



PART A – GENERAL CONDITIONS OF CONTRACT

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A1. DEFINITIONS

In the Contract the following words shall have the following meanings unless the context requires otherwise:

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

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

"Commercial Representative(s)" means the representative(s) of each Party for all commercial matters as named in the Contract;

"Commercially Sensitive Information" means the Confidential Information under this Contract comprising of commercially sensitive information relating to: -

- (a) the pricing of the Goods and / or Services;
- (b) details of the Contractor's IPR;
- (c) the Contractor's business and investment plans; and/or
- (d) the Contractor's trade secrets;

which the Contractor has indicated to MHCLG that, if disclosed by MHCLG, would cause the Contractor significant commercial disadvantage or material financial loss;

"Confidential Information" means all information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (howsoever it is conveyed and stored), including Commercially Sensitive Information, information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, Know-How, personnel, customers and suppliers of either Party and all personal data and sensitive personal data within the meaning of the DPA, together with all information derived from the above;

"Contract" means the contract between MHCLG and the Contractor consisting of the following documents:

- a) Annex B Contract Award Letter; and
- b) this Annex B Part A General Conditions of Contract; and
- c) Annex B Part D Conditions of Contract for Services; and
- d) Annex A Specification; and
- e) Annex C Price Schedule; and
- f) Annex D Contractor's Tender and any other terms and conditions, schedules or documents (or parts thereof) specified, in writing, by MHCLG to the Contractor;



“Contract Manager(s)” means the representative(s) of each Party who manages the Contract, whose appointment and contact details shall be notified to the other Party in writing;

"Contractor" means the individual, firm or company with whom MHCLG enters into the Contract;

"Contractor Background IPR" 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 Contract;

“Contractor's Personnel” means all persons employed by the Contractor to perform the Contract together with the Contractor's servants, agents and Sub-Contractors used in the performance of the Contract;

"Crown" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

“Day” means calendar day unless otherwise defined;

“MHCLG” means the Secretary of State for the Ministry for Housing, Communities and Local Government;

“Deliverables” means anything specified in the Contract to be delivered by the Contractor to MHCLG under the Contract including reports, manuals and other documentation and outputs;

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



“DPA” means the Data Protection Act 1998, as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“Environmental Information Regulations or EIRs” means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“Environmental Policy” means 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, including any written environmental policy of MHCLG;

“FOIA” means the Freedom of Information Act 2000, as amended from time to time and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

“Force Majeure” means any event, occurrence, circumstance, matter or cause affecting the performance by either MHCLG or the Contractor of its obligations arising from:

- (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under this Contract;
- (b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- (c) acts of the Crown, local government or regulatory bodies;
- (d) fire, flood or any disaster; and
- (e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
 - (i) any industrial dispute relating to the Contractor, the Contractor’s Personnel (including any subsets of them) or any other failure in the Contractor or the Sub-Contractor’s supply chain; and
 - (ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and
 - (iii) any failure of delay caused by a lack of funds;



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

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

"Goods" means any such goods and associated documentation as are to be supplied by the Contractor (or by the Contractor's Sub-Contractor) to MHCLG pursuant to the Contract;

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others;

"Information" has the meaning given under Section 84 of the FOIA;

"Insolvency Event" means, in respect of the Contractor or Guarantor (as applicable):

- 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 fourteen (14) working 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 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or



- h) where the Contractor or Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

"Intellectual Property Rights" means:

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

"Know-How" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and / or Services but excluding know-how already in the other Party's possession before the Effective Date;

"Law" means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

"Occasion of Tax Non-Compliance" means:

- (a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or



- (b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;

“Material Breach” means any fundamental breach of a term of this Contract or breach of a fundamental term of the Contract;

“Open Book Data” means complete and accurate financial and non-financial information which is sufficient to enable MHCLG to verify payments payable by the Contractor to MHCLG under the Contract and payments forecast to be paid by the Contractor to MHCLG during the remainder of this Contract, including details and all assumptions relating to:

- (a) the Contractor’s costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all goods and/or services;
- (b) operating expenditure relating to the provision of the Goods and/or Services including an analysis showing:
 - (i) the unit costs and quantity of Goods and any other consumables and bought-in goods and/or services;
 - (ii) manpower resources broken down into the number and grade/role of all Contractor Personnel (free of any contingency) together with a list of agreed rates against each manpower grade; and
 - (iii) a list of costs underpinning those rates for each manpower grade, being the agreed rate less the Contractor’s profit margin;

“Party” means a party to the Contract and “Parties” shall be construed accordingly;

“Persistent Breach” means any breach of the Contract continuously for 30 Days or more or a breach of the Contract that occurs on more than one occasion and for the avoidance of doubt includes inadequate performance;

“Process” has the meaning given to it under the DPA and “Processed” and “Processing” shall be construed accordingly;

“Prohibited Act” means any of the following:

- a) to directly or indirectly offer, promise or give any person working for or engaged by a public body a financial or other advantage to:



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

"Regulations" means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;

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

"Relevant Tax Authority" means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Contractor is established;

"Requests for Information" means a request for information or an apparent request relating to this Contract or the provision of the Goods and / or Services or an apparent request for such information under FOIA or the EIRs;

"Security Policy" means MHCLG's security policy in force as at the Effective Date (a copy of which has been supplied to the Contractor), as updated from time to time and notified to the Contractor;

"Services" means the services to be provided as specified in the Contract including the production of any Deliverables and any planning, preliminary and preparatory work;



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

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

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

“Third Party IPR” means Intellectual Property Rights owned by a third party which is or will be used by the Contractor for the purpose of providing the Goods and/or Services;

“Transparency Reports” means the information relating to the Goods and / or Services and performance of this Contract which the Contractor is required to provide to MHCLG in accordance with the reporting requirements in this Contract;

“Valid Invoice” means an invoice issued by the Contractor to MHCLG that complies with the invoicing procedure in the Contract;

“Worker” means any one of the Contractor Personnel which MHCLG, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 – Tax Arrangements of Public Appointees <https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees> - applies in respect of the Goods and/or Services;

A2. INTERPRETATIONS

A2.1 The Conditions of Contract shall take precedence over the other documents forming the Contract unless such documents include an express statement to the contrary.

A2.2 Unless the context requires otherwise:

(a) capitalised expressions shall have the meanings set out in Clause A1 of this Contract. If a capitalised expression does not have an interpretation in Clause A1 of this Contract, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning;

(b) the masculine includes the feminine and the neuter and vice versa;



- (c) the singular includes the plural and vice versa;
 - (d) references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (e) references to “representations” shall be construed as references to present facts, to “warranties” as references to present and future facts and to “undertakings” as references to obligations under this Contract
- A2.4 The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.
- A2.5 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 amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof. In the case of a statute or statutory provision, the reference shall also be construed as a reference to all subordinate legislation made under such statute or statutory provision.
- A2.6 Reference to any person shall include all legal persons of whatever kind and however constituted.
- A2.7 Reference to a Condition is a reference to the whole of that Condition unless stated otherwise.
- A2.8 Reference to a Clause or Sub-Clause is a reference to a paragraph within a Condition unless stated otherwise.
- A2.9 The headings to the Conditions are included for ease of reference and shall not affect their interpretation.

A3. WARRANTIES AND REPRESENTATIONS

- A3.1 Without prejudice to any other warranties expressed in the Contract or implied by law the Contractor warrants and represents that:
- A3.1.1 it has full capacity and authority and all necessary consents, including where required the consent of its parent company, to enter into and to perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
 - A3.1.2 the Contract shall be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments;



- A3.1.3 it shall discharge its obligations hereunder with all due skill, care and diligence and in accordance with Good Industry Practice;
- A3.1.4 it owns, has obtained or shall obtain all the consents, licences, permits and approvals necessary for the Contractor to perform its duties under the Contract and shall comply with the terms of any such consents, licences, permits and approvals at all times. The cost of such consents, licences, permits and approvals shall be borne solely by the Contractor;
- A3.1.5 the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract;
- A3.1.6 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- A3.1.7 if the rates or prices payable under this Contract exceed or are likely to exceed five (5) million pounds, as at the Effective Date it has notified MHCLG in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in connection with any Occasions of Tax Non Compliance;
- A3.1.8 it has and shall continue to have all necessary rights in and to the Third Party IPR, the Contractor Background IPRs and any other materials made available by the Contractor (and/or any Sub-Contractor) to MHCLG which are necessary for the performance of the Contractor's obligations under this Contract including the receipt of the Goods and/or Services by MHCLG;
- A3.1.9 it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or MHCLG's Confidential Information (held in electronic form) owned by or under the control of, or used by, MHCLG;
- A3.1.10 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;



A3.1.11 it is not affected by an Insolvency Event and 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; and

A3.1.12 for the term of the Contract and for a period of twelve (12) months after the termination or expiry of this Contract, the Contractor shall not employ or offer employment to any staff of MHCLG which have been associated with the provision of the Goods and/or Services without Approval or the prior written consent of MHCLG which shall not be unreasonably withheld.

A3.2 Each of the representations and warranties set out in Clause A3.1 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Contract.

A3.3 If at any time the Contractor becomes aware that a representation or warranty given by it under Clause A3.1 has been breached, is untrue or is misleading, it shall immediately notify MHCLG of the relevant occurrence in sufficient detail to enable MHCLG to make an accurate assessment of the situation.

A3.4 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination MHCLG may have in respect of breach of that provision by the Contractor which constitutes a Material Breach.

A4. RELATIONSHIP OF THE PARTIES

A4.1 Nothing in the Contract shall be construed as or have the effect of creating a partnership, a contract of employment or a relationship of principal and agent between the Contractor or the Contractor's Personnel and MHCLG.

A4.2 The Contractor shall not (and shall procure that the Contractor's Personnel do not) say or do anything that might lead any other person to believe that the Contractor or the Contractor's Personnel are acting as the partner, employee or agent of MHCLG.

A4.3 The Contractor shall not (and shall procure that the Contractor's Personnel do not) hold themselves out as having authority to bind MHCLG unless specifically permitted in writing by MHCLG's Commercial Representative.

A4.4 The Contractor's Personnel shall be appropriately experienced, qualified, trained, vetted and security cleared in accordance with the Security Policy.



- A4.5 The Contractor shall supervise and manage the Contractor's Personnel properly in accordance with the Contract.
- A4.6 If any of the Contractor's Personnel is not a British citizen, Swiss national or a national of a country in the European Economic Area, the Contractor shall ensure that the Contractor's Personnel has the necessary Home Office permission to work and shall ensure compliance with the Asylum and Immigration Act 1996.

A5. AMENDMENTS AND VARIATIONS

- A5.1 Subject to Clause A5.2, no amendment or variation to the Contract involving a change in rates or prices shall be valid unless it has first been agreed in writing or via email by both Commercial Representatives of the Parties in accordance with any change control procedures set out in the Contract. Any other amendment or variation to the Contract shall be valid once agreed in writing by both Contract Managers of the Parties. Anything undertaken by the Contractor which is not authorised by the Contract, or any agreed amendment thereto, shall be undertaken at the sole risk of the Contractor. In the event of an amendment or variation being agreed the Contract rates and prices shall be subject to a fair and reasonable adjustment to be agreed between the Parties and recorded in writing.
- A5.2 Any amendment or variation to the Contract must be compliant with the Regulations.

