement Contractor may be phased, such that certain of the Services are handed over before others.

1.11 The Contractor shall review and (if appropriate) update the Exit Plan in the first month of each Contract year (commencing with the second Contract year) to reflect changes in the Services, and within 5 Working Days following each major change to the Services. Following such update the Contractor shall submit the revised Exit Plan to the Authority for review. Within 5 Working Days following submission of the revised Exit Plan, the Authority and the Contractor shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan, based on the principles set out in this schedule and the changes that have occurred in the Services since the Exit Plan was last agreed. If the Authority and the Contractor are unable to agree the contents of the revised Exit Plan within that a Working Day period, such dispute shall be resolved in accordance with Condition I2 (Dispute Resolution).

#### **Notification of Requirements for Termination Services**

1.12 The Authority shall be entitled to require the provision of Termination Services by notifying the Contractor in writing ("Termination Assistance Notice") at least Three 3 months before the date of termination or expiry of this Service Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either the Authority or the Contractor of any notice to terminate. The Termination Assistance Notice shall specify the:

1.12.1 date from which Termination Services are required which shall be no earlier than 3 months prior to expiry of this Contract or from the service by either the Authority or the Contractor of any notice to terminate, as the case may be;

1.12.2 nature of the Termination Services required; and

1.12.3 period during which it is anticipated that Termination Services will be required which shall continue no longer than 3 months after the date that the Contractor ceases to provide the Services (the "Termination Assistance Period").

1.13 The Authority may extend the Termination Assistance Period beyond the period initially specified in the Termination Assistance Notice provided that such extension shall not extend for more than 3 months after the end of the Termination Assistance Period and provided that it shall Notify the

Contractor to such effect no later than 1 month before the date on which the provision of Termination Services is otherwise due to expire.

### **Termination Assistance Period**

1.14 Throughout any Termination Assistance Period, the Contractor shall:

- 1.14.1 not, without the Authority's prior written consent, embark on any actions that fall outside the Ordinary Course of Business;
- 1.14.2 continue to provide the Services and shall ensure that there is no disruption to the Services (to the extent that such Services are not being reduced by agreement in accordance with the requirements of the Exit Plan in readiness for transfer of the Services at the end of the Termination Assistance Period);
- 1.14.3 notify the Authority of any act, omission or conduct of the Contractor and/or its Subcontractors which materially adversely affects the provisions of the Services including where such act, omission or conduct of the Contractor and/or its Subcontractors materially adversely affects the Hardware, Software, Subcontractors or Contractor Personnel required to deliver any of the Services during the Term;
- 1.14.4 carry out the activities and provide the Termination Services set out in the Exit Plan (save to the extent the Authority notifies it that such activities are not required);
- 1.14.5 in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the termination or expiry of this Contract and to facilitate the orderly and efficient transfer of responsibility for and conduct of the Services to the Contracting Authority and/or Replacement Contractor. The Contractor shall use all reasonable endeavours to reallocate resources to provide Termination Services without additional costs. However to the extent that this is not possible, any additional costs incurred by the Contractor in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan will be subject to the Parties' agreement (which shall not be unreasonably withheld or delayed by either Party) and shall not in any event exceed the appropriate Combined Rate plus any appropriate Operational Costs and Expenses; and
- 1.14.6 upon termination or expiry of this Service Agreement, provide to the Authority all final up-to-date Exit Information, Registers and an up-to-date Business Process Manual,

unless previously agreed in writing by the Authority that it is not appropriate for the Services.

- 1.15 During the Termination Assistance Period, the Contractor's obligations under this Contract in respect of the Services shall not be reduced except to the extent required by or set out in the Exit Plan in readiness for transfer of the Services at the end of the Termination Assistance Period. The Contractor shall:
- 1.15.1 devote such time and resources to the continued provision of the Services; and
  - 1.15.2 monitor the activities of the Contractor Personnel and Subcontractors, in each case as is necessary to ensure its continued performance of this Contract.