A6. CONTRACT PRICES

- A6.1 In consideration of and subject to the full and proper performance by the Contractor of its obligations under the Contract MHCLG shall pay to the Contractor the rates, prices and any expenses specified in the Contract.
- A6.2 All rates and prices are exclusive of Value Added Tax (VAT). If appropriate, VAT will be added at the relevant rate and will be shown as a separate net item on each invoice submitted.
- A6.2A The Contractor shall indemnify MHCLG on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on MHCLG at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under this Contract. Any amounts due under Clause A6.2 shall be paid in cleared funds by the Contractor to MHCLG not less than five (5) working days before the date upon which the tax or other liability is payable by MHCLG.



- A6.3 Except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the Contract shall be inclusive of all costs, including but not limited to staff, facilities, equipment, materials and all other expenses incurred by the Contractor in discharging its obligations under the Contract.
- A6.4 Invoices shall be submitted to the invoice address specified in the Contract.
- A6.5 All pricing on all documentation including but not limited to any invoices shall be quoted in Sterling.
- A6.6 MHCLG will make payment by BACS within 30 Days of receipt of a Valid Invoice or the date the invoice was due whichever is the later save where the invoice is disputed or where the Contractor fails to submit information in accordance with Clause A6.7 below. Payments arising under the Contract shall be made in Sterling. Late payment shall not constitute a fundamental breach of the Contract.
- A6.7 The Contractor will submit to MHCLG such records as MHCLG may reasonably require to enable MHCLG to verify the information and the amounts referred to in that invoice.
- A6.8 Where the Contractor enters into a Sub-Contract for the purpose of performing its obligations under the Contract, it shall cause the following terms to be included in such Sub-Contract:
- A6.81 requiring payment to be made by the Contractor to the Sub-Contractor within a specified period not exceeding 30 Days from receipt of a Valid Invoice as defined by the Sub-Contract;
 - A6.82 requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Contractor in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
 - A6.83 conferring a right to MHCLG to publish the Contractor's compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
 - A6.84 giving the Contractor a right to terminate the Sub-Contract if the sub-contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
 - A6.85 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by this Clause A6.8.



A6.8A The Contractor shall:

- (a) pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a Valid Invoice;
- (b) include within its reports, in connection with the Contract, to MHCLG a summary of its compliance with this Clause A6.8B(a), such data to be certified each quarter by a director of the Contractor as being accurate and not misleading.

A6.8B Any invoices submitted by a Sub-Contractor to the Contractor shall be considered and verified by the Contractor in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Contractor failing to regard an invoice as valid and undisputed.

A6.8C Notwithstanding any provision of Clauses A17 (Confidentiality) and A22 (Right to Publish and Publicity) if the Contractor notifies MHCLG that the Contractor has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or MHCLG otherwise discovers the same, MHCLG shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

A6.9 Any statute, enactment, order, regulation or other similar instrument not existing or any statute, enactment, order, regulation or other similar instrument modified which the Contractor would not have the opportunity to consider at the time of formulating its rates and prices and which is not reasonably foreseeable, may, at the discretion of MHCLG cause the rates and price(s) to change.

A6.10 In performing its obligations under the Contract, the Contractor is prohibited from taking or seeking to take advantage of any particular taxation regime (including the use of any offshore tax haven) which will or may enable the Contractor to avoid liability for any taxation in the United Kingdom. In the event that the Contractor or the Contractor's Personnel or anyone acting on the Contractor's behalf (with or without its knowledge) breaches this Clause MHCLG reserves the right to terminate the Contract by notice in writing with immediate effect and recover from the Contractor any loss resulting from such termination including the administrative costs of re-tendering the requirement and any difference in the rates or prices which MHCLG may have to pay to a new contractor where such rates or prices are higher than the rates or prices payable under the Contract.

A6.11 Where the Contractor or any Contractor Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Contractor shall:

A6.11.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and



A6.11.2 indemnify MHCLG against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Goods and / or Services by the Contractor or any Contractor Personnel.

A6.12 In the event that any one of the Contractor Personnel is a Worker who receives consideration relating to the Goods and / or Services, then, in addition to its obligations under Clause A6.11, the Contractor shall ensure that its contract with the Worker contains the following requirements:

A6.12.1 that MHCLG may, at any time during the term of the Contract, request that the Worker provides information which demonstrates how the Worker complies with the requirements of Clause A6.11, or why those requirements do not apply to it. In such case, MHCLG may specify the information which the Worker must provide and the period within which that information must be provided;

A6.12.2 that the Worker's contract may be terminated at MHCLG's request if:

A6.12.2.1 the Worker fails to provide the information requested by MHCLG within the time specified by MHCLG under Clause A6.12.1; and/or

A6.12.2.2 the Worker provides information which MHCLG considers is inadequate to demonstrate how the Worker complies with Clauses A6.11.1 or A6.11.2 or confirms that the Worker is not complying with those requirements; and

A6.12.2 that MHCLG may supply any information it receives from the Worker to HMRC for the purpose of the collection and management of revenue for which they are responsible.

A7. RECOVERY OF SUMS DUE

A7.1 Without prejudice to MHCLG's other rights and remedies wherever any sum of money is recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other agreement or contract with MHCLG or with any other government department, office or agency.



A8. INDEMNITIES

A8.1 Subject to Clause A8.2 and without prejudice to any rights or remedies of MHCLG the Contractor shall indemnify and keep indemnified MHCLG, its servants and agents fully against all actions, claims, proceedings, damages, legal costs, expenses and any other liabilities whatsoever incurred by or made against MHCLG, its servants or agents in respect of any loss or damage or personal injury (including death) arising out of, in respect of or in connection with the Contract.

A8.2 If:

- (a) all other contractors, Sub-Contractors or advisers engaged in connection with the performance of the Contract have provided contractual undertakings on terms no less onerous than those set out in these Conditions to MHCLG in respect of the carrying out of their obligations; and
- (b) all such other contractors, Sub-Contractors or advisers have paid to MHCLG such sum as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage,

the liability of the Contractor under Clause A8.1 shall be limited to £1,000,000 in aggregate.

A8.3 The indemnity contained in Clause A8.1 shall not apply to the extent that the loss, damage or personnel injury (including death) is caused by the negligent or wilful act of MHCLG, its servants or agents.

A8.4 The Contractor shall indemnify and keep indemnified MHCLG, its servants and agents fully against any tax, national insurance contributions or similar impost in respect of the Contractor's Personnel.

A8.5 MHCLG undertakes not to make any claims against the Contractor's Personnel. The Contractor is vicariously liable for the actions of the Contractor's Personnel.

A8.6 Except where the Law sets out otherwise or there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Contractor or the Contractor's Personnel the Contractor's liability under this Contract shall be limited to the amount of £1,000,000 exclusive of VAT.



A9. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- A9.1 Without prejudice to any rights or remedies of MHCLG the Contractor shall indemnify and keep indemnified MHCLG, its servants and agents fully against all actions, claims, proceedings, damages, legal costs, expenses and any other liabilities whatsoever arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights arising out of, in respect of or in connection with the Contract except to the extent that the infringement or alleged infringement is due to material furnished or made available to the Contractor by MHCLG. This indemnity covers claims concerning an actual or alleged infringement by MHCLG if the infringement arises as a consequence of any actual or alleged infringement of an Intellectual Property Right by or on behalf of the Contractor.
- A9.2 The Contractor shall immediately notify MHCLG if any claim or demand is made or action brought against the Contractor for infringement or alleged infringement of any Intellectual Property Rights which may affect the performance of the Contract.
- A9.3 MHCLG shall immediately notify the Contractor if any claim or demand is made or action brought against MHCLG for infringement or alleged infringement of any Intellectual Property Rights in connection to the Contract.
- A9.4 Subject to the limitation on the indemnity in Clause A9.1 in respect of material furnished or made available to the Contractor by MHCLG the Contractor shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and MHCLG hereby agrees to grant to the Contractor exclusive control of any such litigation and negotiations.
- A9.5 MHCLG shall at the request and cost of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against MHCLG or the Contractor for infringement or alleged infringement of any Intellectual Property Rights in connection with the performance of the Contract.
- A9.6 MHCLG shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by MHCLG or the Contractor in connection with the performance of the Contract.

A10. INSURANCE

- A10.1 The Contractor shall effect and maintain with an insurance company or companies acceptable to MHCLG a policy or policies of insurance to provide a level of cover sufficient for all the matters which are the subject of the indemnities and undertakings on the part of the Contractor contained in the Contract and in accordance with any legal requirements for the time being in force.



- A10.2 Where the Contractor Sub-Contracts part of this Contract, the Contractor shall procure that any Sub-Contractor effects and maintains insurance to cover its liabilities under that Sub-Contract, but this shall not relieve the Contractor of any of his obligation and liabilities under the Contract.
- A10.3 Where, in compliance with Clause A10.1, the Contractor effects professional indemnity insurance, the insurance policy and any renewal shall cover liabilities under this Contract during the term of the Contract and for 6 years after the expiry or earlier termination of the Contract.
- A10.4 If requested, the Contractor shall provide a certificate evidencing the existence of such policies to MHCLG, together with receipts or other evidence of payment of the latest premiums due under such policies.
- A10.5 If the Contractor fails to comply with this Condition A10 MHCLG may make alternative arrangements necessary to protect its interest and may recover the costs of such arrangements from the Contractor.
- A10.6 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract.

A11. FORCE MAJEURE

- A11.1 If either Party becomes aware of circumstances of Force Majeure which give rise or which are likely to give rise to any delay in or failure to perform its obligations under the Contract it shall immediately notify the other Party by the most expeditious method available and shall inform the Party of the period which it is estimated that such delay or failure shall continue.
- A11.2 Neither Party shall be liable to the other Party if such delay or failure is due to Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform, or resume performance of, its obligations under the Contract for the duration of the Force Majeure. However, if any such event prevents the Contractor from performing all of its obligations under the Contract for a period in excess of 3 months, MHCLG may terminate the Contract in writing with immediate effect.
- A11.3 The Contractor shall not be entitled to any payment for that part of the Contract which the Contractor was unable to perform as a result of Force Majeure.



A11.4 The Contractor shall and shall procure that its Sub-Contractors maintain at all times a disaster recovery and business continuity plan, in accordance with Good Industry Practice, in respect of a Force Majeure event or any other event which may affect the Contractor's ability to meet its obligations under the Contract (including loss of computer and business systems, loss or failure of equipment, loss of utilities or premises, industrial relations problems, failures in the supply chain and loss of Contractor's Personnel). Such plans shall be delivered to MHCLG on request. MHCLG shall be entitled to make suggested changes to the plans which the Contractor, acting reasonably, shall consider and, after consultation and agreement with MHCLG, put in place.

A12. PREVENTION OF FRAUD AND BRIBERY

A12.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Contractor Personnel, have at any time prior to the Effective Date:

A12.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

A12.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

A12.2 The Contractor shall not during the term of the Contract:

A12.2.1 commit a Prohibited Act; and/or

A12.2.2 do or suffer anything to be done which would cause MHCLG or any of the MHCLG's employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

A12.3 The Contractor shall during the term of the Contract:

A12.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

A12.3.2 keep appropriate records of its compliance with its obligations under Clause A12.3.1 and make such records available to MHCLG on request;



- A12.3.3 if so required by MHCLG, within twenty (20) working days of the Effective Date, and annually thereafter, certify to MHCLG in writing that the Contractor and all persons associated with it or its Sub-Contractors or other persons who are supplying the Goods and/or Services in connection with this Contract are compliant with the Relevant Requirements. The Contractor shall provide such supporting evidence of compliance as MHCLG may reasonably request; and
- A12.3.4. have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to MHCLG on request) to prevent it and any Contractor Personnel or any person acting on the Contractor's behalf from committing a Prohibited Act.
- A12.4 The Contractor shall immediately notify MHCLG in writing if it becomes aware of any breach of Clause A12.1, or has reason to believe that it has or any of the Contractor Personnel have:
- A12.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- A12.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- A12.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- A12.5 If the Contractor makes a notification to MHCLG pursuant to Clause 12.4, the Contractor shall respond promptly to the MHCLG's enquiries, co-operate with any investigation, and allow MHCLG to audit any books, records and/or any other relevant documentation in accordance with Clause A20 (Production and Retention of Documentation).
- A12.6 If the Contractor breaches Clause A12.3, MHCLG may by notice:
- A12.6.1 require the Contractor to remove from performance of this Contract any Contractor Personnel whose acts or omissions have caused the Contractor's breach; or
- A12.6.2 immediately terminate this Contract for Material Breach.
- A12.7 Any notice served by MHCLG under Clause 12.4 shall specify the nature of the Prohibited Act, the identity of the Party who MHCLG believes has committed the Prohibited Act and the action that MHCLG has elected to take (including, where relevant, the date on which this Contract shall terminate).



A13. EQUALITY AND DIVERSITY

A13.1 The Contractor shall.

- (a) perform its obligations under this Contract (including those in relation to provision of the Goods and/or Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
 - (ii) any other requirements and instructions which MHCLG reasonably imposes in connection with any equality obligations imposed on MHCLG at any time under applicable equality Law;
- (b) take all necessary steps, and inform MHCLG of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

A14. THIRD PARTY RIGHTS

A14.1 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 or her without prior written agreement of both Parties. This Condition does not affect any right or remedy of a third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and the provisions of this Condition do not apply to the Crown.

A15. ENVIRONMENTAL REQUIREMENTS

A15.1 The Contractor shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Contract (including the EIRs). In addition the Contractor shall comply with MHCLG's Environmental Policy made available to the Contractor from time to time.

A15.2 In performing its obligations under the Contract the Contractor shall (to the extent applicable to the Contract):

A15.2.1 demonstrate low carbon resource efficiency, including minimising the use of energy, water, wood, paper and other resources;

A15.2.2 reduce waste;

A15.2.3 phase out the use of ozone depleting substances; and



A15.2.4 minimise the release of greenhouse gases (including carbon dioxide emissions), volatile organic compounds and other substances damaging to health and the environment.

A15.3 All written work, including reports, in connection with the Contract shall (unless otherwise specified) be produced on recycled paper containing at least 80% post consumer water and used on both sides where appropriate.

A15.4 Without prejudice to the generality of the foregoing, the Contractor shall promptly provide all such information regarding the environmental impact of the Contract as may reasonably be requested by MHCLG.

A15.5 The Contractor shall meet all reasonable requests by MHCLG for information evidencing compliance with the provisions of this Condition A15 by the Contractor.

A16. NOTICES

A16.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

A16.2 Any notice or other communication pursuant to the Contract must be sent by letter (sent by hand, first class post, registered post or by recorded delivery) or transmitted by electronic mail (confirmed by letter) to the address of the other Party set out in the Contract or as notified to the other Party from time to time. Provided the relevant notice or communication is not returned as undelivered, the notice or communication shall be deemed to have been given two working days after the day on which the letter is posted or four hours, in the case of letters handed over, electronic mail or sooner where the other Party acknowledges receipt of such notice or communication.

A17. CONFIDENTIALITY

A17.1 Each Party:

A17.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

A17.1.2 shall not disclose any Confidential Information belonging to the other Party to any other persons without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or where disclosure is otherwise expressly permitted by the provisions of the Contract.

A17.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from MHCLG under or in connection with the Contract:



- A17.2.1 is given only to such of the Contractor's Personnel engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for performance of the Contract;
- A17.2.2 is treated as confidential and not disclosed (without Approval) or used by the Contractor or any of the Contractor's Personnel otherwise than for the purposes of the Contract.
- A17.3 Where it is considered necessary in the opinion of MHCLG, the Contractor shall ensure that the Contractor's Personnel sign a confidentiality undertaking prior to any involvement in the Contract.
- A17.4 The provisions of Clauses A17.1 to A17.3 shall not apply to any Confidential Information received by one Party from the other:
- A17.4.1 which is or becomes public knowledge (otherwise than by a breach of this Condition A17);
- A17.4.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- A17.4.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- A17.4.4 which has been independently developed by the receiving Party without access to the Confidential Information;
- A17.4.5 which must be disclosed pursuant to a legal obligation placed upon the Party making the disclosure including, but not limited to, obligations under FOIA and Environmental Information Regulations;
- A17.4.6 where the receiving Party has reasonable grounds to believe that the disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- A17.5 Nothing in this Condition 17 shall prevent MHCLG:
- A17.5.1 disclosing any Confidential Information for the purposes of the examination and certification of MHCLG's accounts or any examination pursuant to the National Audit Act 1983;



- A17.5.2 disclosing any Confidential Information to any government department, office or agency or to any person engaged in providing any services to MHCLG for any purpose relating to or ancillary to the Contract providing that in disclosing the Confidential Information MHCLG discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate;
- A17.5.3 disclosing any Confidential Information relating to the Contract, including payments made under the Contract, to Crown Commercial Service or in accordance with the provisions of Condition A20.1;
- A17.5.4 disclosing any Confidential Information, which arises out of or in connection with any legal challenge or potential legal challenge against MHCLG arising out of or in connection with this Contract; and
- A17.5.5 disclosing any Confidential Information the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- A17.6 Nothing in this Condition A17 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in the a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- A17.7 In the event that the Contractor fails to comply with this Condition A17, MHCLG reserves the right to terminate the Contract by notice in writing with immediate effect and recover from the Contractor any loss resulting from such termination.
- A17.8 The provisions of this Condition A17 are without prejudice to the provisions of the Official Secrets Act 1911 to 1989 and Section 182 of the Finance Act 1989.
- A17.9 Upon termination (for whatever reason) or expiry of the Contract, the Parties shall each return to the other any Confidential Information that it possesses at the time of termination or expiry, and dispose of any such Confidential Information as the other Party may reasonably direct.

A18. OFFICIAL SECRETS ACT

- A18.1 The Contractor shall take all reasonable steps to ensure that the Contractor's Personnel are aware of the provisions of the Official Secrets Acts 1911 to 1989 and Section 182 of the Finance Act 1989, and understand that these provisions apply during and after the Contract.



A19. DATA PROTECTION

A19.1 For the purposes of this Condition A19, the terms “Personal Data”, “Processing”, “Data Processor”, “Data Subject” and “Data Controller” shall have the meaning prescribed under the DPA.

A19.2 The Contractor undertakes to abide and procure that the Contractor’s Personnel abide by the provisions of the DPA and the Contractor shall co-operate with MHCLG to enable MHCLG to discharge its obligations under the DPA and shall not perform its obligations under the Contract in such a way as to cause MHCLG to breach any of its applicable obligations under the DPA.

A19.3 The Contractor shall:

A19.3.1 Process the Personal Data only in accordance with instructions from MHCLG (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by MHCLG to the Contractor during the term);

A19.3.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body and under no circumstances may such data be Processed by the Contractor for any other purpose;

A19.3.3 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;

A19.3.4 take reasonable steps to ensure the reliability of any Contractor’s Personnel who have access to the Personal Data;

A19.3.5 obtain prior written consent from MHCLG in order to transfer the Personal Data to any Sub-Contractors for the provision of the Services;

A19.3.6 ensure that all Contractor’s Personnel 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 A19;

A19.3.7 ensure that none of Contractor’s Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by MHCLG;



- A19.3.8 notify MHCLG (within seven Days) if it receives:
 - A19.3.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - A19.3.8.2 a complaint or request relating to MHCLG's obligations under the DPA.
- A19.3.9 provide MHCLG with full cooperation and assistance in relation to any complaint or request made, including by:
 - A19.3.9.1 providing MHCLG with full details of the complaint or request;
 - A19.3.9.2 complying with a data access request within the relevant timescales set out in the DPA and in accordance with MHCLG's instructions;
 - A19.3.9.3 providing MHCLG with any Personal Data it holds in relation to a Data Subject (within the timescales required by MHCLG); and
 - A19.3.9.4 providing any information requested by MHCLG.
- A19.3.10 permit MHCLG (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by MHCLG to enable it to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
- A19.3.11 provide a written description of the technical and organisational methods employed by the Contractor for Processing Personal Data (within the timescales required by MHCLG); and
- A19.3.12 not Process Personal Data outside the European Economic Area without the prior written consent of MHCLG and, where MHCLG consents to a transfer, to comply with:
 - A19.3.12.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
 - A19.3.12.2 any reasonable instructions notified to it by MHCLG.



- A19.3.13 notify MHCLG, as soon as the Contractor becomes aware, of any accidental disclosure of Personal Data in breach of this Condition 19.
- A19.4 Without prejudice to Clauses A19.1, A19.2 and A19.3, the Contractor shall:
- A19.4.1 only accept instructions in respect of data Processing from MHCLG;
- A19.4.2 adopt all technical and organisational measures necessary to protect all Personal Data Processed by the Contractor on behalf of MHCLG against unauthorised or unlawful Processing, accidental loss, damage or destruction;
- A19.4.3 ensure that all Contractor Personnel involved in data Processing are suitable for the task and are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition A19.
- A19.5 With respect to the Parties' rights and obligations under the Contract, the Parties agree that the Secretary of State is the Data Controller and that the Contractor is the Data Processor. The Data Controller's nominated representative for the purposes of the DPA is MHCLG's Data Protection Officer.
- A19.6 Where Personal Data is held or acquired by MHCLG in relation to this Contract MHCLG shall use such Personal Data only for purposes relating directly to:
- A19.6.1 the management and performance of this Contract by the Contractor;
- A19.6.2 the provision by MHCLG of references within MHCLG and to other government departments, offices or agencies; and
- A19.6.3 any other purpose required by law.
- A19.7 The Contractor hereby agrees and shall procure from any Contractor Personnel agreement to the publication by MHCLG in any format of the following Personal Data: name and contact details. The Contractor shall provide a copy of any relevant consent to MHCLG on request.
- A19.8 If, having regard to the circumstances in which MHCLG Processes such Personal Data, MHCLG requires the Contractor or any Contractor Personnel to provide additional information to enable MHCLG to Process that Personal Data fairly it shall notify the Contractor in writing and the Contractor shall provide or procure the additional information within 7 days of receipt of the request.



A20. PRODUCTION AND RETENTION OF DOCUMENTATION

A20.1 The Contractor shall maintain and produce such accounts, documents (including working documents), records and management information relating to this Contract, including any Open Book Data, as MHCLG may reasonably request at any time during this Contract. Where requested by MHCLG, the Contractor shall provide management information to the Office of Government Commerce and the Contractor hereby consents to the Office of Government Commerce:

A20.1.1 storing and analysing such management information and producing statistics; and

A20.1.2 sharing the management information or any statistics produced with any government department, office or agency.

A20.2 The Contractor shall be responsible for the accuracy of all such accounts, documents (including working documents) and records supplied to MHCLG by the Contractor and shall pay MHCLG any extra costs occasioned by any discrepancies, errors or omissions therein.