### **Charges and Apportionments**

- 1.16 During the Termination Assistance Period (or for such shorter period as the Authority may require the Contractor to provide the Termination Services), the Authority shall pay the Charges to the Contractor in respect of the Termination Services, such Charges to be calculated in accordance with Clause H4 (Consequences of Expiry and Termination) and paid in accordance with Clause C (Payment and Charges).
- 1.17 The costs of providing Termination Services shall not be more than the relevant Charge for the Service (if such Service and Charge is defined within this Contract) or if there is no such charge, shall not be more than the appropriate Combined Rate and any appropriate Operational Cost and Expenses .
- 1.18 In either case the costs should not be more than the estimate set out in the Annex to this Schedule. A revised estimate of the cost of such Termination Services may be agreed between the Authority and the Contractor not less than 3 months prior to the end of the Term or within 3 month of the announcement of termination of this Contract. If the scope or timing of the Termination Services are changed and this results in a change to the Costs of such Termination Services, the estimate may be varied in accordance with clause F3 (Variations).
- 1.19 The costs for all Termination Services will be agreed between the Parties and set out in the Exit Plan.

## Schedule 2 – Key Performance Indicators

### 1. General

- 1.1 The purpose of this Schedule 2 (Key Performance Indicators) is to set out the draft KPIs by which the Contractors overall performance under this Contract shall be monitored and managed. These will be further developed and agreed as part of the inception period. As part of this process both parties will agree how continuous improvement in service delivery can be measured and reported on. The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Contract Period, however any significant changes to KPIs shall be agreed between the Authority and the Contractor in accordance with Clause F3 (Variations).
- 1.2 The Contractor shall use all reasonable endeavours to meet the KPI Targets identified in the table below.
- 1.3 The Contractor shall establish processes to monitor its performance against the agreed KPIs. The Contractor shall at all times ensure compliance with the standards set by the KPIs.
- 1.4 The Authority shall review progress against these KPIs to evaluate the effectiveness and efficiency with which the Contractor performs its obligations to fulfil this Contract.
- 1.5 The Contractors achievement of KPIs shall be reviewed during Contractor Review Meetings and the review and ongoing monitoring of KPIs will form a key part of the contract management process.
- 1.6 The Authority reserves the right to adjust, introduce new, or remove KPIs throughout the Contract Period, however any significant changes to KPIs shall be agreed between the Authority and the Contractor.
- 1.7 The Authority reserves the right to use and publish the performance of the Contractor against the KPIs without restriction.
- 1.8 The KPIs from which performance by the Contractor of this Contract will be reported against are set out below:

Key Performance Indicator (KPI)	KPI Target	Measured by
<b>1. CONTRACT MANAGEMENT</b>		
1.1 MI returns: All MI returns to be returned to the Authority by the 5 <sup>th</sup> Working Day of each month	<b>100%</b>	Confirmation of receipt and time of receipt by the Authority
1.2 Actions identified in an Audit Report to be delivered by the dates set out in the Audit Report	<b>100%</b>	Confirmation by the Authority of completion of the actions by the dates identified in the Audit Report



<b>2. DATA VERIFICATION &amp; CLEANSING</b>		
2.1 The MRS Hub will respond to all enquiries within five working days of being notified of a request for support	<b>100%</b>	Confirmation of receipt and time of receipt by the Authority
2.2. The MRS Hub will validate all data inputted into the MRS Observatory within five working days of being notified of the data inputted	<b>90%</b>	Confirmation by the Authority of the validation of the data being complete as sent by the MRS Observatory
<b>3. MRS OBSERVATORY (MRSO) ADMINISTRATION</b>		
3.1 The MRS Observatory will be available to all authorised users 24 hours a day, seven days a week, unless prior notification of system outage is provided	<b>99.5%</b>	Confirmation by the Authority of validated MRSO system availability reports downloaded from the MRSO
<b>4. REPORTING &amp; ANALYTICS</b>		
4.1 All reports included in the MRS reporting suite (Annual, Quarterly and monthly fund-level reports and dashboards) will be delivered on the date/time agreed with the Authority	<b>100%</b>	Confirmation by the Authority of the report being made available on the MRS Observatory
4.2 The MRS Hub will agree the scope and timings for providing indicator design support to programmes within five working days of being notified of the request	<b>90%</b>	Confirmation of receipt and time of receipt by the Authority
<b>5. CUSTOMER SATISFACTION</b>		
5.1. The Contractor will provide a service to its customers that is rated either very good or excellent on average	<b>80%</b>	Confirmation by the Authority of customer satisfaction scores of the annual MR Customer Satisfaction Survey.