A20.3 The Contractor shall keep and maintain until six years after the Contract has been completed and/or terminated, or as long a period as may be agreed between the Parties, accounts, documents and records to the satisfaction of MHCLG of the Contract and all expenditures which are reimbursable by MHCLG.

A20.4 The Contractor shall on request by MHCLG and at no extra cost afford MHCLG or any representative of MHCLG such access to those accounts, documents and records as may be required by MHCLG and shall provide reasonable assistance during the term of the Contract for the purpose of carrying out any audit of the Contractor's compliance with the Contract.

A20.5 If any audit reveals an error or incorrect charge in any invoice relating to the Contract, an appropriate correcting payment or credit shall be promptly made either by MHCLG or the Contractor respectively.

A20.6 The right to the accounts, documents and records shall not apply to the extent that an examination would cause the Contractor to breach confidentiality obligations to other clients.



A20.7 For the purpose of the examination and certification of MHCLG's accounts, or any examination pursuant to the National Audit Act 1983, of the economy, efficiency and effectiveness with which MHCLG has used its resources, the Contractor shall allow the Comptroller and Auditor General to verify the Open Book Data and 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 and/or written explanations as the Comptroller or Auditor General considers necessary. This Clause A20.7 does not constitute a requirement or contract for the examination, certification or inspection of the accounts of the Contractor under the National Audit Act 1983.

A21. FREEDOM OF INFORMATION

A21.1 The Contractor acknowledges that MHCLG is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with MHCLG (at the Contractor's expense) to enable MHCLG to comply with its Information disclosure requirements.

A21.2 The Contractor shall and shall procure that its Sub-Contractors shall:

A21.2.1 transfer to MHCLG any Request for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information;

A21.2.2 provide MHCLG with a copy of all Information in its possession or power in the form that MHCLG requires within five working days (or such other period as MHCLG may specify) of MHCLG requesting the Information; and

A21.2.3 provide all necessary assistance as reasonably requested by MHCLG to enable MHCLG to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

A21.3 MHCLG shall be responsible for determining at its absolute discretion whether any Information is exempt from disclosure under the FOIA or the Environmental Information Regulations.

A21.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by MHCLG.

A21.5 The Contractor acknowledges that MHCLG may under the FOIA or the Environmental Information Regulations be obliged to disclose Information:

A21.5.1 without consulting with the Contractor; or

A21.5.2 following consultation with the Contractor and having taken its views into account.



A21.6 MHCLG shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) MHCLG shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

A21.7 The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit MHCLG to inspect such records as requested from time to time.

A22. RIGHT TO PUBLISH AND PUBLICITY

A22.1 The Parties agree that, except for any information in the Contract which would be exempt from disclosure under the provisions of the Freedom of Information Act 2005 (FOIA) or under the Environmental Information Regulations 2004 (EIR), the content of the Contract and the Transparency Reports ("together the Transparency Information") are not Confidential Information. MHCLG shall, in its absolute discretion, determine whether the Transparency Information would be exempt from disclosure in accordance with the provisions of the FOIA or the EIR. The Contractor hereby agrees that, notwithstanding any other term of the Contract, MHCLG may publish the Transparency Information in its entirety to the general public including any agreed changes to the Transparency Information, having first redacted any information which would be exempt from disclosure under the provisions of the FOIA or EIR, before such publication.

A22.2 MHCLG may discuss with the Contractor its proposed decision with regard to whether any Transparency Information should be redacted in accordance with these provisions before publication of such information and will consider any representations made by the Contractor with regard to the extent of the redaction, if any, but the final decision as to both redaction and publication will be for MHCLG alone to make.

A22.2A If MHCLG believes that publication of any element of the Transparency Information would be contrary to the public interest, MHCLG shall be entitled to exclude such information from publication. MHCLG acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, MHCLG acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Contractor.



A22.2BMHCLG shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Contractor.

A22.2CThe Contractor agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Goods and / or Services shall be provided to MHCLG on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. MHCLG may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information and Confidential Information (subject to Clause 34.3.7(c)) and Open Book Data) publish such Information. The Contractor shall provide to MHCLG within 5 working days (or such other period as MHCLG may reasonably specify) any such Information requested by MHCLG.

A22.3 The Contractor shall assist and cooperate with MHCLG (at the Contractor's expense) to enable MHCLG to publish the Transparency Information including the preparation of the Transparency Reports, in a timely manner in accordance with this Contract.

A22.4 Neither the Contractor nor the Contractor's Personnel shall make any press announcements or publicise the Transparency Information or any part thereof in any way, without the prior consent in writing of MHCLG upon such terms as may be agreed.

A23. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

A23.1 MHCLG may terminate the Contract with immediate effect by notice in writing to the Contractor (or the Contractor's representative in the event of A23.1.7) where:

A23.1.1 the Contractor or its parent company or ultimate parent company undergoes a change of control, within the meaning of Section 416 of the Income and Corporation Taxes Act 1988; or

A23.1.2 the Contractor is an individual and a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor, or the Contractor makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if a trustee in bankruptcy or a supervisor under an individual voluntary arrangement is appointed to manage the Contractor's affairs; or



- A23.1.3 the Contractor is a company and the company passes a resolution for winding up or dissolution (otherwise than exclusively for the purposes of and followed by an amalgamation or reconstruction) or an application is made for an administration order in relation to it, or any party gives or files notice of an intention to appoint an administrator of it or such an administrator is appointed, or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager or supervisor or provisional liquidator is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge; or
- A23.1.4 the Contractor is a firm, or a number of persons acting together in any capacity and any event in Sub-Clauses A23.1.2 or A23.1.3 occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or
- A23.1.5 the Contractor is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
- A23.1.6 any similar event occurs within the United Kingdom under the law of any other jurisdiction; or
- A23.1.7 the Contractor is an individual and he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- A23.1.8 the Contractor is an individual and he suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of his business; or
- A23.1.9 an Insolvency Event, which is not already covered in this Clause 23.1, affecting the Contractor occurs.
- A23.2 The Contractor (or the Contractor's representative in the event of A23.1.7) shall notify MHCLG in writing immediately upon the occurrence of any of the events mentioned in Clause A23.1.
- A23.3 In relation to Sub-Clause A23.1.1 MHCLG may only exercise its right to terminate under Clause A23.1 where there are reasonable grounds for MHCLG to do so within six months of a change of control and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs.



A24. TERMINATION ON DEFAULT

A24.1 MHCLG may at any time by notice in writing terminate the Contract with immediate effect if the Contractor or the Contractor's Personnel is deemed to have committed a Material Breach of the Contract and:

A24.1.1 the Material Breach is capable of remedy and the Contractor or the Contractor's Personnel shall have failed to remedy the Material Breach within 30 Days of being required by MHCLG in writing to do so; or

A24.1.2 the Material Breach is not capable of remedy.

A24.2 Without prejudice to the provisions of Clause A24.1, where MHCLG considers that the Contractor or the Contractor's Personnel has committed a Persistent Breach, MHCLG shall be entitled to serve a notice on the Contractor:

A24.2.1 specifying that it is a notice of Persistent Breach;

A24.2.2 giving sufficient details of the Persistent Breach to enable the Contractor to identify the same; and

A24.2.3 stating that such breach is a breach which, if it recurs or continues, may result in a termination of the Contract.

A24.3 If 30 Days after service of a notice of Persistent Breach as described in Clause A24.2, the Contractor or the Contractor's Personnel has failed to demonstrate to the satisfaction of MHCLG that the breach specified has not recurred or continued and that the Contractor or the Contractor's Personnel has put in place measures to ensure that such breach does not recur, then MHCLG may deem such failure to be a Material Breach not capable of remedy for the purposes of Clause A24.1 and may terminate this Contract under the provisions of that Clause.

A25. CONSEQUENCES OF TERMINATION AND EXPIRY

A25.1 Any expiry or termination of the Contract howsoever arising shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to MHCLG and shall not affect the continued operation of Conditions A1, A2, A3, A4, A7, A8, A9, A10, A14, A16, A17, A18, A19, A20, A21, A22, A25, A26, A29, A30, A31, A33, A34, A36, A37, A40 and A41.



A25.2 Without prejudice to any other rights or remedies of MHCLG, in the event of termination of the Contract as provided by Condition A23 or A24, MHCLG shall be entitled to either accept receipt of, or decline to receive any part of the Contract already completed by the Contractor but not yet paid for by MHCLG and to engage an alternative contractor to undertake the outstanding balance of the Contract. The Contractor shall indemnify MHCLG against all reasonable costs incurred in doing so. Such costs shall include the administrative costs of re-tendering the requirement and any difference in the rates or prices which MHCLG may have to pay to the new contractor where such rates or prices are higher than the rates or prices payable under the Contract.

A25.3 In the event that MHCLG accepts receipt of any part of the Contract already completed by the Contractor but not yet paid for by MHCLG, MHCLG shall pay to the Contractor a reasonable charge for the partially completed Contract.

A25.4 Prior to or upon expiry or termination of the Contract for any reason, the Contractor:

A25.4.1 shall, at no cost to MHCLG, promptly provide such assistance and comply with such timetable as MHCLG may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or termination of the Contract,

A25.4.2 shall comply with any reasonable direction by MHCLG as to which of its obligations to perform as a priority under the Contract during the notice period;

A25.4.3 shall not knowingly do anything, or make any omission, which may adversely affect the orderly transfer of responsibility upon the expiry or termination of the Contract; and

A25.4.4 shall deliver up to MHCLG and/or destroy all Confidential Information pursuant to Clause A17.9.

A26. DISPUTE RESOLUTION

A26.1 Any dispute arising out of or in relation to the Contract shall be notified in the first instance to the Contract Managers of the Parties who will attempt in good faith to resolve the dispute through negotiations. Where the dispute cannot be resolved by the Contract Managers of the Parties within one month or such other period as is agreed between the Parties in writing, either Party may refer the dispute to senior representatives of the Department and/or the Contractor for further negotiations.



Mediation

- A26.2 If the dispute cannot be resolved by the Parties within one month or such other period as is agreed between the Parties in writing pursuant to Clause A26.1, either of the Parties may refer the dispute to mediation. If the Parties agree and the dispute is referred mediation neither Party shall be entitled to commence or pursue any legal proceedings until the mediation procedure has been exhausted.
- A26.3 The mediator shall be appointed by agreement between the Parties, or in the event of a failure to agree within 7 Days or if the agreed mediator is unable or unwilling to act, either Party may apply to the Centre for Effective Dispute Resolution (“CEDR”) to nominate the mediator.
- A26.4 The Parties shall within 7 Days of the appointment of the mediator meet with the mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations.
- A26.5 Unless otherwise agreed in writing, all negotiations connected with the dispute and any settlement agreement relating to it will be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- A26.6 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- A26.7 If the Parties fail to reach agreement on the appointment of a mediator under Clause A26.3 or within 60 Days of the mediator being appointed, or such longer period as the Parties may agree, then any dispute between them may be referred to the courts unless MHCLG at any time before the court proceedings are commenced serves a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clauses A26.9-A26.11.
- A26.8 If the Contractor intends to commence court proceedings, it shall serve written notice on MHCLG of its intentions and MHCLG shall have 21 Days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of Clause A26.9-A26.11.

Arbitration

- A26.9 A sole arbitrator shall be agreed between the Parties or in the event of a failure to agree within 5 Days of the referral to arbitration or if the agreed arbitrator is unable or unwilling to act, the arbitrator shall be appointed by the London Court of International Arbitration (“LCIA”).



A26.10 Any arbitration shall be governed by the provisions of the Arbitration Act 1996 and the LCIA procedural rules in force at the date the dispute was referred to arbitration.

A26.11 The arbitration proceedings shall take place in London and shall be governed by and interpretations made in accordance with English law.

A26.12 The fees of the mediator or arbitrator shall be borne by the Parties in the proportion as shall be determined by the mediator or arbitrator respectively having regard to all pertinent matters, including the conduct of the parties.

A26.13 Nothing in this Condition A26 shall prevent either Party from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

A27. CONTINUATION OF CONTRACT IN EVENT OF DISPUTES

A27.1 If any dispute of any kind whatsoever arises between the Parties in connection with or arising out of the Contract the Contractor shall at MHCLG's discretion continue to perform the Contract with all due diligence pending settlement of the dispute.

A28. TRANSFER AND SUB-CONTRACTING

A28.1 The Contractor shall not assign, novate, Sub-Contract, charge or otherwise dispose of the Contract or any part of the Contract without the prior written consent of MHCLG which shall not be unreasonably withheld.

A28.2 The Contractor shall ensure that any Sub-Contractor complies with the terms of this Contract, so far as they are applicable. Sub-Contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.

A28.3 Where MHCLG has consented to the placing of Sub-Contracts, the Contractor shall, on request by MHCLG and within a reasonable time, send copies of the Sub-Contracts to MHCLG.

A28.4 Without prejudice to any entitlement to transfer its rights and obligations pursuant to a statutory transfer (which shall be governed by the terms set out therein), MHCLG shall be entitled to assign, novate or otherwise dispose of the Contract to any public sector body or any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by MHCLG at no cost to MHCLG or its successor provided that where any such assignment, novation or other disposal increases the burden of the Contractor's obligations under the Contract, the Contractor shall be entitled to such charges as may be agreed in writing between MHCLG's Commercial Representative and the Contractor to compensate for such additional burdens.



A29. SEVERABILITY

A29.1 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 hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, MHCLG and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

A30. WAIVER

A30.1 Any delay, neglect or forbearance on the part of either Party in enforcing against the other Party any provision of the Contract shall neither be nor be deemed to be a waiver or in any way prejudice any right or remedy of that Party under the Contract and shall not cause any diminution of the obligations established by the Contract.

A30.2 A waiver shall not be effective unless it is expressly stated in writing to be a waiver and is signed by the Party waiving the right or remedy.

A30.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy from any other or subsequent breach of Contract.

A31. CONFLICTS OF INTEREST

A31.1 The Contractor shall use all reasonable endeavours to ensure that neither the Contractor nor any of the Contractor's Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to MHCLG under the provisions of the Contract. The Contractor will disclose to MHCLG full particulars of any such conflict of interest which may arise.

A31.2 If, in the reasonable opinion of MHCLG, a conflict of interest arises then the Contractor shall take all necessary measures as are required by MHCLG to resolve the conflict of interest or alleviate its effect, at the Contractor's expense.

A31.3 If a resolution of the conflict of interest is not possible then without prejudice to any rights or remedies of MHCLG, MHCLG shall have the right to terminate the Contract with immediate effect and recover from the Contractor any loss resulting from such termination.



A31.4 Where MHCLG is of the opinion that a conflict of interest which existed at the time of the award of the Contract could have been discovered by a competent contractor and ought to have been disclosed by the Contractor, MHCLG may terminate the Contract immediately and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

A32. ADDITIONAL CLAIMS

A32.1 No claims for additional payment or time shall be allowed on the grounds of any matter for which a competent contractor would have made due allowance or which the Contractor could reasonably have discovered by a visit to MHCLG's premises, reference to MHCLG, or such other means as may have been appropriate.

A33. GOVERNING LAW

A33.1 The Contract shall be governed by and construed in accordance with English law and the Contractor hereby irrevocably submits to the exclusive jurisdiction of the English courts.

A34. ENTIRE CONTRACT

A34.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract and, save as may be expressly referred to or referenced herein, supersedes all prior representations, negotiations and understandings, whether written or oral, with respect hereto.

A34.2 Any terms, conditions or general reservations printed on any documentation passing between the Parties shall not be applicable to the Contract.

A34.3 Clause A34.1 shall not exclude any liability in respect of any fraudulent misrepresentation.

A35. CYBER ESSENTIALS SCHEME CONDITION

A35.1 Where MHCLG has notified the Contractor that the award of this Contract is conditional upon receipt of a valid Cyber Essentials Scheme Basic Certificate or Cyber Essentials Scheme Plus Certificate or equivalent, then on or prior to the execution of this Contract, as a condition for the award of this Contract, the Contractor shall deliver to MHCLG evidence of the same.

A35.2 Where the Contractor continues to Process Cyber Essentials Scheme Data during the term of the Contract the Contractor shall deliver to MHCLG evidence of renewal of a valid Cyber Essentials Scheme Basic Certificate or Cyber Essentials Scheme Plus Certificate or equivalent on each anniversary of the first applicable certificate obtained by the Contractor under Clause A35.1.



A35.3 Where the Contractor is due to Process Cyber Essentials Scheme Data after the Effective Date but before the end of the term of the Contract, the Contractor shall deliver to MHCLG evidence of:

A35.3.1 a valid Cyber Essentials Scheme Basic Certificate or Cyber Essentials Scheme Plus Certificate or equivalent (before the Contractor Processes any such Cyber Essentials Scheme Data); and

A35.3.2 renewal of a valid Cyber Essentials Scheme Basic Certificate or Cyber Essentials Scheme Plus Certificate or equivalent on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Contractor under Clause A35.3.1.

A35.4 In the event that the Contractor fails to comply with Clauses A35.2 or A35.3 (as applicable), MHCLG reserves the right to terminate this Contract for Material Breach.

A36 DUE DILIGENCE

A36.1 The Contractor acknowledges that:

A36.1.1 MHCLG has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under this Contract;

A36.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

A36.1.3 it has raised all relevant due diligence questions with MHCLG before the Effective Date; and

A36.1.4 it has undertaken all necessary due diligence and has entered into this Contract in reliance on its own due diligence alone.

A36.2 The Contractor shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Contractor be entitled to recover any additional costs or charges, arising as a result of:

A36.2.1 any misinterpretation of the requirements of MHCLG in this Contract;

A36.2.2 any failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information; and/or

A36.2.3 failure by the Contractor to undertake its own due diligence.

A37 NOT USED

A38 NOT USED



A39 TERMINATION FOR BREACH OF THE REGULATIONS

A39.1 MHCLG may terminate this Contract by issuing a notice, in writing, to the Contractor on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

A40 INTELLECTUAL PROPERTY RIGHTS

A40.1 All Intellectual Property Rights or other similar protection in any specifications, instructions, plans, data, drawings, databases, patterns, models, designs or other material furnished to or made available to the Contractor by MHCLG pursuant to the Contract shall remain the property of MHCLG.

A40.2 All pre-existing Intellectual Property Rights or other similar protection in any specifications, instructions, plans, data, drawings, databases, patterns, models, designs or other material existing prior to the date of the Contract date and furnished to or made available to MHCLG by the Contractor pursuant to the Contract shall remain the property of the Contractor. The Contractor hereby grants to MHCLG and the Crown a non-exclusive, royalty free, perpetual and irrevocable licence to use, reproduce, modify, adapt, amend, enhance and otherwise deal with (and to authorise a third party on behalf of MHCLG or the Crown, such third party having signed a confidentiality undertaking, to use, reproduce, modify, adapt, amend, enhance and otherwise deal with) the Contractor's pre-existing Intellectual Property Rights for MHCLG or the Crown's own internal purposes, to allow MHCLG or the Crown to exploit the Intellectual Property Rights or similar generated under the Contract and for any other purposes specified in the Contract.

A40.3 All Deliverables, reports and other documents or similar and all Intellectual Property Rights or other similar protection arising out of the performance by the Contractor's Personnel of their duties hereunder are hereby assigned to and shall vest in MHCLG absolutely, unless the Parties agree otherwise in writing, and the Contractor or the Contractor's Personnel shall enter into such documentation and perform such acts as MHCLG may request to properly vest such rights in MHCLG.



A41 INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

A41.1 If an action, claim or demand for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of MHCLG (not to be unreasonably withheld or delayed) either:

A41.1.1 modify any or all of the Goods and / or Services without reducing the performance of the same so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutates mutandis to such modified or substituted Goods and / or Services; or

A41.1.2 procure a licence (at the Contractor's cost) to provide the Goods and / or Services, which are the subject of the alleged infringement, on terms which are acceptable to MHCLG.

A42 TERMINATION BY THE AUTHORITY FOR CONVENIENCE

A42.1 MHCLG shall have the right to terminate this Contract at any time giving the Contractor at least thirty (30) Working Days written notice.

A43 NOT USED



PART D – CONDITIONS OF CONTRACT FOR SERVICES

- D1. Definitions
- D2. The Services
- D3. Variation of the Services
- D4. Contractor's Personnel
- D5. Meetings and Reporting
- D6. Equipment, Plant and Materials
- D7. Inspection
- D8. Acceptance Procedure
- D9. MHCLG Premises
- D10. Health and Safety and Security
- D11. Payment
- D12. Not Used
- D13. Not Used
- D14. Staff Transfer
- D15. Soliciting for Employment
- D16. Business Continuity Planning
- D17. Exit and Skills Transfer
- D18. Non-exclusivity
- D19. Break

Schedule 1: Staff Transfer

D1. DEFINITIONS

In the Contract the following words shall have the following meanings unless the context requires otherwise:

“Acceptance” means the written acceptance of MHCLG’s Contract Manager given in accordance with any acceptance procedures set out in the Contract;

“Annex” means, unless otherwise provided, the relevant annex referred to in Schedule 1;

“Deliverables” means anything specified in the Contract to be delivered by the Contractor to MHCLG under the Contract including reports, manuals and other documentation and outputs;

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

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;



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

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

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

“Key Personnel” means any of the Contractor’s Personnel named in the Contract as key personnel or any of the Contractor’s Personnel who MHCLG notifies to the Contractor in writing are to be regarded as key personnel;

“Premises” means the location(s) where the Services are to be performed as specified in the Contract;

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

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

“Replacement Contractor” means any third party provider of Replacement Services appointed by or at the direction of MHCLG from time to time or where MHCLG is providing Replacement Services for its own account, shall also include MHCLG;



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

“Schedule 1” means, unless otherwise provided, schedule 1 of this Annex B Part D Conditions of Contract for Services, which relates to staff transfer;

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

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

“Services” means the services to be provided as specified in the Contract including the production of any Deliverables and any planning, preliminary and preparatory work;

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

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

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

D2. THE SERVICES

D2.1 The Contractor’s Personnel shall undertake the Services with reasonable skill, care and diligence in accordance with the Contract and good industry practice and to the reasonable satisfaction of MHCLG.

D2.2 Timely provision of the Services shall be of the essence of the Contract and failure to commence or provide the Services within the time promised or specified shall enable MHCLG (at MHCLG’s option acting reasonably) to release itself from any obligation to accept and pay for the Services and/or to cancel all or part of the Contract, in either case without additional cost and without prejudice to MHCLG’s other rights and remedies.