## Schedule 3 – Management Information

### 1. Introduction

- 1.1 The successful delivery of this Contract will rely on the ability of the Contractor and the Authority in developing a strategic relationship immediately following the conclusion of this Contract with the Contractor and maintaining this relationship throughout the Contract Period.
- 1.2 To achieve this strategic relationship, there will be a requirement to adopt proactive management activities which will be informed by quality management information, and the sharing of information between the Contractor and the Authority.

### Management

- 1.3 This Schedule 3 outlines the general structures and management activities that the Parties shall follow during the Contract Period.
- 1.4 Management Structure:
  - (a) The Contractor shall provide a suitably qualified nominated contact (the “**Contractor Manager**”) who will take overall responsibility for delivering the Services required within this Contract, as well as a suitably qualified deputy to act in their absence. The parties will agree a formal governance structure and arrangements within the first month following the Commencement Date.
  - (b) Following discussions between the Parties following the Commencement Date, the Authority shall produce and issue to the Contractor a draft Contractor action plan. The Contractor shall not unreasonably withhold its agreement to the draft Contractor action plan. The Contractor action plan shall, unless the Authority otherwise approves, be agreed between the Parties and come into effect within two weeks from receipt by the Contractor of the draft Contractor action plan.
  - (c) The Contractor action plan shall be maintained and updated on an ongoing basis by the Authority. Any changes to the Contractor action plan shall be notified by the Authority to the Contractor. The Contractor shall not unreasonably withhold its agreement to any changes to the Contractor action plan. Any such changes shall, unless the Authority otherwise approves, be agreed between the Parties and come into effect within two (2) weeks from receipt by the Contractor of the Authority’s notification.
- 1.5 Contractor Review Meetings
  - (a) Regular performance review meetings will take place at the Authority’s premises throughout the Term and thereafter until the Contract Expiry Date (“**Contractor Review Meetings**”).

- (b) The exact timings and frequencies of such Contractor Review Meetings will be determined by the Authority following the conclusion of the Contract. It is anticipated that the frequency of the Contractor Review Meetings will be once every month or less. The Parties shall be flexible about the timings of these meetings.
- (c) The purpose of the Contractor Review Meetings will be to review the Contractors performance under this Contract and, where applicable, the Contractors adherence to the Contractor action plan. The agenda for each Contractor Review Meeting shall be set by the Authority and communicated to the Contractor in advance of that meeting.
- (d) The Contractor Review Meetings shall be attended, as a minimum, by the Authority Representative(s) and the Contractor Contract Manager.

### **Efficiency Tracking Performance Measures**

- 1.6 The Contractor shall cooperate in good faith with the Authority to develop efficiency tracking performance measures for this Contract. This shall include:
- (a) tracking reductions in product volumes and product costs, in order to demonstrate that Contracting Authorities are consuming less and buying more smartly; and
  - (b) developing additional KPIs to ensure that the Contract supports the emerging target operating model across central government (particularly in line with centralised sourcing and category management, procurement delivery centres and payment processing systems and shared service centres).
- 1.7 The list in paragraph 1.6 is not exhaustive and may be developed during the Contract Period.
- 1.8 The metrics that are to be implemented to measure efficiency shall be developed and agreed between the Authority and the Contractor. Such metrics shall be incorporated into the list of KPIs set out in Schedule 2 (Key Performance Indicators).
- 1.9 The ongoing progress and development of the efficiency tracking performance measures shall be reported through contract management activities as outlined in this Schedule 3.

### **Escalation Procedure**

- 1.10 In the event that the Authority and the Contractor are unable to agree the performance score for any KPI during a Contractor Review Meeting, the disputed score shall be recorded and the matter shall be referred to the Authority Representative and the Contractor Representative in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).

- 1.11 In cases where the Authority Representative and the Contractor Representative fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the procedure set out in Clause I2 (Dispute Resolution).