D3. VARIATION OF THE SERVICES

D3.1 MHCLG reserves the right from time to time during the term of the Contract in accordance with any change control procedures set out in the Contract to add to, omit, or otherwise vary the Services including the order in which the Services are to be delivered or the locations where the Services are to be provided and any alteration to the prices or completion date arising by reason of such variation shall be agreed between the Parties and shall properly and fairly reflect the nature and extent of the variation in all the circumstances.

D4. CONTRACTOR'S PERSONNEL

D4.1 The Contractor shall make the Key Personnel available for the purposes of the Services and shall not make any changes in the Key Personnel without the prior written approval of MHCLG, such approval not to be unreasonably withheld. Whenever, for any reason, the Key Personnel are unavailable for the performance of the Services, the Contractor shall as soon as reasonably practicable substitute suitably qualified replacements acceptable to MHCLG.

D4.2 If and when requested by MHCLG, the Contractor shall provide MHCLG with a list of the names of all the Contractor's Personnel who may at any time be concerned with the provision of the Services or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity, qualifications, experience and other supporting evidence as MHCLG may reasonably require.

D4.3 Where MHCLG reasonably requires by notice to the Contractor that any of the Contractor's Personnel is not to become involved in or is to be removed from involvement in the Services, the Contractor shall take all reasonable steps to comply with such notice. The Contractor shall replace any such person with someone with equivalent experience, qualifications, training and security clearance.

D4.4 The decision of MHCLG as to whether any person is not to become involved in or is to be removed from involvement in the Services, as to the designation or approval of Key Personnel and as to whether the Contractor has furnished the information or taken the steps required by this Condition D4 shall be final and conclusive.

D4.5 The Contractor shall:

D4.5.1 take instructions and all directions and, where appropriate, receive MHCLG's decisions only through MHCLG's Contract Manager;

D4.5.2 act in accordance with all reasonable instructions and directions in carrying out the Services;

D4.5.3 keep MHCLG's Contract Manager advised on all matters materially related to its performance of the Services according to reporting formats specified by MHCLG;



- D4.5.4 answer all reasonable enquiries received from MHCLG's Contract Manager;
- D4.5.5 attend or be represented at regular meetings as requested by MHCLG from time to time.
- D4.6 The Contractor shall ensure that leave is taken by the Key Personnel on dates which do not interfere with the proper delivery of the Services and shall consult with MHCLG's Contract Manager before allowing leave to be taken.
- D4.7 The Contractor shall not vary the Contract prices at anytime during the term of the Contract including any extension due to the promotion of any of the Contractor Personnel.
- D4.8 The Contractor shall bear the cost of any notice, instruction or decision of MHCLG under this Condition D4.

D5. MEETINGS AND REPORTING

- D5.1 The Contractor and the Contractor's Personnel shall upon receipt of reasonable notice and during office hours attend all meetings arranged by MHCLG's Contract Manager for the discussion of matters connected with the performance of the Services.
- D5.2 The Contractor and the Contractor's Personnel shall provide MHCLG's Contract Manager with such reports of the Services and copies of the Deliverables at such intervals and in such form as MHCLG may from time to time reasonably require.

D6. EQUIPMENT, PLANT AND MATERIALS

- D6.1 The Contractor shall provide all equipment, plant and materials necessary for the provision of the Services except where otherwise agreed in the Contract.
- D6.2 In the event that the Contractor procures goods or services including equipment from third parties on behalf of MHCLG, it shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2015 as though the Contractor were a contracting authority within the meaning of those regulations and in accordance with all other applicable domestic and European law.
- D6.3 Where MHCLG in accordance with the Contract issues equipment, plant or materials free of charge to the Contractor such equipment, plant or materials shall be and remain the property of MHCLG. The Contractor shall not in any circumstances have a lien on the equipment, plant or materials and shall take all steps necessary to ensure that the title of MHCLG and the exclusion of any lien are brought to the attention of any third party dealing with the equipment, plant and materials.



D6.4 The Contractor shall maintain all equipment, plant and materials provided by MHCLG in good order and condition and shall use such equipment, plant and materials solely in connection with the Contract. The Contractor shall notify MHCLG of any surplus materials remaining after completion of the Services and shall dispose of them as MHCLG may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or the Contractor's Personnel shall be made good at the Contractor's expense. Without prejudice to any other of the rights of MHCLG, the Contractor shall deliver up such equipment, plant or materials whether processed or not to MHCLG on demand.

D7. INSPECTION

D7.1 MHCLG shall be entitled to inspect and examine the performance of the Services and the Contractor shall afford all reasonable access, facilities and assistance required by MHCLG for any inspection and examination free of charge.

D7.2 No failure to make complaint at the time of such inspection and no approval given during or after such inspections shall constitute a waiver by MHCLG of any rights or remedies in respect of the Services.

D8. ACCEPTANCE PROCEDURE

D8.1 This Condition D8 shall apply in the absence of any specific acceptance procedures elsewhere in the Contract.

D8.2 The Contractor shall make available any Deliverables to MHCLG's Contract Manager for Acceptance.

D8.3 The Acceptance of a Deliverable shall be carried out by MHCLG with the co-operation of the Contractor, within 15 days (or such other period as the Parties may agree in writing) of the Contractor making the Deliverable available to MHCLG during which time MHCLG must determine whether the Deliverable meets the requirements defined and/or any acceptance criteria agreed in writing prior to the commencement of the acceptance procedure.

D8.4 If it is determined that the Deliverable meets the requirements defined and/or any acceptance criteria agreed MHCLG shall promptly notify the Contractor in writing of its Acceptance.

D8.5 If it is determined that the Deliverable, or any part of it, does not meet the requirements defined and/or any acceptance criteria agreed, MHCLG shall extend the acceptance period by 10 days (or such other period as the Parties may agree in writing) during which the Contractor shall correct the faults which caused the acceptance to be unsuccessful and the acceptance procedure shall be carried out again.



D8.6 If, after MHCLG has extended the acceptance period pursuant to Clause D8.5 above, the acceptance has not been recorded as successful by the end of that period, MHCLG shall, have the right, without prejudice to its other rights and remedies:

D8.6.1 to accept such part of the work as MHCLG may decide and pay a charge calculated on a pro rata basis therefor or such other charge as may be agreed between the Parties; or

D8.6.2 to extend the acceptance period for a period or periods, specified by MHCLG, during which the Contractor shall correct the fault that caused the acceptance to be unsuccessful and the acceptance procedure shall be carried out again.

D9. MHCLG PREMISES

D9.1 This Condition D9 shall only apply where the Premises are provided by or on behalf of MHCLG.

D9.2 Access to the Premises shall be made available to the Contractor free of charge and shall be used solely for the purposes of performing the Contract. The Contractor shall have use of the Premises as licensee.

D9.3 Access to the Premises shall not be exclusive to the Contractor but shall be such as to enable the Contractor to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as MHCLG may reasonably require.

D9.4 Where any of the Contractor's Personnel is replaced in accordance with D4 the Contractor shall take any steps reasonably required by MHCLG to prevent such Contractor's Personnel being admitted to the Premises.

D9.6 The Contractor shall make no delivery of its equipment, plant or materials nor commence the Services on the Premises without MHCLG's Contract Manager's prior approval.

D9.7 The Contractor shall maintain its items of equipment, plant and materials within the Premises in a safe, serviceable and clean condition.

D9.8 All equipment, plant and materials brought onto the Premises by the Contractor shall be at the Contractor's own risk and MHCLG shall have no liability for any loss of or damage to the same unless the Contractor can demonstrate that such loss or damage was caused by the wilful act of MHCLG.

D9.9 The Contractor shall provide for the haulage or carriage of its equipment, plant or materials to the Premises and the removal therefrom when no longer required at the Contractor's sole cost.



D9.10 MHCLG shall have the power at any time during the Contract to order in writing that the Contractor:

D9.10.1 remove from the Premises any of its equipment, plant or materials which in the opinion of MHCLG is either hazardous, noxious or not in accordance with the Contract; and

D9.10.2 substitute proper and suitable equipment, plant and materials.

D9.11 On completion of the Services the Contractor shall remove its equipment, plant and unused materials and shall clear away from the Premises all rubbish arising out the Services and leave the Premises in a neat and tidy condition.

D9.12 The Contractor shall pay the costs of making good any damage to the Premises (and any fixtures and fittings of the Premises) done by the Contractor's Personnel other than fair wear and tear.

D9.13 Continuity of electricity, heating, telephone, water supplies, stationery and sewerage ("Supplies") at the Premises is not guaranteed and no liability will be accepted by MHCLG for shut-down or restrictions due to any cause whatsoever.

D9.14 The Contractor's Personnel shall ensure that the Premises are used with due regard for the need for the efficient use and conservation of Supplies and MHCLG shall not bear the costs of any use of such Supplies by the Contractor's Personnel which do not conform to the requirements of this Clause D9.14.

D10. HEALTH AND SAFETY AND SECURITY

D10.1 The Contractor shall notify MHCLG if the Services are hazardous to health or safety and of the precautions that should be taken in respect thereto.

D10.2 MHCLG shall notify the Contractor of any special health and safety hazards which MHCLG becomes aware of in relation to the Premises, where the Premises are provided by or on behalf of MHCLG, which may affect the Contractor's performance of the Services. If MHCLG notifies the Contractor of any special health and safety hazards the Contractor shall draw any such hazards to the attention of the Contractor's Personnel.

D10.3 The Contractor shall be responsible for the observance by itself and the Contractor's Personnel of all such rules, site regulations, policies, procedures, requirements (including those relating to security arrangements) and safety precautions necessary for the protection of itself and the Contractor's Personnel and any other persons including all precautions required to be taken by or under all applicable laws, enactments, orders, regulations, other similar instruments and codes of practice. The Contractor and the Contractor's Personnel shall co-operate fully with MHCLG to ensure the proper discharge of these duties.



D10.4 Where the Premises are provided by or on behalf of the Contractor MHCLG shall be entitled to inspect the Premises to ensure they are appropriate for the provision of the Services.

D10.5 Accidents to the Contractor's Personnel at the Premises which ordinarily are required to be reported in accordance with the Health and Safety at Work Act 1974 shall be reported immediately to MHCLG's Contract Manager.

D10.6 MHCLG may undertake security and/or identity checks on any of the Contractor's Personnel requiring unescorted access to MHCLG's Premises or IT network. The Contractor and the Contractor's Personnel must comply with MHCLG's arrangements for undertaking security and identity checks.

D11. PAYMENT

D11.1 This Condition D11 shall apply in the absence of any specific provision for payment elsewhere in the Contract.

D11.2 The Contractor shall submit a single, fully itemised invoice at the end of each calendar month in respect of the Services undertaken during that month unless the Contract specifies payment is due upon Acceptance of the Services or Deliverables in which case the Contractor shall submit a single, fully itemised invoice after Acceptance of the Services or Deliverables.

D11.3 The invoice must clearly identify the Services and/or Deliverables to which the invoice relates.

D12. NOT USED

D13. NOT USED

D14. STAFF TRANSFER

D14.1 The Parties agree that:

D14.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 1 (Staff Transfer) shall apply as follows:

(a) where the Relevant Transfer involves the transfer of Transferring MHCLG Employees, Part A of Schedule 1 (Staff Transfer) shall apply;

(b) where the Relevant Transfer involves the transfer of Transferring Former Contractor Employees, Part B of Schedule 1 (Staff Transfer) shall apply;



(c) where the Relevant Transfer involves the transfer of Transferring MHCLG Employees and Transferring Former Contractor Employees, Parts A and B of Schedule 1 (Staff Transfer) shall apply; and

(d) Part C of Schedule 1 (Staff Transfer) shall not apply;

D14.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 1 (Staff Transfer) shall apply and Parts A and B of Schedule 1 (Staff Transfer) shall not apply; and

D14.1.3 Part D of Schedule 1 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services;

D14.2 The Contractor shall both during and after the term of the Contract indemnify MHCLG against all Employee Liabilities that may arise as a result of any claims brought against MHCLG by any person where such claim arises from any act or omission of the Contractor or any Contractor Personnel.

D15. SOLICITING FOR EMPLOYMENT

D15.1 Each Party to the Contract undertakes not to attempt to solicit nor procure the service or employment of employees of the other Party or persons engaged under a contract for services with the other Party during the term of the Contract and within six calendar months after the termination or expiry of the Contract without the prior written permission of the other Party.

D15.2 Clause D15.1 shall not restrict either Party from appointing any person, whether employee or consultant of the other or not, who has applied in response to an advertisement properly and publicly placed in the normal course of business. In such event, neither Party shall have any obligation or liability to the other by way of introductory or finder's fee.

D16. BUSINESS CONTINUITY PLANNING

D16.1 MHCLG may require the Contractor to develop and agree with MHCLG a business continuity plan. Where so required the Contractor shall:

D16.1.1 in accordance with good industry practice, maintain detailed and comprehensive contingency plans against events which could affect the ability of the Contractor to perform the Services in accordance with this Contract, including loss of computer and business systems, loss or failure of equipment, loss of utilities or premises, industrial relations problems, failures in the supply chain, pandemic and loss of Key Personnel; and



D16.1.2 keep the plans under review and make such changes, from time to time, as shall be required in accordance with good industry practice.

D16.2 MHCLG shall be entitled to review any business continuity plans developed under this Contract at any time and, at its sole discretion, make suggested changes or amendments to the plans which the Contractor, acting reasonably shall consider and, after consultation and agreement with MHCLG, put in place.

D17. EXIT AND SKILLS TRANSFER

D17.1 MHCLG may require the Contractor to develop and agree with MHCLG an exit and skills transfer plan describing how the Services shall be handed over and appropriate skills transferred. Any such exit and skills transfer plan will be developed in line with MHCLG's requirements and updated through the term of the Contract.

D18. NON-EXCLUSIVITY

D18.1 MHCLG may at any time engage other persons to provide services of the same type as the Services.

D19. BREAK

D19.1 In addition to MHCLG's other rights to terminate the Contract MHCLG shall be entitled to terminate the Contract or any part thereof by giving to the Contractor not less than:

D19.1.1 15 Days notice to that effect where the term of the Contract is less than 90 Days.

D19.1.2 30 Days notice to that effect where the term of the contract is 90 Days or more.

D19.2 Where MHCLG terminates the Contract under Clause D19.1, MHCLG shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by 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 Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under D19.1.



D19.3 MHCLG shall not be liable under Clause D19.2 to pay any sum which:

D19.3.1 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; or

D19.3.2 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 in accordance with Clause D19.1.



SCHEDULE 1 STAFF TRANSFER

1. DEFINITIONS

In this Schedule 1, the following definitions shall apply:

“Admission Agreement” An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Contractor where it agrees to participate in the Schemes in respect of the Services;

“Contractor's Final Contractor Personnel List”
a list provided by the Contractor of all Contractor Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

“Contractor's Provisional Contractor Personnel List”
a list prepared and updated by the Contractor of all Contractor Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Contractor;

“Eligible Employee” any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;

“Fair Deal Employees” those Transferring MHCLG Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule 1 applies, any Transferring Former Contractor Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);



“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
“Notified Sub-Contractor”	a Sub-Contractor identified in the Annex to this Schedule 1 to whom Transferring MHCLG Employees and/or Transferring Former Contractor Employees will transfer on a Relevant Transfer Date;
“Schemes”	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
“Staffing Information”	in relation to all persons identified on the Contractor's Provisional Contractor Personnel List or Contractor's Final Contractor Personnel List, as the case may be, such information as MHCLG may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format: <ul style="list-style-type: none"><li data-bbox="719 1637 1361 1738">(a) their ages, dates of commencement of employment or engagement, gender and place of work;<li data-bbox="719 1760 1361 1883">(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;<li data-bbox="719 1906 1361 1973">(c) the identity of the employer or relevant contracting party;



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

2. INTERPRETATION

Where a provision in this Schedule 1 imposes an obligation on the Contractor to provide an indemnity, undertaking or warranty, the Contractor shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to MHCLG, Former Contractor, Replacement Contractor or Replacement Sub-Contractor, as the case may be.



PART A

TRANSFERRING MHCLG EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

1.1 MHCLG and the Contractor agree that:

1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring MHCLG Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between MHCLG and the Transferring MHCLG Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Contractor and/or any Notified Sub-Contractor and each such Transferring MHCLG Employee.

1.2 MHCLG shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring MHCLG Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) MHCLG; and (ii) the Contractor and/or any Notified Sub-Contractor (as appropriate).

2. MHCLG INDEMNITIES

2.1 Subject to Paragraph 2.2, MHCLG shall indemnify the Contractor and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

2.1.1 any act or omission by MHCLG in respect of any Transferring MHCLG Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring MHCLG Employee occurring before the Relevant Transfer Date;



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



- 2.1.7 any claim made by or in respect of a Transferring MHCLG Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring MHCLG Employee relating to any act or omission of MHCLG in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring MHCLG Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the Contractor or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by MHCLG as a Transferring MHCLG Employee claims, or it is determined in relation to any person who is not identified by the MHCLG as a Transferring MHCLG Employee, that his/her contract of employment has been transferred from MHCLG to the Contractor and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Contractor shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to MHCLG; and
- 2.3.2 MHCLG may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Contractor and/or any Notified Sub-Contractor, or take such other reasonable steps as MHCLG considers appropriate to deal with the matter provided always that such steps are in compliance with Law.



- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by MHCLG, the Contractor shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Contractor and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Contractor and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, MHCLG shall indemnify the Contractor and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Contractor takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Contractor and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and



2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Contractor and/or any Notified Sub-Contractor (as appropriate) to MHCLG within 6 months of the Effective Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by MHCLG nor dismissed by the Contractor and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Contractor and/or any Notified Sub-Contractor and the Contractor shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. CONTRACTOR INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2 the Contractor shall indemnify MHCLG against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Contractor or any Sub-Contractor in respect of any Transferring MHCLG Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring MHCLG Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Contractor or any Sub-Contractor on or after the Relevant Transfer Date of:

(a) any collective agreement applicable to the Transferring MHCLG Employees; and/or

(b) any custom or practice in respect of any Transferring MHCLG Employees which the Contractor or any Sub-Contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring MHCLG Employees arising from or connected with any failure by the Contractor or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;



- 3.1.4 any proposal by the Contractor or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring MHCLG Employees to their material detriment on or after their transfer to the Contractor or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring MHCLG Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Contractor or any Sub-Contractor to, or in respect of, any Transferring MHCLG Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with MHCLG in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring MHCLG Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (b) in relation to any employee who is not a Transferring MHCLG Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from MHCLG to the Contractor or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring MHCLG Employees in respect of the period from (and including) the Relevant Transfer Date;



- 3.1.8 any claim made by or in respect of a Transferring MHCLG Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring MHCLG Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from MHCLG's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Contractor or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of MHCLG whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from MHCLG's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring MHCLG Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between MHCLG and the Contractor.

4. INFORMATION

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



5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

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

6. PENSIONS

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



ANNEX TO PART A: PENSIONS

1. PARTICIPATION

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



2. FUTURE SERVICE BENEFITS

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

3. FUNDING

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



4. PROVISION OF INFORMATION

The Contractor and MHCLG respectively undertake to each other:

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

5. INDEMNITY

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

6. EMPLOYER OBLIGATION

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

7. SUBSEQUENT TRANSFERS

The Contractor shall:

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



7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,

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

8. BULK TRANSFER

8.1 Where the Contractor has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Contractor agrees to:

8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;

8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Contractor and/or MHCLG may reasonably require, to enable the Replacement Contractor to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Contractor agrees to pay the Shortfall to the Schemes; and

8.1.4 indemnify MHCLG on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.



PART B

TRANSFERRING FORMER CONTRACTOR EMPLOYEES AT COMMENCEMENT OF SERVICES

1. RELEVANT TRANSFERS

1.1 MHCLG and the Contractor agree that:

1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Contractor Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Contractor and the Transferring Former Contractor Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Contractor and/or Notified Sub-Contractor and each such Transferring Former Contractor Employee.

1.2 Subject to Paragraph 6, MHCLG shall procure that each Former Contractor shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Contractor Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Contractor shall make, and MHCLG shall procure that each Former Contractor makes, any necessary apportionments in respect of any periodic payments.



2. FORMER CONTRACTOR INDEMNITIES

2.1 Subject to Paragraphs 2.2 and 6, MHCLG shall procure that each Former Contractor shall indemnify the Contractor and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

2.1.1 any act or omission by the Former Contractor in respect of any Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee arising before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Former Contractor arising before the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Former Contractor Employees; and/or
- (b) any custom or practice in respect of any Transferring Former Contractor Employees which the Former Contractor is contractually bound to honour;

2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (a) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
- (b) in relation to any employee who is not a Transferring Former Contractor Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;



- 2.1.4 a failure of the Former Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period to (but excluding) the Relevant Transfer Date;
 - 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Contractor other than a Transferring Former Contractor Employee for whom it is alleged the Contractor and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.1.6 any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Former Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Contractor or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Contractor Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Contractor or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Contractor and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.



- 2.3 If any person who is not identified by MHCLG as a Transferring Former Contractor Employee claims, or it is determined in relation to any person who is not identified by MHCLG as a Transferring Former Contractor Employee, that his/her contract of employment has been transferred from a Former Contractor to the Contractor and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- 2.3.1 the Contractor shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to MHCLG and, where required by MHCLG, to the Former Contractor; and
- 2.3.2 the Former Contractor may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Contractor and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Contractor considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Contractor and/or MHCLG, the Contractor shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Contractor and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Contractor and/or any Notified Sub-Contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, MHCLG shall procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Contractor takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.



- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- (a) any claim for:
- (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Contractor and/or any Sub-Contractor; or
- (b) any claim that the termination of employment was unfair because the Contractor and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Contractor and/or any Notified Sub-Contractor (as appropriate) to MHCLG and, if applicable, the Former Contractor, within 6 months of the Effective Date.
- 2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Contractor nor dismissed by the Contractor and/or any Notified Sub-Contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Contractor or Notified Sub-Contractor and the Contractor shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

3. CONTRACTOR INDEMNITIES AND OBLIGATIONS

- 3.1 Subject to Paragraph 3.2, the Contractor shall indemnify MHCLG and/or the Former Contractor against any Employee Liabilities arising from or as a result of:
- 3.1.1 any act or omission by the Contractor or any Sub-Contractor in respect of any Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee whether occurring before, on or after the Relevant Transfer Date;



- 3.1.2 the breach or non-observance by the Contractor or any Sub-Contractor on or after the Relevant Transfer Date of:
- (a) any collective agreement applicable to the Transferring Former Contractor Employee; and/or
 - (b) any custom or practice in respect of any Transferring Former Contractor Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Contractor Employees arising from or connected with any failure by the Contractor or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Contractor or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Contractor Employees to their material detriment on or after their transfer to the Contractor or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 any statement communicated to or action undertaken by the Contractor or a Sub-Contractor to, or in respect of, any Transferring Former Contractor Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with MHCLG and/or the Former Contractor in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and



- (b) in relation to any employee who is not a Transferring Former Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Contractor to the Contractor or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
 - 3.1.7 a failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period from (and including) the Relevant Transfer Date;
 - 3.1.8 any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Contractor's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
 - 3.1.9 a failure by the Contractor or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Contractor's failure to comply with its obligations under the Employment Regulations.



- 3.3 The Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Contractor Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Contractor and the Former Contractor.

4. INFORMATION

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



5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

- 5.1 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by MHCLG relating to pensions in respect of any Transferring Former Contractor Employee as set down in:
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
 - 5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
 - 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
 - 5.1.4 the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

6. PROCUREMENT OBLIGATIONS

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

7. PENSIONS

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



ANNEX TO PART B: PENSIONS

1. PARTICIPATION

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



2. FUTURE SERVICE BENEFITS

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

3. FUNDING

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



4. PROVISION OF INFORMATION

The Contractor and MHCLG respectively undertake to each other:

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

5. INDEMNITY

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

6. EMPLOYER OBLIGATION

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

7. SUBSEQUENT TRANSFERS

The Contractor shall:

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



7.3.2 after the date which is two (2) years prior to the date of expiry of this Contract,

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

8. BULK TRANSFER

8.1 Where the Contractor has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Contractor agrees to:

8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;

8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Contractor and/or MHCLG may reasonably require, to enable the Replacement Contractor to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service ("the Shortfall"), the Contractor agrees to pay the Shortfall to the Schemes; and

8.1.4 indemnify MHCLG on demand for any failure to pay the Shortfall as required under Paragraph 8.1.3 above.



PART C
NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

1.1 MHCLG and the Contractor agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of MHCLG and/or any Former Contractor.

1.2 If any employee of MHCLG and/or a Former Contractor claims, or it is determined in relation to any employee of MHCLG and/or a Former Contractor, that his/her contract of employment has been transferred from MHCLG and/or the Former Contractor to the Contractor and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

1.2.1 the Contractor shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to MHCLG and, where required by MHCLG, give notice to the Former Contractor; and

1.2.2 MHCLG and/or the Former Contractor may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Contractor or the Sub-Contractor (as appropriate) or take such other reasonable steps as MHCLG or Former Contractor (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by MHCLG and/or the Former Contractor), the Contractor shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

1.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:

1.4.1 no such offer of employment has been made;

1.4.2 such offer has been made but not accepted; or

1.4.3 the situation has not otherwise been resolved,

the Contractor and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.



2. INDEMNITIES

- 2.1 Subject to the Contractor and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, MHCLG shall:
- 2.1.1 indemnify the Contractor and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of MHCLG referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- 2.1.2 subject to paragraph 3, procure that the Former Contractor indemnifies the Contractor and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Contractor referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Contractor takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re-employed by MHCLG and/or the Former Contractor as appropriate nor dismissed by the Contractor and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Contractor and/or the Sub-Contractor (as appropriate) and the Contractor shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Contractor and/or any Sub-Contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Contractor and/or the Sub-Contractor and the Contractor shall indemnify MHCLG and any Former Contractor, and shall procure that the Sub-Contractor shall indemnify MHCLG and any Former Contractor, against any Employee Liabilities that either of them may incur in respect of any such employees of the Contractor and/or employees of the Sub-Contractor.



2.4 The indemnities in Paragraph 2.1:

2.4.1 shall not apply to:

- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Contractor and/or any Sub-Contractor; or

- (b) any claim that the termination of employment was unfair because the Contractor and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and

2.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Contractor and/or any Sub-Contractor to MHCLG and, if applicable, Former Contractor within 6 months of the Effective Date.

3. PROCUREMENT OBLIGATIONS

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



PART D

EMPLOYMENT EXIT PROVISIONS

1. PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Contractor agrees that within twenty (20) Working Days of the earliest of:

- 1.1.1 receipt of a notification from MHCLG of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any partial termination of this Contract;
- 1.1.3 the date which is twelve (12) months before the end of the Term; and
- 1.1.4 receipt of a written request of MHCLG at any time (provided that MHCLG shall only be entitled to make one such request in any six (6) month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Contractor's Provisional Contractor Personnel List, together with the Staffing Information in relation to the Contractor's Provisional Contractor Personnel List and it shall provide an updated Contractor's Provisional Contractor Personnel List at such intervals as are reasonably requested by MHCLG.

1.2 At least thirty (30) Working Days prior to the Service Transfer Date, the Contractor shall provide to MHCLG or at the direction of MHCLG to any Replacement Contractor and/or any Replacement Sub-Contractor:

- 1.2.1 the Contractor's Final Contractor Personnel List, which shall identify which of the Contractor Personnel are Transferring Contractor Employees; and
- 1.2.2 the Staffing Information in relation to the Contractor's Final Contractor Personnel List (insofar as such information has not previously been provided).

1.3 MHCLG shall be permitted to use and disclose information provided by the Contractor under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Contractor and/or Replacement Sub-Contractor.



- 1.4 The Contractor warrants, for the benefit of MHCLG, any Replacement Contractor, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1, the Contractor agrees, that it shall not, and agrees to procure that each Sub Contractor shall not, assign any person to the provision of the Services who is not listed on the Contractor's Provisional Contractor Personnel List and shall not without the approval of MHCLG (not to be unreasonably withheld or delayed):
 - 1.5.1 replace or re-deploy any Contractor Personnel listed on the Contractor Provisional Contractor Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Contractor Personnel (including any payments connected with the termination of employment);
 - 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Contractor Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Contractor Personnel List;
 - 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or



1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Contractor Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, MHCLG or, at the direction of MHCLG, any Replacement Contractor and any Replacement Sub-Contractor of any notice to terminate employment given by the Contractor or relevant Sub-Contractor or received from any persons listed on the Contractor's Provisional Contractor Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Contractor shall provide, and shall procure that each Sub Contractor shall provide, to MHCLG any information MHCLG may reasonably require relating to the manner in which Services are organised, which shall include:

1.6.1 the numbers of employees engaged in providing the Services;

1.6.2 the percentage of time spent by each employee engaged in providing the Services;

1.6.3 the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule 1 or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule 1 (as appropriate); and

1.6.4 a description of the nature of the work undertaken by each employee by location.

1.7 The Contractor shall provide, and shall procure that each Sub Contractor shall provide, all reasonable cooperation and assistance to MHCLG, any Replacement Contractor and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Contractor Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Contractor Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Contractor shall provide, and shall procure that each Sub-Contractor shall provide, to MHCLG or, at the direction of MHCLG, to any Replacement Contractor and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Contractor's Final Contractor Personnel List who is a Transferring Contractor Employee:

1.7.1 the most recent month's copy pay slip data;

1.7.2 details of cumulative pay for tax and pension purposes;

1.7.3 details of cumulative tax paid;



- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 MHCLG and the Contractor acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Contractor and/or a Replacement Sub-Contractor. Such change in the identity of the Contractor of such Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. MHCLG and the Contractor further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Contractor and the Transferring Contractor Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Contractor and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Contractor Employee.
- 2.2 The Contractor shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Contractor Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Contractor Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Contractor and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Contractor and/or Replacement Sub-Contractor.



- 2.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs the Contractor shall indemnify the MHCLG and/or the Replacement Contractor and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the Contractor or any Sub-Contractor in respect of any Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee whether occurring before, on or after the Service Transfer Date;
 - 2.3.2 the breach or non-observance by the Contractor or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Contractor Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Contractor Employees which the Contractor or any Sub-Contractor is contractually bound to honour;
 - 2.3.3 any claim by any trade union or other body or person representing any Transferring Contractor Employees arising from or connected with any failure by the Contractor or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) in relation to any Transferring Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and



- (b) in relation to any employee who is not identified in the Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor to MHCLG and/or Replacement Contractor and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
 - 2.3.5 a failure of the Contractor or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees in respect of the period up to (and including) the Service Transfer Date);
 - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Contractor or any Sub-Contractor other than a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List for whom it is alleged MHCLG and/or the Replacement Contractor and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - 2.3.7 any claim made by or in respect of a Transferring Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Contractor Employee relating to any act or omission of the Contractor or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by MHCLG and/or Replacement Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Contractor Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Contractor and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or



- 2.4.2 arising from the Replacement Contractor's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Contractor's Final Contractor Personnel List claims, or it is determined in relation to any person who is not identified in the Contractor's Final Contractor Personnel List that his/her contract of employment has been transferred from the Contractor or any Sub-Contractor to the Replacement Contractor and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- 2.5.1 MHCLG shall procure that the Replacement Contractor shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Contractor; and
- 2.5.2 the Contractor may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Contractor and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Contractor or a Sub-Contractor, MHCLG shall procure that the Replacement Contractor shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
- 2.7.2 such offer has been made but not accepted; or
- 2.7.3 the situation has not otherwise been resolved

the Replacement Contractor and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.



2.8 Subject to the Replacement Contractor and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Contractor shall indemnify the Replacement Contractor and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Contractor takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

2.9.1 shall not apply to:

- (a) any claim for:
 - (i) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Replacement Contractor and/or Replacement Sub-Contractor; or

- (b) any claim that the termination of employment was unfair because the Replacement Contractor and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Contractor and/or Replacement Sub-Contractor to the Contractor within six (6) months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Contractor or any Sub-Contractor nor dismissed by the Replacement Contractor and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Contractor Employee.



- 2.11 The Contractor shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Contractor's Final Contractor Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Contractor and/or any Sub-Contractor; and
 - 2.11.2 the Replacement Contractor and/or the Replacement Sub-Contractor.
- 2.12 The Contractor shall, and shall procure that each Sub-Contractor shall, promptly provide to MHCLG and any Replacement Contractor and/or Replacement Sub-Contractor, in writing such information as is necessary to enable MHCLG, the Replacement Contractor and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. MHCLG shall procure that the Replacement Contractor and/or Replacement Sub-Contractor, shall promptly provide to the Contractor and each Sub-Contractor in writing such information as is necessary to enable the Contractor and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, where a Relevant Transfer occurs MHCLG shall procure that the Replacement Contractor indemnifies the Contractor on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Contractor and/or Replacement Sub-Contractor in respect of any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee;



- 2.13.2 the breach or non-observance by the Replacement Contractor and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List; and/or
 - (b) any custom or practice in respect of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List which the Replacement Contractor and/or Replacement Sub-Contractor is contractually bound to honour;
- 2.13.3 any claim by any trade union or other body or person representing any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List arising from or connected with any failure by the Replacement Contractor and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.13.4 any proposal by the Replacement Contractor and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List on or after their transfer to the Replacement Contractor or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Contractor's Final Contractor Personnel List who would have been a Transferring Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- 2.13.5 any statement communicated to or action undertaken by the Replacement Contractor or Replacement Sub-Contractor to, or in respect of, any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Contractor in writing;



- 2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - (c) in relation to any employee who is not a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Contractor or Sub-Contractor, to the Replacement Contractor or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- 2.13.7 a failure of the Replacement Contractor or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Contractor Employees identified in the Contractor's Final Contractor Personnel List in respect of the period from (and including) the Service Transfer Date; and
- 2.13.8 any claim made by or in respect of a Transferring Contractor Employee identified in the Contractor's Final Contractor Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Contractor Employee relating to any act or omission of the Replacement Contractor or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Contractor and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Contractor and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.